



COLORADO

**Department of
Regulatory Agencies**

Colorado Office of Policy, Research &
Regulatory Reform

**2017 Sunset Review:
Physical Therapy Practice Act**

October 13, 2017



COLORADO

**Department of
Regulatory Agencies**

Executive Director's Office

October 13, 2017

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 Colorado General Assembly established the sunset review process in 1976 as a way to analyze and evaluate regulatory programs and determine the least restrictive regulation consistent with the public interest. Since that time, Colorado's sunset process has gained national recognition and is routinely highlighted as a best practice as governments seek to streamline regulation and increase efficiencies.

Section 24-34-104(5)(a), Colorado Revised Statutes (C.R.S.), directs the Department of Regulatory Agencies to:

- Conduct an analysis of the performance of each division, board or agency or each function scheduled for termination; and
- Submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination.

The Colorado Office of Policy, Research and Regulatory Reform (COPRRR), located within my office, is responsible for fulfilling these statutory mandates. Accordingly, COPRRR has completed the evaluation of the State Physical Therapy Board (Board). I am pleased to submit this written report, which will be the basis for COPRRR's oral testimony before the 2018 legislative committee of reference.

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

Sincerely,

Marguerite Salazar
Executive Director





COLORADO

Department of Regulatory Agencies

Colorado Office of Policy, Research &
Regulatory Reform

2017 Sunset Review Physical Therapy Practice Act

SUMMARY

What is regulated?

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

Why is it regulated?

The General Assembly adopted the Physical Therapy Practice Act because it found that the practice of physical therapy without a license is harmful to the public welfare.

Who is regulated?

During fiscal year 15-16, the State Physical Therapy Board (Board) credentialed 9,314 individuals, including 7,565 physical therapist (PT) licensees and 1,749 physical therapist assistant (PTA) certificate holders.

How is it regulated?

There are two main ways to obtain licensure, through examination or through endorsement. A PT or PTA can qualify by completing required education with a Commission on Accreditation in Physical Therapy Education-accredited program. Once candidates have completed the education they are eligible to sit for their respective version of the National Physical Therapy Examination. The examination is developed by the Federation of State Boards of Physical Therapy.

What does it cost?

The monetary expenditures amounted to \$314,658 and the Division of Professions and Occupations allotted 1.05 full-time equivalent employees to administer the program in fiscal year 15-16.

What disciplinary activity is there?

In fiscal year 15-16, the Board issued 10 disciplinary actions, which included one suspension. It also, issued 13 confidential letters of concern which are not disciplinary actions *per se*, but are issued when the Board dismisses a complaint but notes conduct that could lead to serious consequences if not corrected.

KEY RECOMMENDATIONS

Continue the Physical Therapy Practice Act and the regulation of PTs and PTAs by the Board for nine years, until 2027.

PTs and PTAs are healthcare workers who provide patient-specific treatment to change physical condition, recover from illness and injury, and to help rehabilitate maladies connected to body movement. Physical therapy often uses hands-on treatment modalities with individuals who have issues. Therefore, there is significant potential and/or opportunity for harm if a person is not trained properly or practices outside of his or her expertise.

The licensing regime established under the Act provides a degree of confidence in the professional practitioners by confirming that they have the training necessary to provide care. It also ensures that when an individual does not practice according to established professional standards, they could lose the ability to perform physical therapy.

Clarify that a PT may establish a physical therapy diagnosis for a patient.

The Act prohibits PTs from diagnosing disease and this recommendation does not seek to change that provision. Notwithstanding, PTs diagnose limitations and dysfunctions in the way the human body moves. Based on that diagnosis, a PT determines a course of action to improve physical function, determines the prospects for improvement, and he or she generally helps to implement the action plan.

The problem lies with a widely accepted, but erroneous, interpretation of the Act; diagnosing *disease* is interpreted too broadly by licensees. Problems manifest themselves in record keeping. The patient records that PTs write are too often vague, incomplete, or not understandable because of the misinterpreted prohibition. PTs must have the explicit ability to diagnose the mechanical, physiological, and movement-related issues for which they are trained and for which patients seek their services.

METHODOLOGY

As part of this review, Colorado Office of Policy, Research and Regulatory Reform staff attended Board meetings; interviewed Board members, Division of Professions and Occupations staff, officials with state and national professional associations, other stakeholders, regulators from other states, and officials from physical therapy schools; and reviewed records, Colorado statutes and rules, and the laws of other states.

MAJOR CONTACTS MADE DURING THIS REVIEW

AARP
Acupuncture Association of Colorado
Concorde Career College - Physical Therapist
Assistant Program
Colorado Chapter - American Physical Therapy
Association
Colorado Community Health Network
Colorado Cross-Disability Coalition
Colorado Hospital Association
Colorado in Motion

Colorado Chiropractic Association
Colorado Medical Society
Federation of State Boards of Physical Therapy
Home Health Care Association of Colorado
University of Colorado Physical Therapy Program
Regis University School of Physical Therapy
Pima Medical Institute Physical Therapist
Assistant Program
Office of the Colorado Attorney General

What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are prepared by:
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www.dora.colorado.gov/opr



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Background

Introduction

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

Sunset reviews are based on the following statutory criteria:

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

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

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- Whether the agency through its licensing or certification process imposes any disqualifications on applicants based on past criminal history and, if so, whether the disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subparagraph (i) of paragraph (a) of subsection (8) of this section shall include data on the number of licenses or certifications that were denied, revoked, or suspended based on a disqualification and the basis for the disqualification; and
 - Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

Types of Regulation

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

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

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

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

There are also several levels of regulation.

Licensure

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

Certification

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

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

Registration

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

Title Protection

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

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

Regulation of Businesses

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

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

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

Sunset Process

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review on COPRRR's website at: www.dora.colorado.gov/opr.

