



CO L O R A D O

**Department of
Regulatory Agencies**

Colorado Office of Policy, Research &
Regulatory Reform

**2018 Sunset Review:
Colorado Podiatry Board**

October 15, 2018



COLORADO

**Department of
Regulatory Agencies**

Executive Director's Office

October 15, 2018

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 Colorado Podiatry Board (Podiatry Board). I am pleased to submit this written report, which will be the basis for COPRRR's oral testimony before the 2019 legislative committee of reference.

The report discusses the question of whether there is a need for the regulation provided under Article 32 of Title 12, C.R.S. The report also discusses the effectiveness of the Podiatry Board and the staff in the Division of Professions and Occupations 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

2018 Sunset Review Colorado Podiatry Board

SUMMARY

What is regulated?

Podiatry is a branch of medicine focused on the diagnosis and treatment of diseases, injuries and defects of the foot and ankle. Podiatric treatment may be medical, surgical, mechanical, physical or adjunctive.

Why is it regulated?

Podiatrists perform medical and surgical treatments on the human foot and ankle, and podiatric treatment performed by an unqualified or incompetent practitioner could result in serious harm to a patient, including deformity, chronic pain and amputation of a toe, foot or lower leg.

Who is regulated?

In fiscal year 16-17, the Colorado Podiatry Board (Podiatry Board), which is located in the Division of Professions and Occupations, licensed 239 podiatrists.

How is it regulated?

In Colorado, it is unlawful to practice podiatry without being licensed by the Podiatry Board. An applicant is qualified for a license if he or she has reached the age of 21, graduated from a school of podiatry approved by the Podiatry Board, passed a national examination and completed a residency program.

What does it cost?

In fiscal year 16-17, the total expenditures to oversee the program were approximately \$66,894, and there were 0.65 full-time equivalent employees dedicated to the program.

What disciplinary activity is there?

In fiscal year 16-17, the Podiatry Board issued one letter of admonition, entered into two stipulated agreements, and revoked the license of one individual. The Podiatry Board also issued one fine in the amount of \$250.

KEY RECOMMENDATIONS

Continue the Podiatry Board for seven years, until 2026.

Podiatrists perform medical and surgical treatments on the human foot and ankle, and podiatric treatment performed by an unqualified or incompetent practitioner could result in serious harm to a patient, including deformity, chronic pain and amputation of a toe, foot or lower leg. Considering the potential for harm, regulation of the profession is necessary, and the General Assembly should continue the Podiatry Board for seven years, until 2026.

Amend the Act so that failing to act within the limitations created by a health condition is grounds for discipline, and authorize the Podiatry Board to enter into a confidential agreement with a practitioner to address a health condition that may impact a podiatrist's ability to practice.

The General Assembly should revise the Act so that failing to act within the limitations created by a physical or mental condition is grounds for discipline, as opposed to simply having such a condition. Rather than taking disciplinary action against the licensee, the Podiatry Board should instead be granted the authority to enter into a confidential agreement with a licensee in which the licensee voluntarily agrees to limit his or her practice so that he or she may continue to practice safely, within the limits of the health condition.

Clarify that passage of an examination approved by the Podiatry Board is required as a condition of licensure.

Passage of an examination is critical for an applicant to demonstrate that he or she has the clinical knowledge necessary to independently practice podiatry, and it should be explicitly required in the Act.

METHODOLOGY

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

MAJOR CONTACTS MADE DURING THIS REVIEW

American College of Foot and Ankle Surgeons
California School of Podiatric Medicine at Samuel
Merritt University
Des Moines University College of Podiatric
Medicine and Surgery
Colorado Division of Professions and Occupations
Colorado Foot and Ankle Society
Colorado Office of the Attorney General

Colorado Podiatry Board
Council on Podiatric Medical Education
Kaiser Permanente
Kent State University College of Podiatric
Medicine
Podiatry Insurance Company of America
Presbyterian St. Luke's Hospital

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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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 Colorado Podiatry Board (Podiatry Board) as enumerated in Article 32 of Title 12, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2019, 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 Podiatry Board pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed regulation should be continued and to evaluate the performance of the Podiatry Board and the Division of Professions and Occupations (Division). During this review, the Podiatry Board 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 Podiatry Board meetings; interviewed Division staff, Podiatry Board members, officials with state and national professional associations and other stakeholders; reviewed records, Colorado statutes and rules, and the laws of other states.

Profile of the Profession

Podiatry is a branch of medicine that is focused on the diagnosis and treatment of diseases, injuries and defects of the foot and ankle. Podiatric treatment may be medical, surgical, mechanical, physical or adjunctive.²

Podiatrists treat problems such as:³

- Calluses,
- Ingrown toenails,
- Heel spurs,
- Arthritis,
- Congenital deformities, and
- Arch problems.

