



**COLORADO**

**Department of  
Regulatory Agencies**

Colorado Office of Policy, Research &  
Regulatory Reform

**2018 Sunset Review:  
The Licensing and Regulation of  
Psychiatric Technicians**

*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 licensing and regulation of psychiatric technicians. 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 42 of Title 12, C.R.S. The report also discusses the effectiveness of 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 The Licensing and Regulation of Psychiatric Technicians

#### SUMMARY

##### ***What is regulated?***

Psychiatric technicians (psych techs) provide care to patients with mental or emotional conditions or developmental disabilities by following the instructions of physicians and other health-care practitioners. They are charged with monitoring the patients' well-being and reporting to the medical staff. They may participate in rehabilitation and treatment programs, assist patients with personal hygiene and administer medication.

##### ***Why is it regulated?***

Without licensed psychiatric technicians (LPTs), the Colorado Mental Health Institute and the regional centers that serve people with intellectual and developmental disabilities would struggle to provide services to their patients, which would put the patients' health and safety at risk.

##### ***Who is regulated?***

In fiscal year 16-17, the Colorado Board of Nursing (Board), located within the Division of Professions and Occupations (Division), licensed 871 licensed psych techs (LPTs).

##### ***How is it regulated?***

In Colorado, no one may represent themselves as an LPT or practice as a psych tech without a license, with some exceptions. An applicant is qualified for a license if he or she has completed high school or its equivalent, completed an LPT educational program accredited by the Board and passed an examination offered by the Division.

##### ***What does it cost?***

The LPT program is one of several programs administered by the Board. Individual programmatic data pertaining to expenditures and staffing is not available.

##### ***What disciplinary activity is there?***

In fiscal year 16-17, the Board issued five letters of admonition to LPTs and revoked 10 LPT licenses.

## KEY RECOMMENDATIONS

### ***Continue the licensing and regulation of LPTs for 15 years, until 2034.***

Without LPTs, the Colorado Mental Health Institute and the regional centers that serve people with intellectual and developmental disabilities would struggle to provide services to their patients, which would put the patients' health and safety at risk. Therefore, the General Assembly should continue the licensing and regulation of LPTs for 15 years, until 2034.

### ***Amend the grounds for discipline to include the excessive or habitual use or abuse of alcohol or controlled substances.***

Currently, having an alcohol or substance use disorder is grounds for discipline. This provision should be amended to instead prohibit the habitual or excessive use or abuse of alcohol or controlled substances. This language would be preferable since the current language may be unconstitutional.

### ***Amend the statute so that failure to act within the limitations created by a health condition is grounds for discipline and authorize the Board to enter into confidential agreements with practitioners to address conditions that may impact an LPTs ability to practice.***

The General Assembly should revise the statute 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 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 in order to continue to practice safely, within the limits of the health condition.

## METHODOLOGY

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

## MAJOR CONTACTS MADE DURING THIS REVIEW

Colorado Board of Nursing  
Colorado Department of Human Services  
Colo. Dept. of Public Health and Environment  
Colorado Division of Professions and  
Occupations  
Colorado Hospital Association  
Colorado Mental Health Institute at Pueblo

Colorado Nurses Association  
Colorado Office of the Attorney General  
Grand Junction Regional Center  
Pueblo Community College  
Pueblo Regional Center  
Wheat Ridge Regional Center

### **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:  
Colorado Department of Regulatory Agencies  
Colorado Office of Policy, Research and Regulatory Reform  
1560 Broadway, Suite 1550, Denver, CO 80202  
[www.dora.colorado.gov/opr](http://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 criteria<sup>1</sup> 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;

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<sup>1</sup> 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

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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).

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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](http://www.dora.colorado.gov/opr).

The functions of the Colorado Board of Nursing (Board) as enumerated in Article 42 of Title 12, Colorado Revised Statutes (C.R.S.) (Act), 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 Act pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed regulation of licensed psychiatric technicians should be continued and to evaluate the performance of the Board and the staff in the Division of Professions and Occupations (Division). During this review, the 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.

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## Methodology

As part of this review, COPRRR staff attended Board meetings; interviewed Division staff, officials from state professional associations and other stakeholders; surveyed members of the regulated profession; and reviewed records, Colorado statutes and rules and the laws of other states.