The functions of the State Physical Therapy Board (Board) as enumerated in Article 41 of Title 12, Colorado Revised Statutes (C.R.S.), shall terminate on September 1, 2018, unless continued by the General Assembly. During the year prior to this date, it is the duty of COPRRR to conduct an analysis and evaluation of the Board and the program pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed program to regulate physical therapists and physical therapist assistants should be continued and to evaluate the performance of the Board and the staff of the Division of Professions and Occupations (Division). During this review, the Board and the Division must demonstrate that the program serves the public interest. COPRRR's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

Methodology

As part of this review, COPRRR staff attended Board meetings; interviewed Board members, Division staff, officials with state and national professional associations, other stakeholders, regulators from other states, and officials from physical therapy schools; and reviewed records, Colorado statutes and rules, and the laws of other states.

Profile of the Profession

Physical Therapists²

Physical therapists (PTs) are healthcare workers who work with people to improve movement and manage pain. PTs help patients heal and rehabilitate chronic conditions, illnesses, or injuries.

Services that PTs typically perform for patients are:

- Review the medical history and any notes from other healthcare workers;
- Diagnose function and movement issues by observing and by listening;
- Develop individualized plans of care, as well as outlining the goals and the expected outcomes of the plans;
- Use exercise, stretching maneuvers, hands-on therapy, and equipment to ease pain, help increase their mobility, prevent further pain or injury, and facilitate health and wellness;
- Continue to evaluate, record progress, and modify a plan as needed; and
- Educate patients and their families about what to expect from the recovery process and how best to cope with challenges throughout the process.

PTs provide care to people who have functional problems resulting from diseases, disorders, and other conditions. They employ a variety of therapies to care for patients. Therapies include exercises; training in functional movement, which may include the use of equipment such as canes, crutches, wheelchairs, and walkers; and special movements of joints, muscles, and other soft tissue to improve movement and decrease pain.

The work of PTs is individual patient-based. An elderly male patient working to recover mobility lost after a stroke needs different care from a younger female patient recovering from a stroke. Some PTs specialize in one type of care, such as orthopedics or geriatrics. Some physical therapists also help patients to maintain or improve mobility by developing fitness and wellness programs to encourage healthier and more active lifestyles.

Physical therapists often work as part of a healthcare team, overseeing the work of physical therapist assistants and consulting with other healthcare professionals.

² Bureau of Labor and Statistics. *Occupational Outlook Handbook*. Retrieved May 5, 2017, from <https://www.bls.gov/ooh/healthcare/physical-therapists.htm#tab-2>

Physical Therapist Assistants³

Physical therapist assistants (PTAs), work under the direction and supervision of PTs. In fact, in Colorado a PTA may not practice physical therapy unless he or she is under a PT's supervision⁴ and may not supervise other personnel in the provision of physical therapy services to a patient.⁵ Like PTs, they help patients recover from injury and illness to regain movement and manage pain. PTAs also perform tasks indirectly related to patient care, such as cleaning and setting up a treatment area, moving patients, and performing clerical duties.

In Colorado, the supervising PT is responsible for the performance, and is accountable for the actions of his or her PTAs. There are multiple categories of supervision:⁶

- “General supervision” means the physical therapist is not required to be on site for direction and supervision, but must be available at least by telecommunications;
- “Direct supervision” means the physical therapist is physically present in the same physical building; and
- “Immediate supervision” means the physical therapist is physically present or immediately available in the same physical building to support the individual being supervised.

In Colorado PTs must provide general supervision to PTAs. However, direct supervision is required if a PTA is administering topical and aerosol medications.⁷ Notwithstanding, a PT cannot delegate an initial clinical contact, interpretation of referrals, initial examinations and evaluations, diagnosis and prognosis, development and modification of plans of care, determination of discharge criteria, or supervision of physical therapy services rendered to a patient.⁸

Much like PTs, PTAs treat patients through exercise, massage, gait and balance training, and other therapeutic interventions. PTAs may record progress but must report the results of treatments to the PT.

³ Bureau of Labor and Statistics. *Occupational Outlook Handbook*. Retrieved May 5, 2017 from <https://www.bls.gov/ooh/healthcare/physical-therapist-assistants-and-aides.htm#tab-2>

⁴ § 12-41-203(2), C.R.S.

⁵ 4 CCR 732-1, State Physical Therapy Board Rule 302.A.

⁶ 4 CCR 732-1, State Physical Therapy Board Rule 101

⁷ 4 CCR 732-1, State Physical Therapy Board Rule 201.C1.

⁸ 4 CCR 732-1, State Physical Therapy Board Rule 201. A3 and A4.

Legal Framework

History of Regulation

Regulation of physical therapists (PTs) in Colorado began in 1959. The State Board of Physical Therapy (Board), made up of three PTs, operated within the Secretary of State's Office. Initially PTs could only practice under physician supervision. However, this provision was repealed in 1988 when patients were allowed direct access to PTs. Prior to the repeal, patients were required to have a prescription from a physician, dentist, or podiatrist in order to receive physical therapy.

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

Sunset reviews have had major influence on physical therapy regulation. The 1979 sunset review recommended that PTs be granted title protection and expanded the definition of physical therapy. Following the 1985 sunset review, the General Assembly dissolved the Board and reconfigured PT regulation as a registration program under the authority of the Director of DORA's Division of Registrations (currently known as the Division of Professions and Occupations). The Director was required to form a Physical Therapy Advisory Committee consisting of at least five registered PTs.

A 1990 sunset report recommended reestablishment of PT licensing. The review argued that the term "license" better described the regulatory model for PTs because the 1985 changes left all the licensing qualifications in place. The General Assembly also expanded the grounds for discipline. Among other changes, the failure to properly refer patients to another, appropriate healthcare provider became a violation.

The 2000 sunset review precipitated repealing a requirement that wound debridement be performed only under the direct supervision of a physician as well as other less substantive changes.

The 2010, and most recent, sunset review recommended several changes, most significant of which was the reestablishment of the Board and dissolution of the Physical Therapy Advisory Committee. The recommendation was founded on changes in both the profession and in healthcare generally since the original Board was dissolved. The General Assembly agreed, and this is the regulatory model which is the subject of the current sunset review.