Podiatrists may also treat foot and leg problems, such as chronic wounds, that result from diabetes and other conditions. Other podiatrists specialize in fields such as sports medicine, pediatrics or surgical foot and ankle reconstruction.⁴

Most podiatrists work in private-practice office settings. Others work in offices with physicians or other health-care professionals, and a small percentage of podiatrists work in hospital settings or for the federal government.⁵

To become a podiatrist, an individual must earn a Doctor of Podiatric Medicine, a four-year degree, from an accredited college. In 2017, there were nine accredited colleges of podiatric medicine.⁶

To be admitted to a podiatric medical college, an applicant must complete at least three years of undergraduate education, which must include courses in:⁷

- Biology,
- Chemistry,
- Physics,
- English, and
- Other subjects.

An applicant must also pass the Medical College Admission Test.⁸

² The American Heritage Stedman's Medical Dictionary. *Podiatry*. Retrieved on November 2, 2017, from Dictionary.com at <http://www.dictionary.com/browse/podiatry>

³ Bureau of Labor Statistics. *What Podiatrists Do*. Retrieved on November 2, 2017, from <https://www.bls.gov/ooh/healthcare/podiatrists.htm#tab-2>

⁴ Bureau of Labor Statistics. *What Podiatrists Do*. Retrieved on November 2, 2017, from <https://www.bls.gov/ooh/healthcare/podiatrists.htm#tab-2>

⁵ Bureau of Labor Statistics. *Work Environment*. Retrieved on November 2, 2017, from <https://www.bls.gov/ooh/healthcare/podiatrists.htm#tab-3>

⁶ Bureau of Labor Statistics. *How to Become a Podiatrist*. Retrieved on November 2, 2017, from <https://www.bls.gov/ooh/healthcare/podiatrists.htm#tab-4>

⁷ Bureau of Labor Statistics. *How to Become a Podiatrist*. Retrieved on November 2, 2017, from <https://www.bls.gov/ooh/healthcare/podiatrists.htm#tab-4>

⁸ Bureau of Labor Statistics. *How to Become a Podiatrist*. Retrieved on November 2, 2017, from <https://www.bls.gov/ooh/healthcare/podiatrists.htm#tab-4>

During the first two years in a podiatric medical college, a student takes courses in subjects, such as:⁹

- Anatomy,
- Physiology,
- Pharmacology, and
- Pathology.

During the last two years of education, students gain clinical experience by participating in supervised clinical rotations.¹⁰

Upon graduation from podiatric medical college, podiatrists complete a three-year medical and surgical residency program in a hospital setting, and some podiatrists may complete additional training in fellowship programs.¹¹

Podiatrists may also obtain certification through private professional organizations, such as:¹²

- The American Board of Foot and Ankle Surgery,
- The American Board of Podiatric Medicine, and
- The American Board of Multiple Specialties in Podiatry.

All states, the District of Columbia and Puerto Rico require podiatrists to be licensed in order to practice.¹³ Most states require podiatrists to pass a national examination as a condition of licensure, and some states require passage of a state examination.¹⁴

⁹ Bureau of Labor Statistics. *How to Become a Podiatrist*. Retrieved on November 2, 2017, from <https://www.bls.gov/ooh/healthcare/podiatrists.htm#tab-4>

¹⁰ Bureau of Labor Statistics. *How to Become a Podiatrist*. Retrieved on November 2, 2017, from <https://www.bls.gov/ooh/healthcare/podiatrists.htm#tab-4>

¹¹ Bureau of Labor Statistics. *How to Become a Podiatrist*. Retrieved on November 2, 2017, from <https://www.bls.gov/ooh/healthcare/podiatrists.htm#tab-4>

¹² Bureau of Labor Statistics. *How to Become a Podiatrist*. Retrieved on November 2, 2017, from <https://www.bls.gov/ooh/healthcare/podiatrists.htm#tab-4>

¹³ American Association of Colleges of Podiatric Medicine. *Becoming a Podiatric Physician*. Retrieved on November 14, 2017, from <http://www.aacpm.org/becoming-a-podiatric-physician/>

¹⁴ Bureau of Labor Statistics. *How to Become a Podiatrist*. Retrieved on November 2, 2017, from <https://www.bls.gov/ooh/healthcare/podiatrists.htm#tab-4>

Legal Framework

History of Regulation

In Colorado, podiatry was first regulated in 1915 under what is now the Colorado Medical Board (Medical Board). In 1943, a podiatry advisory board was created to advise the Medical Board on podiatry issues, and in 1985, the advisory board became an independent, policy autonomous board, the Colorado Podiatry Board (Podiatry Board).