## Profile of the Profession

Psychiatric technicians (psych techs) provide care to patients with mental or emotional conditions or developmental disabilities<sup>2</sup> by following the instructions of physicians and other health-care practitioners. They are charged with monitoring the patients' well-being and reporting to the medical staff. They may participate in rehabilitation and treatment programs, assist patients with personal hygiene and administer medication.<sup>3</sup>

Psych techs typically work in hospitals, group homes and state mental hospitals.<sup>4</sup>

Psych techs encompass a variety of workers with various levels of training, up to a bachelor's degree. They have numerous titles which may begin with psychiatric, mental health or behavioral health and be followed by aide, technician, worker, counselor, assistant or associate, such as mental health assistant or behavioral health technician.<sup>5</sup>

Entry-level psych techs help patients with personal grooming and activities of daily living, such as bathing, dressing and feeding. They also conduct educational, recreational and therapeutic activities. At this level, they may be referred to as psychiatric aides.<sup>6,7</sup>

Psych techs with more formal training participate in planning and implementing patient treatment plans. They may also admit and interview patients, maintain patient records, conduct therapy sessions and administer medication.<sup>8</sup>

All psych techs work on interdisciplinary teams with psychiatrists, psychologists, social workers and licensed professional nurses.<sup>9</sup>

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<sup>2</sup> American Association of Psychiatric Technicians. *Are you helpful, compassionate, and a good listener?* Retrieved on October 30, 2017, from <https://psychtechs.org/>

<sup>3</sup> U.S. Bureau of Labor Statistics. *Occupational Employment and Wages, May 2016: 29-2053 Psychiatric Technicians.* Retrieved on October 30, 2017, from <https://www.bls.gov/oes/current/oes292053.htm>

<sup>4</sup> American Association of Psychiatric Technicians. *Are you helpful, compassionate, and a good listener?* Retrieved on October 30, 2017, from <https://psychtechs.org/>

<sup>5</sup> American Association of Psychiatric Technicians. *Are you helpful, compassionate, and a good listener?* Retrieved on October 30, 2017, from <https://psychtechs.org/>

<sup>6</sup> American Association of Psychiatric Technicians. *Career Paths.* Retrieved on October 30, 2017, from <https://psychtechs.org/about-psychiatric-technicians/>

<sup>7</sup> American Association of Psychiatric Technicians. *Are you helpful, compassionate, and a good listener?* Retrieved on October 30, 2017, from <https://psychtechs.org/>

<sup>8</sup> American Association of Psychiatric Technicians. *Career Paths.* Retrieved on October 30, 2017, from <https://psychtechs.org/about-psychiatric-technicians/>

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At this time, only four states regulate psych techs:<sup>10</sup>

- Arkansas,
- California,
- Colorado, and
- Kansas.

In Kansas, psych techs are referred to as mental health technicians.

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<sup>9</sup> American Association of Psychiatric Technicians. *Career Paths*. Retrieved on October 30, 2017, from <https://psychtechs.org/about-psychiatric-technicians/>

<sup>10</sup> American Association of Psychiatric Technicians. *Are you from California?* Retrieved on October 30, 2017, from <https://psychtechs.org/are-you-from-california/>

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## Legal Framework

### History of Regulation

The General Assembly created the psychiatric technician practice act (Act) in 1967 to ensure that employees in Colorado state institutions who were caring for mentally ill patients were properly trained, and the Act required psychiatric technicians (psych techs) to be licensed.

In 1976, the Act was changed to allow licensed psych techs (LPTs) to administer medications in state hospitals and other institutional settings.

In 1979, legislation was passed expanding the practice of an LPT to include those who work with the developmentally disabled, and establishing distinct licensing requirements for psych techs who work with this population.

A sunset review was conducted in 1984, and based on the recommendations in that report, the General Assembly made numerous housekeeping changes to the Act, primarily relating to the disciplinary process.

The Colorado Office of Policy, Research and Regulatory Reform conducted a second sunset review in 1994. Subsequently, the General Assembly removed language restricting LPTs to state hospitals and institutions approved by the Department of Human Services. The bill also revised the curriculum requirements for educational programs.

In 2008, COPRRR conducted another sunset review and determined licensure to be unnecessary, and, accordingly, it recommended repealing the Act. The General Assembly, however, continued the Act for 10 years.

### Legal Summary

The laws governing LPTs are contained within Article 42 of Title 12, Colorado Revised Statutes (C.R.S.). The Colorado Board of Nursing (Board) located within the Division of Professions and Occupations (Division) in the Department of Regulatory Agencies is vested with the authority to regulate LPTs.<sup>11</sup>

The practice of an LPT is defined in the Act as<sup>12</sup>

the performance for compensation of selected acts requiring interpersonal and technical skills and includes the administering of selected treatments and selected medications prescribed by a licensed physician or dentist, in the care of and in the observation and recognition of symptoms and reactions of a patient with a behavioral or

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<sup>11</sup> § 12-42-103(1), C.R.S.