There have been other changes made to the Act not as a result of sunset. In 2007, the General Assembly authorized PTs to perform physical therapy on animals. During the 2010 legislative session, the General Assembly added PTs to the list of healthcare providers required to provide profile information under the Michael Skolnik Medical Transparency Act of 2010 (Skolnik Act). That same year, physical therapist assistants (PTAs) were required to become certified for the first time and are currently regulated by the Board under the auspices of the Physical Therapy Practice Act (Act).

During the 2017 legislative session, the legislature passed the Interstate Physical Therapy Compact Act. It allows PTs and PTAs credentialed in other compact member states to practice physical therapy in Colorado and Colorado PTs and PTAs to practice in the other compact states. In spite of its passage, Colorado is unable to participate in the compact because of the mandates required by the Skolnik Act.

Legal Summary

Essentially, physical therapy is,

the examination, treatment, or instruction of patients and clients to detect, assess, prevent, correct, alleviate, or limit physical disability, movement dysfunction, bodily malfunction, or pain from injury, disease, and other bodily conditions.⁹

Article 41 of Title 12, Colorado Revised Statutes (C.R.S.), holds the Act. The General Assembly adopted the Act because it found that the practice of physical therapy without a license is harmful to the public welfare.¹⁰

Physical therapy is regulated by the seven-member, Governor-appointed, type 1, State Physical Therapy Board (Board).¹¹ A type 1 board exercises a large degree of autonomy. Section 105 of Article 1, Title 24, C.R.S., which authorizes type 1 boards, reads in part:

[A board transferred under a type 1 transfer] shall exercise its prescribed statutory powers, duties, and functions, including rule-making, regulation, licensing, and registration, the promulgation of rules, rates, regulations, and standards, and the rendering of findings, orders, and adjudications, independently of the head of the principal department.

All Board members must be legal residents of Colorado. Five members must be licensed physical therapists whose licenses are in good standing and who have been actively engaged in professional practice for five years.¹² The remaining two members are required to represent the public at large.¹³

As the regulator, the Board is empowered to:¹⁴

- Evaluate the qualifications of applicants for licensure,
- Administer examinations,
- Issue and renew licenses,
- Adopt rules necessary for implementation of the Act,

⁹ § 12-41-103(6), C.R.S.

¹⁰ § 12-41-102, C.R.S.

¹¹ §§ 12-41-103.3(1)(a) and (1)(c), C.R.S.

¹² § 12-41-103.3(2), C.R.S.

¹³ § 12-41-103(1)(a), C.R.S.

¹⁴ § 12-41-103.6(2), C.R.S.

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- Conduct hearings concerning violations of the Act,
 - It may also employ Administrative Law Judges to conduct hearings.¹⁵
 - Take disciplinary actions for violations of the Act,
 - Maintain an inventory of every licensee, and
 - Promote consumer protection and education.

Licensure

The Act requires that each individual who practices as a PT be licensed and each individual who practices as PTA be certified.¹⁶ For the purpose of this sunset review, the required license and certification are collectively referred to as “licensure.”

To acquire licensure in Colorado, a person must:¹⁷

- Complete a program that is either accredited by a nationally recognized accrediting agency or is approved by the Board,
- Submit an application,
- Pay a fee,
- Pass a state and a national examination, and
- Not have committed an act that would be grounds for discipline.¹⁸

Prior to practicing as a PT, the Act requires that each PT carry professional liability insurance of at least \$1 million per claim and at least \$3 million per year for all claims. This requirement is waived for PTs who are employed by a corporation that maintains those levels of insurance.

The Board can issue a one-time, 120-day, provisional license to a PT who has completed a qualified program, submitted an application, and paid the fee. However, that person must practice under the supervision of a licensed PT.¹⁹

Licensure by endorsement is available to a PT or PTA who:²⁰

- Possesses licensure in good standing from another state,
- Submits an application, and
- Pays a fee.

¹⁵ § 12-41-117(8), C.R.S.

¹⁶ §§ 12-41-106, and 204, C.R.S.

¹⁷ § 12-41-107(1), C.R.S.

¹⁸ § 12-41-107(3), C.R.S.

¹⁹ § 12-41-107.5, C.R.S.

²⁰ §§ 12-41-109(1), and 206(1), C.R.S.

When these required materials have been submitted, the staff of the Division of Professions and Occupations verifies the qualifications.²¹ Once verified, the Board is directed to issue licensure to an individual who has satisfied at least one of the following:²²

- Graduated from an accredited program within the past two years and passed an examination substantially equivalent to Colorado's;
- Practiced for at least two of the five years immediately preceding the date of the application; or
- Not practiced for two of the last five years but passed a substantially similar examination and completed a Board-approved internship.

Licensure is also available to foreign-trained applicants whose training is equivalent to that required in Colorado, as long as they hold an active, valid license, and they pass the required examination.²³

A PT has the ability to request that the Board inactivate his or her license. Conversely, if a license is inactive, a PT may request that the Board activate the license. A PT cannot practice with an inactive license.²⁴

Licensure renewal takes place in odd numbered years. If a PT or PTA fails to renew in a timely manner, the licensure expires.²⁵ In addition to paying renewal fees, PTs, but not PTAs, must complete continuing professional competency requirements to be eligible for renewal.²⁶

The Act requires the Board to adopt rules for a continuing professional competency protocol that must include:²⁷

- A self-assessment of the PT's knowledge and skills when renewing or reinstating a license;
- A learning plan based on the assessment that documents the development and execution of that learning plan; and
- Documentation of activities that ensure the ability to practice physical therapy safely.

²¹ §§ 12-41-109(2), and 206(2), C.R.S.

²² §§ 12-41-109(3), and 206(3) C.R.S.

²³ §§ 12-41-111, and 207, C.R.S.

²⁴ § 12-41-112.5, C.R.S.

²⁵ §§ 12-41-112, and 208, C.R.S.

²⁶ §§ 12-41-112, 114.6(1)(b)(I), and 114.6(1)(d)(I), C.R.S.

²⁷ § 12-41-114.6(1)(b), C.R.S.