Podiatry has been a constantly changing profession. These changes can be illustrated by the evolution of the statutory definitions of the scope of practice, which reflect expansions in training and education that resulted in new directions in the treatment of the human foot and in manifestations of systemic diseases in the foot.

In 1915, a podiatrist had the statutory authority to surgically treat abnormal nails, corns, warts, calluses of the feet and the superficial treatment of bunions. A podiatrist was able to give local anesthetics incidental to this treatment but could not give anesthetics that would enable such a person to make an incision below the epidermis.

By 1985, podiatry included the diagnosis and the medical, surgical, mechanical, manipulative and electrical treatment of disorders of the human toe and foot, including the ankle and tendons that insert into the foot. A podiatrist was prohibited from amputating the foot and was limited to the use of local anesthesia.

As a result of a sunset review in 1994, several other changes were made to the podiatry practice act. Licensed podiatrists who perform surgical procedures were required to maintain professional liability insurance of at least \$500,000 per claim and \$1.5 million per year for all claims. The Podiatry Board was authorized to promulgate rules establishing financial responsibility requirements for podiatrists who do not perform surgical procedures and rules regarding the reinstatement of a license that has been delinquent for more than two years.

Since 2001, applicants for licensure are required to complete a residency program, consisting of:

- At least one year in a hospital conforming to the minimum standards established by the Council on Podiatric Medical Education; or
- A program that has been approved by the Podiatry Board.

In 2009, the Colorado Office of Policy, Research and Regulatory Reform conducted another sunset review, and the General Assembly subsequently made several changes, such as:

- Amending the definition of podiatry to clarify that podiatrists may treat the soft tissues below the mid-calf, and
- Increasing the level of minimum professional liability insurance required for podiatrists who perform surgery.

Legal Summary

The laws that govern the regulation of podiatry are housed in Article 32 of Title 12, Colorado Revised Statutes (C.R.S.) (Act). The Podiatry Board is vested with the authority to regulate the practice of podiatry.¹⁵

A podiatrist, including anyone who is training in a residency program, must be licensed by the Podiatry Board in order to practice in Colorado.¹⁶

Practice of Podiatry

The practice of podiatry is defined in the Act as:¹⁷

Holding out one's self to the public as being able to treat, prescribe for, palliate, correct or prevent any disease, ailment, pain, injury, deformity or physical condition of the human toe, foot, ankle, tendons that insert into the foot and soft tissue below the mid-calf, by the use of any medical, surgical, mechanical, manipulative or electrical treatment, including complications thereof consistent with such scope of practice;

Suggesting, recommending, prescribing or administering any podiatric form of treatment, operation or healing for the intended palliation, relief or cure of any disease, ailment, injury, condition or defect of the human toe, foot, ankle, tendons that insert into the foot and soft-tissue wounds below the mid-calf, including complications thereof consistent with such scope of practice; and

Maintaining an office or other place for the purpose of examining and treating persons afflicted with disease, injury or defect of the human toe, foot, ankle, tendons that insert into the foot and soft-tissue wounds below the mid-calf, including the complications thereof consistent with such scope of practice.

The Act specifically prohibits podiatrists from amputating the foot, and it only allows podiatrists to administer local anesthetics.¹⁸

While the Act allows a podiatrist to treat a soft-tissue wound below the mid-calf, the patient must also be under the care of a physician for the underlying medical condition, such as diabetes. If not, the podiatrist must refer the patient to a physician to treat the underlying medical condition.¹⁹

¹⁵ § 12-32-104, C.R.S.

¹⁶ § 12-32-102(1), C.R.S.

¹⁷ § 12-32-101(3)(a), C.R.S.

¹⁸ § 12-32-101(3)(b), C.R.S.

¹⁹ § 12-32-101(3)(c), C.R.S.

A podiatrist may perform surgery on the ankle if he or she:²⁰

- Is certified in either reconstructive rearfoot/ankle surgery or foot and ankle surgery by the American Board of Podiatric Surgery,
- Performs surgery under the supervision of a licensed podiatrist who is certified,
- Performs surgery under the supervision of someone licensed to practice medicine who is certified in orthopedic surgery, or
- Has completed a three-year surgical residency program.

Board Membership

The Podiatry Board consists of five members appointed by the Governor to four-year terms, including four podiatrists and one member of the public who is not a licensed health-care professional and who is not employed by or does not benefit financially from the health-care industry.²¹

Board members are paid a per diem for attending board meetings, and they are reimbursed for expenses related to performing their official duties.²²

Licensure

The Podiatry Board must issue a license to an applicant who demonstrates that he or she has:^{23,24}

- Reached the age of 21,
- Graduated from a school of podiatry approved by the Podiatry Board,
- Passed a national examination,²⁵ and
- Completed a residency program of at least one year.

Additionally, an applicant must demonstrate competency by providing evidence that, during the two years preceding the application, the applicant was engaged in one of the following:²⁶

- Was enrolled in podiatric medical school or in a residency program,
- Passed the national examination,
- Was engaged in the active practice of podiatry, or
- Can otherwise demonstrate competency as required by the Podiatry Board.

The Podiatry Board may issue a volunteer license at a reduced fee to a licensee who attests he or she is no longer earning a living from podiatry.²⁷

²⁰ § 12-32-101.5(2), C.R.S.

²¹ § 12-32-103(1), C.R.S.

²² § 24-34-102(13), C.R.S.

²³ § 12-32-107(1), C.R.S.

²⁴ § 12-32-105(1), C.R.S.

²⁵ 3 CCR § 712-1 (1)(c), Colorado Podiatry Board Rules.

²⁶ § 12-32-105(1)(d), C.R.S.

²⁷ §§ 12-32-107.2(1), (2)(a) and (2)(b), C.R.S.

Disciplinary Authority

The Podiatry Board has the authority to deny, revoke and suspend a license of anyone who is found to have engaged in unprofessional conduct. The Podiatry Board may also place a licensee on probation or issue a letter of admonition or a letter of concern,²⁸ and the Podiatry Board may issue a fine of up to \$5,000.²⁹

The Podiatry Board may discipline a licensee for unprofessional conduct, such as:³⁰

- Resorting to fraud, misrepresentation or material deception, or making a misleading omission in securing a license;
- Conviction of a felony or any crime that would constitute a violation of the Act;
- Habitual or excessive use or abuse of alcohol or controlled substances;
- An act or admission that fails to meet the generally accepted standards of practice;
- Violating the Act or a rule or order of the Podiatry Board;
- Having a physical or mental disability that renders the licensee unable to perform podiatry with reasonable skill and with safety;
- Having a sexual relationship with a patient during the course of patient care or during the immediate six-month period following the termination of care;
- Performing a procedure beyond the podiatrist's training and competence; and
- Falsifying, repeatedly making incorrect entries or repeatedly failing to make essential entries on patient records.

A licensee may delegate the authority to practice podiatry to a physician assistant who is licensed by the Medical Board.³¹ A licensee may not supervise more than four physician assistants without approval by the Podiatry Board.³²

Professional Liability Insurance

Any licensee who performs surgical procedures must maintain professional liability insurance of \$1 million per incident and \$3 million annual aggregate. The Podiatry Board has the authority to establish professional liability insurance requirements for licensees who do not perform surgery.³³

Professional Service Corporations

Licensed podiatrists may organize professional service corporations created exclusively for the purpose of conducting the practice of podiatry. All shareholders of the corporation must be licensed podiatrists who are actively engaged in the practice of podiatry, and the president and director of the corporation must be shareholders.³⁴

²⁸ § 12-32-107(2), C.R.S.

²⁹ § 12-32-108.3(20), C.R.S.

³⁰ § 12-32-107(3), C.R.S.

³¹ § 12-32-109.3(1), C.R.S.

³² § 12-32-109.3(2), C.R.S.

³³ § 12-32-102(2), C.R.S.

³⁴ § 12-32-109.5(1), C.R.S.

A professional service corporation is prohibited from conducting itself in any way that would violate the standards of professional conduct as outlined in the Act for licensed individuals.³⁵

³⁵ § 12-32-109.5(2)(a), C.R.S.

Program Description and Administration

The Colorado Podiatry Board (Podiatry Board) is entrusted with the regulation of podiatry in Colorado. The laws governing the practice of podiatry are located in Article 32 of Title 12, Colorado Revised Statutes (C.R.S.) (Act), and the Podiatry Board is responsible for rulemaking, licensing and enforcement of the Act.

The Podiatry Board is composed of five members appointed by the Governor to four-year terms, including four podiatrists and one member of the public.

The Podiatry Board is housed in the Department of Regulatory Agencies, Division of Professions and Occupations (Division), and the Division performs the operational and administrative functions of the Podiatry Board.

Table 1 provides the expenditures and staffing associated with the Podiatry Board over a five-year period.

Table 1
Agency Fiscal Information

Fiscal Year	Total Program Expenditures	FTE
12-13	\$70,146	0.35
13-14	\$61,894	0.40
14-15	\$96,022	0.40
15-16	\$68,339	0.40
16-17	\$66,897	0.65

The full-time equivalent (FTE) employees reported in Table 1 do not include employees in the centralized offices of the Division who provide licensing, administrative, technical and investigative support to the Division. However, the cost of those employees is reflected in the Total Program Expenditures.

In fiscal year 14-15, the increase in expenditures was primarily due to legal services related to enforcement activities. With a small program, like podiatry, a single case can increase legal fees significantly.