Discipline

The Board is responsible for imposing discipline when it concludes a PT or PTA has violated the conditions of licensure. The Board may investigate complaints upon its own motion or when it has been informed of a PT or PTA losing his or her job due to a violation of the Act.²⁸ The Board is empowered to issue letters of admonition (LOA); deny, refuse to renew, suspend, or revoke any license; place a PT or PTA on probation; impose public censure or a fine;²⁹ or institute practice conditions or limitations upon the PT or PTA.³⁰ Any person whose licensure has been revoked or has been surrendered is not eligible to reapply for two years.³¹

A PT or PTA may be disciplined for several reasons that involve clinical and professional conduct, administrative procedures, and/or fraudulent acts.³² For PTs this includes failing to provide adequate or proper supervision to those he or she is required to supervise.³³

If the Board believes a complaint does not warrant formal action but should not be dismissed as being without merit, it may issue an LOA. The recipient of an LOA may request in writing, within 20 days of receipt, that formal proceedings be initiated to resolve the issue described in the LOA. If the request is made within that 20 day window, the LOA is vacated and formal proceedings must commence.³⁴ Similarly, when the Board dismisses a complaint but notes conduct that could lead to serious consequences if not corrected, it may send a confidential letter of concern to the PT or PTA.³⁵ Notwithstanding, if a complaint warrants formal action, the complaint cannot be resolved by a deferred settlement, action, judgment, or prosecution.³⁶

If the Board decides that a PT or PTA poses an imminent threat to the health and safety of the public, or a person is acting or has acted without the required licensure, the Board may issue a cease and desist order. The order must set out the alleged violation and the requirement that the unlawful acts or unlicensed practices cease. The respondent has 10 days to request a hearing that must be conducted according to the State Administrative Procedure Act.³⁷

Alternatively, the Board may issue an order to show cause concerning why it should not issue a cease and desist order for a violation of the Act. The Board must hold a hearing between 10 and 60 calendar days after the order is delivered.³⁸ Any person hurt by a final cease-and-desist order may seek judicial review of the Board's determination.³⁹ The

²⁸ §§ 12-41-117(3)(a), and 212(3)(a), C.R.S.

²⁹ §§ 12-41-116(1)(a), and 211(1)(a), C.R.S.

³⁰ §§ 12-41-116(3), and 211(3), C.R.S.

³¹ §§ 12-41-116(6), and 211(7), C.R.S.

³² §§ 12-41-115, and 210, C.R.S.

³³ § 12-41-115(1)(e), C.R.S.

³⁴ §§ 12-41-116(2), and 211(2), C.R.S.

³⁵ §§ 12-41-116(3.5), and 211(4), C.R.S.

³⁶ § 12-41-117(10), C.R.S.

³⁷ §§ 12-41-117(11) and 212(10), C.R.S.

³⁸ §§ 12-41-117(12), and 212(11), C.R.S.

³⁹ § 12-41-117(15), C.R.S.

Board also has the ability to seek an injunction through the court and to prohibit anyone from practicing without licensure.⁴⁰

If a PT offers or attempts to practice physical therapy without active licensure he or she commits a class 2 misdemeanor for the first offense. If convicted, the sentence ranges from three months imprisonment, a \$250 fine, or both, to 12 months imprisonment, \$1,000 fine, or both. Any second or subsequent offense is a class 6 felony; conviction carries fines from \$1,000 to \$100,000, and from one year to 18 months imprisonment.⁴¹ A PTA who practices without the mandatory licensure commits a class 2 misdemeanor.⁴²

Business Regulation

PTs may form professional service corporations under the Colorado Business Corporation Act. Among the requirements for establishing such an entity are:⁴³

- The corporation must be organized solely for the purposes of conducting the practice of physical therapy only through licensed PTs;
- All shareholders must be licensees, except that an unlicensed heir may be a shareholder for up to two years after the death of a shareholder;
- The President must be a shareholder and director; and
- The articles of incorporation must provide, that all shareholders are jointly and severally liable for all acts, errors, and omissions of the employees, except when the shareholders maintain professional liability insurance that meets Act standards or when the corporation maintains professional liability insurance that meets the Act's standards.

The Board may terminate or suspend a corporation's ability to operate for a violation of the Act in the same manner as it may for an individual licensed under the Act.⁴⁴

⁴⁰ §§ 12-41-123, and 218, C.R.S.

⁴¹ § 12-41-121, C.R.S.

⁴² § 12-41-216, C.R.S.

⁴³ § 12-41-124(1), C.R.S.

⁴⁴ § 12-41-124(2), C.R.S.

Program Description and Administration

The State Physical Therapy Board (Board) is empowered by the Physical Therapy Practice Act (Act) to regulate physical therapists (PTs) and physical therapist assistants (PTAs) in Colorado.⁴⁵ The regulatory program is administered through the Department of Regulatory Agencies' Division of Professions and Occupations (Division).

Table 1 illustrates the monetary expenditures and full-time equivalent (FTE) employee allotment made by the Division for program administration during the period covered by this sunset review.

Table 1
Program Expenditures
Fiscal Years 11-12 through 15-16

Fiscal Year	Total Program Expenditures	FTE
11-12	\$322,725	2.08
12-13	\$340,910	1.70
13-14	\$287,613	1.55
14-15	\$327,066	1.05
15-16	\$314,658	1.05

Table 1 shows that the number of staff to administer the program was reduced by half during the period examined for this sunset review. This is likely due to startup labor associated with creation of the Board in 2012. Subsequently, the workload has been normalized. The enumerated FTE does not include employees in the centralized offices of the Division who provide management, licensing, administrative, technical, and investigative functions for the Board, as well as other regulated professions. However, the cost of those FTE is reflected in the Total Program Expenditures. The FTE listed provide direct Board support and are portions of three positions. During fiscal year 15-16 these position were allocated as follows:

- Program Management II - 0.30 FTE;
- Administrator III - 0.30 FTE; and
- Technician IV - 0.45 FTE.

⁴⁵ § 12-41-101, *et seq.*, C.R.S.