The modest increase in staffing levels in fiscal year 16-17 was a result of a regular assessment of the needs to administer each program as well as a reorganization that focused on improving consistency among Division programs.

In fiscal year 17-18, the total full-time equivalent (FTE) employees dedicated to the program were 0.65 including:

- One Program Manager II (0.10 FTE),
- One Administrator V (0.10 FTE),
- One Technician IV (0.15 FTE),
- One Technician V (0.10 FTE), and
- Two Administrative Assistants III (0.20 FTE).

Table 2 shows the license fees for fully licensed podiatrists spanning a five-year period.

Table 2
Full License Fees

Fiscal Year	Original	Endorsement	Renewal	Reinstatement
12-13	\$200	\$200	\$199	\$214
13-14	\$200	\$200	\$199	\$214
14-15	\$279	\$279	\$254	\$269
15-16	\$279	\$279	\$254	\$269
16-17	\$280	\$280	\$254	\$269

License fees are based on the approximate cost of regulating the profession. In fiscal year 14-15, the fee increases were due to a low fund balance from the previous year. In the following year, the legal fees were high and the increased fees did not cover the whole cost of the program, so the fees were not reduced.

A podiatrist who is no longer charging fees for services may obtain a volunteer license at a reduced fee. However, a podiatrist with a volunteer license must continue to maintain liability insurance and the same standards as other fully licensed podiatrists. The fee for the volunteer license type is \$20.

In order to become fully licensed as a podiatrist, a graduate from a podiatry program is required to successfully complete a residency program of at least one year, and anyone participating in a podiatry residency program must obtain a training license from the Podiatry Board. The fee for a training license is \$10.

Podiatrists with full licenses and volunteer licenses must renew their licenses annually on or before August 31. Training licenses are valid for three years, and they may not be renewed or reinstated.

Licensing

In Colorado, it is unlawful to practice podiatry without being licensed by the Podiatry Board.

An applicant is qualified for a license if he or she has:

- Reached the age of 21,
- Graduated from a school of podiatry approved by the Podiatry Board,
- Passed a national examination, and
- Completed a residency program.

An applicant must also demonstrate competency by providing evidence that in the previous two years, he or she:

- Was enrolled in podiatric medical school or in a residency program,
- Passed the national examination,
- Was engaged in the active practice of podiatry, or
- Can otherwise demonstrate competency as required by the Podiatry Board.

In order to be licensed, an applicant must first complete an online application and pay a fee. A licensing specialist in the Office of Licensing in the Division then reviews the completed application and documentation, and if the application is without issues, a license is administratively issued. If there are issues with the application, it is provided to the Podiatry Board for consideration.

Applications that are incomplete are kept on file for one year. After a year, an applicant must submit a new application, the required documentation and pay the fee again.

Table 3 illustrates the number of licensed podiatrists for all license types—including full, volunteer and training licenses—over a five-year period.

Table 3
Licensed Podiatrists
All License Types

Fiscal Year	Original	Renewal	Reinstatement	Active*
12-13	23	200	2	269
13-14	26	169	4	269
14-15	29	139	0	289
15-16	29	213	2	294
16-17	27	174	2	239

*The total number of active licenses as of June 30.

In fiscal years 14-15 and 15-16, the total number of actively licensed podiatrists increased slightly. However, in fiscal year 16-17, the number of actively licensed podiatrists decreased by nearly 20 percent from the previous year. A significant number of podiatrists failed to renew in fiscal year 16-17, and the number of new licenses did not increase significantly.

The figures for the various license types do not equal the figures in the “active” column due to a number of circumstances, including computer system anomalies. Many of these anomalies can be attributed to the date on which various reports were pulled, as well as when data was entered into the system.

Table 4 illustrates the number of fully licensed podiatrists over a five-year period.

**Table 4
Fully Licensed Podiatrists**

Fiscal Year	Initial	Renewal	Reinstatement	Active*
12-13	13	200	2	244
13-14	18	169	4	245
14-15	20	139	0	262
15-16	21	213	2	266
16-17	17	174	2	205

*The total number of active licenses as of June 30.

The total number of fully licensed podiatrists increased incrementally over the five-year period, except in fiscal year 16-17, when the number decreased by about 23 percent.

Table 5 illustrates the number of training licenses issued by the Podiatry Board over a five-year period.

**Table 5
Licensed Podiatrists
Training License**

Fiscal Year	Original	Active*
12-13	11	25
13-14	8	24
14-15	9	27
15-16	8	28
16-17	10	34

*The total number of active licenses as of June 30.

Colorado is home to three residency programs. On average, Colorado has about 28 actively licensed podiatrists in residency training programs each year.

As of the writing of this report, there were three podiatrists with volunteer licenses.