Licensure

The main functions of the Board are to qualify and credential individual PTs and PTAs according to the specifications in the Act. There are two main ways to obtain licensure – through examination or through endorsement. A PT or PTA can qualify by completing required education with a Commission on Accreditation in Physical Therapy Education accredited program.⁴⁶ Colorado houses two such programs for PTs. One program is at the University of Colorado and the other is at Regis University.⁴⁷ Both schools offer a Doctor of Physical Therapy degree which requires a bachelor's degree as a prerequisite, classroom instruction, and 38 weeks of clinical education. Once candidates have completed the education they are eligible to sit for the PT version of the National Physical Therapy Examination (NPTE).

There are four schools in Colorado where PTA programs are offered: Arapahoe Community College, Concorde Career College, Pima Medical Institute, and Pueblo Community College.⁴⁸ The degree consists of classroom instruction and a clinical internship. Once the education is complete and a student has received an Associate's degree, he or she may sit for the PTA version of the NPTE.

The NPTE examinations are developed by the Federation of State Boards of Physical Therapy (FSBPT) for both PTs and PTAs.⁴⁹

The examinations are multiple choice and computerized.⁵⁰ Candidates are allowed five hours for the PT examination and four hours for the PTA examination. There are 250 questions on the PT examination and 200 items on the PTA examination.⁵¹

Prometric proctors the examinations for the FSBPT. It has testing sites in Greenwood Village, Longmont, Colorado Springs, and Grand Junction. The examinations for Colorado PTs and PTAs are also available in Scottsbluff, Nebraska.⁵²

⁴⁶ 4 CCR 732-1, State Physical Therapy Board Rule 103

⁴⁷ Commission on Accreditation in Physical Therapy Education. *Accredited PT & PTA Programs Directory*. Retrieved August 28, 2017 from <http://aptaapps.apta.org/accreditedschoolsdirectory/captedirectory.aspx?UniqueKey=>

⁴⁸ *Ibid.*

⁴⁹ 4 CCR 732-1, State Physical Therapy Board Rule 104

⁵⁰ Federation of State Boards of Physical Therapy. *Preparing for the Exam*. Retrieved August 24, 2017, from <https://www.fsbpt.org/FreeResources/NPTECandidateHandbook/TakingtheExamination.aspx#time>

⁵¹ Federation of State Boards of Physical Therapy. *Taking the Examination*. Retrieved August 24, 2017, from <https://www.fsbpt.org/FreeResources/NPTECandidateHandbook/TakingtheExamination.aspx#time>

⁵² Prometric. *Availability: Test Center Selection*. Retrieved August 24, 2017, from <https://securereg3.prometric.com/siteselection.aspx>

Table 2 lists the licensing information for PTs who obtained a license during the period covered by this sunset review.

Table 2
PT Licenses Issued
Fiscal Years 11-12 through 15-16

Fiscal Year	Initial Licenses Issued	Endorsement
11-12	397	306
12-13	202	257
13-14	233	332
14-15	336	344
15-16	361	377

Table 2 notes that there is variation in the numbers of licenses issued from year to year. Division staff did not know why the numbers varied. There have been no changes in regulation or administration that would drive the inconsistency.

Table 3 lists the certification information for PTAs who obtained certification during the period covered by this sunset review.

Table 3
PTA Certifications Issued
Fiscal Years 11-12 through 15-16

Fiscal Year	Initial Certifications Issued	Endorsement
11-12	863	0
12-13	193	119
13-14	113	107
14-15	148	100
15-16	134	116

Certification of PTAs began in fiscal year 11-12. Initial certification explains why the number for fiscal years 11-12 and 12-13 are higher. After the initial rush, the number of certifications has leveled off.

The Board also issues licensure through endorsement to PTs and PTAs who hold licensure in good standing issued by another state.⁵³ The Board issues licensure to an individual who has satisfied at least one of the following:⁵⁴

- Graduated from an accredited program within the past two years and passed an examination substantially equivalent to Colorado’s examination;
- Practiced for at least two of the five years immediately preceding the date of the application; or
- Not practiced for two of the last five years but passed a substantially equivalent examination and completed a Board-approved internship.

Licensure is also available to foreign-trained applicants whose training is equivalent to that required by Colorado. An individual may acquire licensure as long as he or she holds a valid, active credential, and if they pass the required examination.⁵⁵

In addition to original licensure through examination and licensure by endorsement, as of fiscal year 14-15, the Board may issue a provisional license to practice as a PT. To qualify for a provisional license a candidate must successfully complete a physical therapy program that meets the educational requirements and may only practice under the supervision of a Colorado-licensed PT. A provisional license may be issued one time, for 120 days or less.⁵⁶ The fee for a provisional license is \$75.

Table 4 includes the total number of credentials issued to both PTs and PTAs by the Board via all methods. The inclusion of these tables is to give the reader an idea of the Board’s overall workload.

**Table 4
Summary of All Licensure
Fiscal Years 11-12 through 15-16**

Fiscal Year	Examination	Endorsement	Renewal	Reinstatement	Active Licenses*
11-12	993	306	Not applicable	57	7,336
12-13	395	376	5,857	69	7,504
13-14	346	439	Not applicable	41	8,320
14-15	523	444	7,332	56	8,357
15-16	535	493	Not applicable	49	9,337

*The licenses are listed as active as of June 30th, the end of the state fiscal year.

Table 4 illustrates that the number of regulated individuals has increased steadily over the period examined. The total increase is approximately 27 percent.

⁵³ §§ 12-41-109(1), and 206(1), C.R.S.

⁵⁴ §§ 12-41-109(3), and 206(3), C.R.S.

⁵⁵ §§ 12-41-111, and 207, C.R.S.

⁵⁶ § 12-41-107.5, C.R.S.

Fees

Administration of the Act is cash-funded through the licensing fees paid by the PTs and PTAs. The fees are collected to cover the direct and indirect costs associated with regulation of the profession. Table 5 enumerates the licensing fees charged to PTs.