Podiatrists with full licenses and volunteer licenses are required to demonstrate that they have engaged in ongoing professional development by completing a continuing competency process prior to renewal.

To complete the process, a licensee must:³⁶

- Complete a self-assessment,
- Complete 10 hours of continuing education based on the learning goals established through self-assessment or complete a learning goals tool, and
- Submit a certificate demonstrating completion of an assessment of knowledge and skills.

Certification with one of the following private specialty boards satisfies the continuing competency requirements:³⁷

- American Board of Podiatric Surgery, or
- American Board of Podiatric Orthopedics and Primary Podiatric Medicine.

Anyone with a podiatry license who is called to active military duty for more than 120 days is exempt from the continuing competency requirements.³⁸

Division staff conducted two continuing competency audits over a five-year period: one in fiscal year 13-14, in which two licensees were not in compliance, and another in fiscal year 16-17, in which one licensee was not in compliance. The Podiatry Board plans to conduct continuing competency audits on an annual basis.

Examinations

In most states, an applicant must pass the American Podiatric Medical Licensing Examination (APMLE), a national examination developed and administered by the National Board of Podiatric Medical Examiners. The examination is administered in three parts. Parts I and II are completed prior to graduation from podiatric medical school, and passage of Part III is required as a condition of licensure by most states and the District of Columbia. All parts of the examination are written, except Part II includes a practical component.

Part I tests knowledge of the basic sciences and is taken during the second year of podiatric medical school.³⁹ Part II tests clinical knowledge of general medicine, radiology, orthopedics, biomechanics, anesthesia, surgery, community health, jurisprudence and research. Part II is generally taken near the end of the fourth year. A

³⁶ 3 CCR § 712-15 (2)(1)(E), Colorado Podiatry Board Rules.

³⁷ 3 CCR § 712-15 (3)(1), Colorado Podiatry Board Rules.

³⁸ 3 CCR §§ 712-15 (3)(1) and (3)(3), Colorado Podiatry Board Rules.

³⁹ *Candidate Information Bulletin: Part I Examination*, The National Board of Podiatric Medical Examiners, (2018) pp. 2 and 3. <https://www.apmle.com/wp-content/uploads/2018/07/Part-I-CIB-07102018.pdf>

second component of Part II is a practical examination developed to assess clinical skills necessary to enter a residency program.⁴⁰

Part III is designed to determine whether a candidate has the clinical knowledge and skills to safely practice podiatry without supervision. It tests the candidate's clinical skills in evaluating, diagnosing and treating patients.⁴¹ Only three states and Puerto Rico do not require passage of Part III for licensure.⁴²

The fee for each part of the national examination is \$925, and the fee for the practical component of Part II is \$1,230.⁴³ Part III is administered by Prometric, Inc., twice a year.⁴⁴

In Colorado, candidates may take Part III at one of four testing centers located in:⁴⁵

- Greenwood Village,
- Longmont,
- Colorado Springs, and
- Grand Junction.

While the Podiatry Board requires passage of Part III by rule, the Act does not.

Table 6 shows the total number of first-time examinees in the United States and pass rates for Part III over a five-year period.

Table 6
Part III of the APMLE Examination

Fiscal Year	Examinees	Pass Rates
12-13	595	99%
13-14	569	98%
14-15	612	96%
15-16	645	96%
16-17	608	97%

⁴⁰ American Podiatric Licensing Examination. *About the Exam*. Retrieved on August 2, 2018, from <http://www.apmle.com/about-the-exam/>

⁴¹ American Podiatric Licensing Examination. *About the Exam*. Retrieved on August 2, 2018, from <http://www.apmle.com/about-the-exam/>

⁴² Federation of Podiatric Medical Boards. *Board Member Compendium: Licensure*. Retrieved on January 9, 2018, from <https://www.fpmb.org/Resources/MemberBoardsInfo.aspx#member-boards-info>

⁴³ American Podiatric Medical Licensing Examination. *Exam Cost*. Retrieved on August 2, 2018, from <http://www.apmle.com/about-the-exam/exam-cost/> and American Podiatric Medical Licensing Examination. *Part II CSPE*. Retrieved on August 2, 2018, from <https://www.apmle.com/about-the-exam/part-ii-cspe/>

⁴⁴ *Candidate Information Bulletin: Part III Examination*. The National Board of Podiatric Medical Examiners. Revised July 6, 2017 (p 7).

⁴⁵ Prometric. *Test Center Selection*. Retrieved on August 2, 2018, from <https://securereg3.prometric.com/Dispatch.aspx>

On average, approximately 97 percent of examinees pass Part III on the first attempt. This is a fairly high pass rate for a licensing examination, which may indicate that either the examination is too easy or that the examinees are extremely well prepared.

Complaints and Disciplinary Activity

The Podiatry Board primarily receives complaints from patients and their families, health-care professionals, and governmental and public safety agencies. The Podiatry Board may also initiate a complaint on its own motion.

Table 7 demonstrates the number and types of complaints received by the Podiatry Board over a five-year period.

**Table 7
Complaints**

Type of Complaint	FY12-13	FY13-14	FY14-15	FY15-16	FY16-17
Practicing without a License	0	0	0	1	0
Standard of Practice	21	6	3	17	9
Scope of Practice	0	0	0	0	0
Sexual Misconduct	0	0	0	0	0
Substance Abuse	0	0	4	0	1
Felony Conviction	0	0	0	0	1
Fraudulent Insurance Acts	0	0	0	0	1
Total	21	6	7	18	12

By far, most of the complaints against podiatrists concerned standard of practice violations, totaling 56 over the five years under review. Five complaints were filed against podiatrists concerning substance abuse during that same period, and one complaint was filed in each of the following categories: unlicensed practice, felony conviction and fraudulent insurance acts.

The Podiatry Board may take the appropriate disciplinary action if it determines that a licensee has violated the Act.

Table 8 illustrates the disciplinary activity over a five-year period.

**Table 8
Disciplinary Actions**

Type of Action	FY12-13	FY13-14	FY14-15	FY15-16	FY16-17
Revocations	0	0	0	0	1
Suspensions	0	0	0	0	0
Stipulated Agreements	0	3	2	1	2
Letters of Admonition	2	1	0	2	1
Total Actions	2	4	2	3	4
Dismissals	4	2	7	3	7
Letters of Concern	3	5	2	6	7
Total Dismissals	7	7	9	9	14

Over the last five fiscal years, 23 percent of complaints resulted in disciplinary action by the Podiatry Board, and 36 percent of complaints resulted in letters of concern.

Fines

The Podiatry Board has the ability to issue a fine of up to \$5,000 for a violation of the Act. Between fiscal year 12-13 and fiscal year 16-17, the Podiatry Board issued one fine in the amount of \$250. The fine was issued for failure to release patient records as required by the 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.

One license was revoked based on a conviction of health-care fraud in June 2017.

Analysis and Recommendations

Recommendation 1 – Continue the Colorado Podiatry Board for seven years, until 2026.

The laws that govern podiatrists are contained in Article 32 of Title 12, Colorado Revised Statutes (C.R.S.) (Act), and the Colorado Podiatry Board (Podiatry Board) of the Division of Professions and Occupations (Division) in the Department of Regulatory Agencies is responsible for enforcing the Act.

Sunset reviews are guided by statutory criteria located in section 24-34-104, C.R.S., and the first criterion asks whether regulation is necessary to protect the health, safety and welfare of the public.

Podiatrists perform medical and surgical treatments on the human foot and ankle, and podiatric treatment performed by an unqualified or incompetent practitioner could result in serious harm to a patient, including deformity, chronic pain and amputation of a toe, foot or lower leg.

Considering the potential for harm, regulation of the profession is necessary to ensure competent and qualified practitioners.

The Act protects the public by ensuring that podiatrists are qualified. The Act requires podiatrists to earn a Doctor of Podiatric Medicine and complete a residency program, and the Podiatry Board requires podiatrists to pass an examination in order to be licensed to practice podiatry. These qualifications are necessary to ensure the minimum level of competence.

The Podiatry Board is entrusted with protecting the public by denying, revoking or suspending the license of a podiatrist who harms patients or is at risk of harming patients. The Podiatry Board may also issue a letter of admonition or place a podiatrist on probation.

Over a five-year period, the Podiatry Board issued 15 final disciplinary actions: removed one podiatrist from practice; entered into eight stipulated agreements, such as requiring practice monitoring, educational requirements or substance abuse treatment; and issued six letters of admonition.

While this may not seem like a significant number of final agency actions, in fact, 23 percent of complaints to the Podiatry Board resulted in some form of disciplinary action.

However, the Colorado Office of Policy, Research and Regulatory Reform staff reviewed two years of complaint and disciplinary files and did not find evidence that the Podiatry Board was capricious in its disciplinary activity; the final agency actions were fair and necessary to protect the public.

As authorized in section 24-34-104, C.R.S., the General Assembly may continue this program for any period between 1 and 15 years.

Regulation of podiatry is necessary to protect the public from unqualified or incompetent practitioners. Health care is changing rapidly, so it would be better to review the regulatory program again in seven years in case changes are necessary.

For these reasons, the General Assembly should continue the Podiatry Board for seven years, until 2026.

Recommendation 2 – Amend the Act so that failure to act within the limitations created by a health condition is grounds for discipline and authorize the Podiatry Board to enter into confidential agreements with practitioners to address conditions that may impact a podiatrist’s ability to practice.