Table 5
PT License Fees
Fiscal Years 11-12 through 15-16

Fiscal Year	Original	Endorsement	Renewal*	Reinstatement
11-12	\$50	\$50	Not applicable	\$85
12-13	\$100	\$100	\$86	\$101
13-14	\$100	\$100	Not applicable	\$101
14-15	\$100	\$100	\$86	\$101
15-16	\$100	\$100	Not applicable	\$101

*PT Licenses renew October 31st every other year.

The fees charged to obtain a PT license have been stable over the period examined for this sunset review. There has been just one increase, from fiscal year 11-12 to fiscal year 12-13, when the fee went from \$50 to \$100. The adjustment was instigated to approximate the direct and indirect costs of program administration based on increased operating costs for legal and personal services.

Table 6 enumerates the fees charged to obtain a PTA certification.

Table 6
PTA Certification Fees
Fiscal Years 11-12 through 15-16

Fiscal Year	Original	Endorsement	Renewal*	Reinstatement
11-12	\$57	\$57	Not applicable	\$52
12-13	\$57	\$57	\$34	\$49
13-14	\$57	\$57	Not applicable	\$49
14-15	\$57	\$57	\$34	\$49
15-16	\$57	\$57	Not applicable	\$49

*PTA certificates renew October 31st every other year.

Table 6 illustrates that the fees to obtain a PTA certification have been stable over the period examined for this sunset review.

Complaints/Disciplinary Actions

As the regulator, the Board is empowered to hear complaints and choose to discipline or dismiss those complaints. Nonetheless, there are very few complaints leveled against PTs or PTAs. There were 60 total complaints filed with the Board during fiscal year 15-16 and there were 9,337 total individuals credentialed that fiscal year. This represents a complaint to licensee ratio of 0.64 percent.

Table 7 enumerates the alleged violation and the number of complaints filed during the period covered by this sunset review.

Table 7
PT and PTA Complaints
Fiscal Years 11-12 through 15-16

Complaints	FY 11-12	FY 12-13	FY 13-14	FY 14-15	FY 15-16
Practicing on an expired license	8	4	2	1	3
Unlicensed practice	0	0	0	4	1
Standard of practice	9	12	10	6	14
PT scope of practice	0	1	0	0	2
PTA scope of practice	0	0	0	1	0
Sexual misconduct	0	1	0	0	2
Substance abuse	0	0	1	4	3
Felony conviction	0	1	2	2	1
Improper supervision	1	2	0	0	8
Failure to report	0	0	1	2	2
General violation	1	0	2	5	5
Improper documentation	2	1	2	1	8
False advertising	2	1	1	2	1
Falsifying an application	1	1	1	0	0
Patient Abandonment	0	0	1	2	1
Failure to know the Practice Act	1	0	0	0	0
Failure to refer to appropriate professional	0	3	0	0	0
Unprofessional conduct	0	1	0	1	2
Improper use of title	0	0	1	2	4
Fraud	0	0	0	0	1
Violation of specialty practice	0	0	0	3	0
Ordering/performing actions without clinical justification	0	1	0	0	0
Protection of medical records	0	0	0	0	1
Professional Service Corporations	0	0	0	0	1
TOTAL	25	29	24	35	60

Though there are not many complaints filed per capita, the allegations in the complaints are serious. The majority of the complaints concern licensees not adhering to standards of practice for the profession in some manner.

Table 8 enumerates the actions taken by the Board concerning complaints. The number of actions taken does not match the number of complaints enumerated in Table 7. There are multiple reasons that this occurs. Some cases are not finalized in the same fiscal year that the complaint is made, or one final action against a licensee may encompass multiple allegations listed in the “Complaints” column in Table 7. The same may be true for dismissals made by the Board.

**Table 8
Board Final Actions
Fiscal Years 11-12 through 15-16**

Type of Action	FY 11-12	FY 12-13	FY 13-14	FY 14-15	FY 15-16
Revocations	1	1	1	2	1
Suspensions	0	0	0	0	0
Stipulations	2	4	1	4	5
Letters of Admonition	0	0	0	2	2
Other	0	0	2	2	2
TOTAL DISCIPLINARY ACTIONS	3	5	4	10	10
Dismiss	3	6	9	8	5
Letter of Concern	16	7	2	9	13
TOTAL DISMISSALS	19	13	11	17	18

Again the actual number of disciplinary actions taken by the Board is not high when compared to the number of licensees or complaints. However, if one considers that in fiscal year 11-12 the “Revocations” compared to “Total Disciplinary Actions” represents 33 percent of the actions, in fiscal year 12-13, 20 percent, in fiscal year 14-15, 20 percent, and in fiscal year 15-16, 10 percent, these ratios are high. Combine the high revocation ratio with the 60 percent of the dismissals that had a confidential letter of concern attached to them. The data indicate that while the overwhelming majority of licensees perform competently, they also indicate the Board is very willing to honor its charge as the protector of the public and guardian of proficiency. When a licensee has issues, the Board will act.

Collateral Consequences - Criminal Convictions

Section 24-34-104(6)(b)(IX), C.R.S., requires the Colorado Office of Policy, Research, and Regulatory Reform to determine whether the agency under review, through its licensing processes, imposes any disqualifications on applicants or registrants based on past criminal history, and if so, whether the disqualifications serve public safety or commercial or consumer protection interests.

The Board may discipline, including suspending or revoking a credential when a PT or a PTA is convicted of, pled guilty or nolo contendere to a crime related to one's practice or any felony.⁵⁷ Division staff reviewed program records dating to 2009 and identified one license that was denied based on criminal history.

⁵⁷ §§ 12-41-115(1)(q) and 210(1)(m), C.R.S.

Analysis and Recommendations

Recommendation 1 - Continue the Physical Therapy Practice Act, and the regulation of physical therapists and physical therapist assistants by the State Board of Physical Therapy for nine years, until 2027.

Physical therapists (PTs) are healthcare workers who work with patients to change their physical condition, recover from illness and injury, and to help rehabilitate maladies connected to body movement. Working with patients includes diagnosing conditions and counseling patients on the best way to improve physical function, movement, performance, health, quality of life, and well-being.