Podiatrists can become ill, suffer injuries and have disabilities, and some of these conditions may impact their ability to practice safely.

To determine if a podiatrist has a condition that impairs his or her ability to practice safely, the application for initial licensure asks,⁴⁶

In the last five years, have you been diagnosed with or treated for a condition that significantly disturbs your cognition, behavior or motor function, and that may impair your ability to practice as a podiatrist safely and competently including but not limited to bipolar disorder, severe major depression, schizophrenia or other major psychotic disorder, a neurological illness or sleep disorder?

The renewal application asks a similar question. If a podiatrist answers in the affirmative, his or her application may be denied or his or her license may be revoked.

One way to help ensure that podiatrists act within the limitations created by an illness or condition, thus avoiding discipline, is to authorize the Podiatry Board to enter into confidential agreements with such practitioners whereby the practitioner agrees to limit his or her practice.

However, this process should not be available to those podiatrists who are using or abusing drugs or alcohol. Practicing with such a condition constitutes a separate statutory violation, and this recommendation is not intended to address drug or alcohol abuse.

If a podiatrist has a health condition and is no longer able to practice safely, the current remedy would be to require the podiatrist to enter into a stipulated agreement to limit his or her practice, which is a public disciplinary action.

However, the podiatrist did not really do anything wrong and the underlying reason for his or her disciplinary action is due to a protected, confidential medical condition.

⁴⁶ Colorado Podiatry Board, *Application for Original Licensure* (December 2016), p. 5, question 9.

The General Assembly should revise the Act so that failing to act within the limitations created by a physical or mental health condition is grounds for discipline, as opposed to simply having such a condition. Additionally, the practitioner must be required to notify the Podiatry Board of the illness or other health condition in a manner and period of time determined by the Podiatry Board.

Rather than taking disciplinary action against the practitioner, the Podiatry Board should instead be granted the authority to enter into a confidential agreement with the podiatrist in which the licensee voluntarily agrees to limit his or her practice so that he or she may continue to practice safely, within the limits of the illness or health condition, and failing to comply with the terms of the confidential agreement would be grounds for discipline.

Therefore, the General Assembly should amend the Act so that failing to act within the limitations created by a health condition is grounds for discipline, and it should also authorize the Podiatry Board to enter into confidential agreements with practitioners to address conditions that may impact a podiatrist's ability to practice. These should be based on similar provisions in the Medical Practice Act.

Recommendation 3 – Clarify that passage of an examination approved by the Podiatry Board is required for licensure.

In order to be licensed as a podiatrist in Colorado, the Act currently requires an applicant to have:

- Reached the age of 21,
- Graduated from a school of podiatry approved by the Podiatry Board, and
- Completed a residency program of at least one year.

Oddly, the Act does not require a podiatrist to pass an examination.

Prior to 2010, the Act did require passage of an examination for licensure. However, this requirement was inadvertently taken out as part of the technical clean-up of the Act.

Passage of an examination is critical for an applicant to demonstrate that he or she has the clinical knowledge necessary to independently practice podiatry, and it should be explicitly required in the Act.

Nearly all states require podiatrists to pass a national examination, and some states require passage of a state examination.⁴⁷

It should be pointed out that the Podiatry Board does require passage of an examination by rule.⁴⁸ However, the General Assembly should clarify in the Act that passage of an examination approved by the Podiatry Board is required as a condition of licensure.

⁴⁷ Bureau of Labor Statistics. *How to Become a Podiatrist*. Retrieved on November 2, 2017, from <https://www.bls.gov/ooh/healthcare/podiatrists.htm#tab-4>

⁴⁸ 3 CCR § 712-1 (1)(c), Colorado Podiatry Board Rules.

Recommendation 4 – Repeal the requirement that letters of admonition be sent by certified mail.

Section 12-32-108.3(2)(c)(III), C.R.S., requires the Board to send letters of admonition via certified mail. While this delivery method allows Division staff to verify that a delivery attempt was made, it does not guarantee that the addressee actually receives the letter. The addressee can decline to sign for or pick up the letter, and then claim he or she never received it. This defeats the purpose of sending a letter by certified mail.

Also, sending a letter by certified mail costs more than sending one by first-class mail or emailing it.

The General Assembly should repeal the requirement that letters of admonition be sent by certified mail. The Board requires licensees to notify the Board of a change of address within 30 days, which may be submitted in writing or through the Board’s online system. If the Board is notified of an address change as required, it is very unlikely that the licensee would not receive a properly addressed letter of admonition.

Repealing this requirement would save money and streamline the administrative process for letters of admonition without compromising the Board’s enforcement authority.

Therefore, the General Assembly should repeal the requirement that letters of admonition be sent by certified mail.