Treatment is always patient-specific and PTs use many methods of patient care. Among the therapies are:

- Exercise;
- Training in functional movement;
- Instruction on the use of devices such as canes, crutches, wheelchairs, and walkers; and
- Joint, muscle, and other soft tissue mobilization to advance movement and alleviate discomfort.

Some PTs specialize in one type of care, such as orthopedics or geriatrics; some work in private practice while others may work in a hospital or a clinic. A PT may also be part of a healthcare team consulting with other healthcare professionals, or, because Colorado has direct access to PTs without a physician's referral, a PT may work alone with patients.

To prepare for such a career, PTs must attain, in most circumstances, a Doctor of Physical Therapy Degree, or DPT. PTs must have working knowledge of anatomy and physiology, and skills to treat patients safely and effectively.

Colorado's Physical Therapy Practice Act (Act), Article 41 of Title 12, Colorado Revised Statutes (C.R.S.), empowers the State Physical Therapy Board (Board) to license qualified applicants, promulgate rules, and discipline PTs who have violated the Act.⁵⁸ The program established to license PTs ensures that licensees have the minimum knowledge and skills necessary to practice independently by meeting the licensing requirements. Initial licensing requirements include completing an accredited education program and passing an examination, and continued licensing is predicated on fulfilling a continued competency requirement.

⁵⁸ S 12-41-103.6(1), C.R.S.

The first analytical criterion a sunset review is directed to consider reads:

Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;⁵⁹

As stated, PTs treat patients with many types of issues in many settings: injured athletes, injured soldiers, people with traumatic injuries, and people with chronic conditions. Physical therapy often uses hands-on treatment modalities with individuals who have issues. Therefore, there is significant potential and/or opportunity for harm if a person is not trained properly or practices outside of his or her expertise.

The licensing regime established under the Act is necessary to protect the public. It provides a degree of confidence in the professional practitioners by confirming that they have the training necessary to provide care. It also ensures that when an individual does not practice according to established professional standards, they could lose the ability to perform physical therapy.

Physical therapist assistants (PTAs), work under the direction and supervision of PTs. They too treat patients through exercise, massage, and other therapeutic interventions and record and report the treatments. While the supervising PT is responsible for the performance and is accountable for the actions of his or her PTAs, there are multiple categories of supervision:⁶⁰

- “General supervision” means the PT is not required to be on site for direction and supervision, but must be available at least by telecommunications;
- “Direct supervision” means the PT is physically present in the same physical building; and
- “Immediate supervision” means the PT is physically present or immediately available in the same physical building to support the individual being supervised.

In some of the more rural areas of Colorado, general supervision of a PTA by a PT may be the only option available for a patient to receive physical therapy. In those cases, a PT would diagnose the issues in need of therapy, develop a plan of action, and direct the PTA to implement the plan. All subsequent communications would occur via telecommunication. Because the PTA is the individual having physical contact with the patient, some of the same issues that could arise concerning consumer harm by a PT, could also occur with a PTA. Therefore, to help prevent and mitigate harm, it is important that PTAs be trained and then certified by the Board, prior to practicing in Colorado. The certification offers patients/consumers a level of protection from harm that is otherwise not guaranteed.

⁵⁹ § 24-34-104(6)(b)(I), C.R.S.

⁶⁰ 4 CCR 732-1, State Physical Therapy Board Rule 101

The General Assembly originally adopted the Act because it found that the practice of physical therapy without a license is harmful to the public welfare.⁶¹ Because of the nature of physical therapy and because the treatments PTs administer elevate the chance for harm to occur, the licensing of PTs and the certification of PTAs is necessary. Therefore, the General Assembly should continue the Act and regulation of PTs and PTAs by the Board for nine years, until 2027.

Recommendation 2 - Clarify that a PT may establish a physical therapy diagnosis for a patient.

Section 12-41-105(1)(b), C.R.S., prohibits PTs from diagnosing disease. PTs are not trained in diagnosing disease and this recommendation does not seek to change that provision. Notwithstanding, this section of the Act has proven problematic. PTs diagnose limitations and dysfunctions in the way the human body moves. Based on that diagnosis, a PT determines a course of action to improve physical function, determines the prospects for improvement, and he or she generally helps to implement the action plan.

The problem lies with a widely accepted, but erroneous, interpretation of the Act. The problems manifest themselves in record keeping. The patient records that PTs write are too often vague, incomplete, or not understandable because the aforementioned prohibition on diagnosing *disease* is interpreted too broadly by licensees. PTs do not want to be disciplined for making any diagnosis, and consequently they skirt around issues rather than being direct and precise in patient records.

It is important that patient records be precise for several reasons, but a major reason is so that any other medical professional can read the file and understand the diagnostic thought process. Any professional must be able to answer the questions: How do a licensee's determinations get from point A to point B? Why is treatment X the recommended course of action? An overly sanitized version of a physical therapy diagnosis often does not allow for such an understanding.

Add to this issue the fact that in Colorado patients have direct access to PTs. A patient does not need a physician's referral to receive a diagnosis and be treated by a licensed PT in this state. If indeed a PT is the first healthcare professional to examine a patient, it is even more important that the patient record is clear, accurate, and defensible if there is an issue or complaint concerning the treatment. Additionally, a PT is obliged to tell a patient to visit another healthcare professional if the PT feels the patient's condition is beyond the scope of the PT's training and expertise.⁶²

PTs should not be allowed to diagnose disease. They are not trained to diagnose disease. Nonetheless, PTs must have explicit ability to diagnose the mechanical, physiological, and movement-related issues for which they are trained and for which patients seek their services.

⁶¹ § 12-41-102, C.R.S.

⁶² § 12-41-115(1)(c), C.R.S.

Physicians too rely on PTs to refine diagnoses. A study conducted by Davenport, *et al.*, found a doctor's referral will often come with a general, nonspecific diagnosis that provides very little information to the PT. An example would be a diagnosis of knee pain with no other elaboration. The researchers found that in less than one-third of the cases examined in the study, a specific diagnosis was made prior to referral to a PT. In most cases, a PT must examine the patient and refine the diagnosis, or in some cases actually diagnose the malady, to develop a treatment intervention.⁶³ This appears to be with good reason. Moore, *et al*, found that the diagnosis accuracy of PTs was slightly less than orthopedic surgeons, 74.5 percent versus 80.8 percent, but considerably better than nonorthopedic providers who had a 35.4 percent accuracy rate.⁶⁴ It appears that a PT diagnosis is relied upon by patients as well as other healthcare professionals, because they fittingly trust the accuracy of a PT diagnosis.

The solution to this problem is to amend the definition of physical therapy to add a caveat to the prohibition on diagnosing disease.

Section 12-31-103(6)(a)(I), C.R.S., reads:

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

Including "diagnosis" after the word examination will help clarify that a diagnosis follows the examination and precedes the treatment of a patient.

The second clarification should be made in section 12-41-105(1), C.R.S., which reads:

- (1) Nothing in this article authorizes a physical therapist to perform any of the following acts:
- (a) Practice of medicine, surgery, or any other form of healing except as authorized by the provisions of this article; or
 - (b) Use of roentgen rays and radioactive materials for therapeutic purposes; the use of electricity for surgical purposes; or the diagnosis of disease.

Adding a caveat that states, "this section does not prevent a PT from making a physical therapy diagnosis based on the definition of physical therapy in section 12-31-103(6)(a), C.R.S.," will clarify that a PT has the ability to perform his or her duties as a physical therapist and nothing more.

⁶³ Todd E Davenport, *et al*, (2005), "Current Status of Physicians' Referral Diagnosis for Physical Therapy," *Journal of Orthopedic & Physical Therapy* 35 (9), p. 376.

⁶⁴ Josef H Moore, *et al*, 2005, "Clinical Diagnostic Accuracy and Magnetic Resonance Imaging of Patients Referred by Physical Therapists, Orthopedic Surgeons, and Nonorthopedic Providers," *Journal of Orthopedic & Sports Therapy* 35 (2), p.69.

The verbiage in the Act has made it so patient records can be incomplete or vague which harms patients. Therefore, the Act should clarify that a PT may establish a physical therapy diagnosis for a patient.

Recommendation 3 - Change “immediate supervision” of subordinates to “direct supervision” in the Act.

The Act directs the Board to define supervision of subordinates by rule:

adopt all reasonable and necessary rules for the administration and enforcement of this article, including rules regarding:⁶⁵ The supervision of unlicensed persons by physical therapists, taking into account the education and training of the unlicensed individuals[.]⁶⁶

The Act also specifically mandates that PTs provide “direct supervision” of PTAs who administer medications⁶⁷ and provide “immediate supervision” to physical therapy students with whom they work.⁶⁸ The Act does not define “direct” or “immediate.” Therefore, the Board defined those terms by rule. However, the Act uses each term only one time and the Board defined those terms essentially alike:⁶⁹

- “Direct supervision” means the PT is physically present in the same physical building; and
- “Immediate supervision” means the PT is physically present or immediately available in the same physical building to support the individual being supervised.

Such redundancy leads to confusion by licensees. Solely because there are two definitions, it is assumed that there are two different standards of practice, which is not the case.

The solution is to change the term “immediate” to “direct” in the Act. The change will clarify that there is accurately only one standard. When direct supervision is required the PT must be in the same building supervising those who work under his or her direction. Consistency will eliminate confusion.

Therefore, the General Assembly should change immediate supervision to direct supervision in the Act.

⁶⁵ § 12-41-103.6(2)(b), C.R.S.

⁶⁶ § 12-41-103.6(2)(b)(l), C.R.S.

⁶⁷ § 12-41-113(2), C.R.S.

⁶⁸ § 12-41-114(1)(a), C.R.S.

⁶⁹ 4 CCR 732-1, State Physical Therapy Board Rule 101

Recommendation 4 - Add PTAs to the list of individuals for whom a PT must provide oversight.

The PT is the head of the physical therapy team. In that regard he or she is responsible for diagnosing the issue(s), determining an appropriate intervention(s), and directing a patient-specific action plan. At times, implementing a plan means that there may be other people working with the patient, such as PTs with a provisional license, unlicensed persons, or PTAs working with a patient. Regardless of with whom the patient is working, the PT is still responsible for both the treatment and the record of the treatment.

The Act is clear that it is a violation for a PT to not, “provide adequate or proper supervision when utilizing unlicensed persons or persons with a provisional license in a physical therapy practice.”⁷⁰ However, this section was adopted prior to the certification of PTAs, and they are not listed with the unlicensed and provisional personnel requiring supervision.

The Act should be unambiguous that it is a violation for a PT to not provide proper supervision to anyone working on the physical therapy team, including PTAs. Therefore, the General Assembly should add PTAs to section 12-41-115(1)(e), C.R.S.

Recommendation 5 - Establish that it is a violation of the Act to fail to report an adverse action, the surrender of a license, or other discipline taken in any other jurisdiction.

The Act provides that a disciplinary action taken against a PT in another jurisdiction may be used as grounds for discipline in Colorado if that action is also a violation of the Act. The notion is that the Board, the entity that issues the license, should at least deliberate and decide if a person’s actions disqualify him or her from practicing competently in Colorado.

What the Act does not state, is that an applicant or licensee must disclose any disciplinary actions taken against their license in another jurisdiction. This is important because there is no national database that enumerates administrative violations for PTs. Failing to report an adverse action, the surrender of a license or other discipline taken in any other jurisdiction brings into question issues of competency and fitness to practice. While it is a violation by a licensee for failing to report a final judgment or settlement concerning malpractice,⁷¹ administrative issues go unaddressed. If another state’s licensing authority felt it was necessary to sanction a PT, it is up to Colorado’s licensing authority to decide if that person has rectified the issues that brought about the discipline and is capable of practicing safely in Colorado.

To protect Colorado physical therapy patients, the General Assembly should establish that it is a violation of the Act to fail to report an adverse action, the surrender of a license, or other discipline taken in any other jurisdiction.

⁷⁰ § 12-41-115(1)(e), C.R.S.

⁷¹ § 12-41-115(1)(o), C.R.S.