<sup>12</sup> § 12-42-102(4), C.R.S.

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mental health disorder or an intellectual and developmental disability under the direction of a licensed physician and the supervision of a registered professional nurse. The selected acts in the care of a patient with a behavioral or mental health disorder or an intellectual and developmental disability must not require the substantial specialized skill, judgment and knowledge required in professional nursing.

Anyone licensed under the Act is known as a “licensed psychiatric technician” or an LPT. No one without a license issued under the Act may use this term or abbreviation, or any of the following terms:<sup>13</sup>

- Psychiatric technician,
- Psychiatric aide,
- Trained psychiatric technician, or
- Graduate psychiatric technician.

Additionally, no one may practice as a psych tech without a license,<sup>14</sup> and doing so is declared to be harmful to the public welfare and a public nuisance.<sup>15</sup> Anyone who practices or attempts to practice as a psych tech without a license commits a class 2 misdemeanor for the first offense and a class 6 misdemeanor for any subsequent offenses.<sup>16</sup>

Nothing in the Act authorizes anyone to practice medicine or nursing or to treat or care for disease, pain, injury, deformity or a physical or mental condition in violation of the law.<sup>17</sup> Nothing in the Act may be interpreted to expand or detract from the rights, powers or duties of any other licensed profession, occupation or business.<sup>18</sup>

There are many exceptions to the Act. Most importantly, the Act does not apply to anyone who is paid to take care of a person with a behavioral or mental health disorder as long as he or she does not represent himself or herself as an LPT or perform the full duties of an LPT.<sup>19</sup>

In order to qualify for a license, an applicant must:<sup>20</sup>

- Complete high school or its equivalent,
- Complete an LPT educational program from a State-accredited program, and
- Pass an examination offered by the State.<sup>21</sup>

Additionally, an applicant must attest that he or she has not committed any acts that would be grounds for discipline under the Act.<sup>22</sup>

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<sup>13</sup> § 12-42-104(3), C.R.S.

<sup>14</sup> § 12-42-118, C.R.S.

<sup>15</sup> § 12-42-118, C.R.S.

<sup>16</sup> § 12-42-119, C.R.S.

<sup>17</sup> § 12-42-120, C.R.S.

<sup>18</sup> § 12-42-121, C.R.S.

<sup>19</sup> §§ 12-42-116(1), (2) and (3), C.R.S.

<sup>20</sup> § 12-42-105(1), C.R.S.

<sup>21</sup> § 12-42-106(1), C.R.S.

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An applicant may be licensed by endorsement if he or she is licensed in another state with qualifications that are substantially equivalent to those of Colorado.<sup>23</sup>

The Board has the authority to withhold or deny a license if the applicant does not meet the requirements of the Act.<sup>24</sup>

The Board must accredit an institution as an LPT educational program if it meets the requirements of the Act.<sup>25</sup>

An LPT educational program must provide curriculum containing theoretical and clinical practice to prepare students to care for clients with intellectual and developmental disabilities or behavioral or mental health disorders in institutional and community settings.<sup>26</sup> The program curriculum must cover at a minimum:<sup>27</sup>

- Fundamental nursing principals and skills,
- Growth and developmental and other physical and behavioral skills,
- Intellectual and developmental disabilities theory and rehabilitation nursing principles and skills if the technician is to be licensed to care for clients with intellectual and developmental disabilities, and
- Psychopathology and psychiatric nursing principles and skills if the technician is to be licensed to care for clients with behavioral or mental health disorders.

Division staff must survey the educational program and report in writing to the Board. The Board may appoint a consultant to survey the program in conjunction with Division staff, and Board members may also participate in the survey.<sup>28</sup>

Division staff may examine accredited educational programs from time to time. The results of any examinations must be submitted to the Board in writing, and the Board may revoke the accreditation if the program fails to meet the education standards required by the Act and fails to correct any deficiencies within a year. In this case, a program may request a hearing before the Board.<sup>29</sup>

The Board also has the authority to suspend, revoke or deny renewal of an LPT. The Board may also impose a fine between \$250 and \$1,000 per violation. All fines must be credited to the General Fund. Additionally, the Board may place a licensee on probation.<sup>30</sup>

A licensee may surrender his or her license prior or subsequent to an investigation or a hearing. The Board may only issue a license that has been surrendered if the

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<sup>22</sup> § 12-42-105(1)(a), C.R.S.

<sup>23</sup> § 12-42-109, C.R.S.

<sup>24</sup> § 12-42-114(2), C.R.S.

<sup>25</sup> § 12-42-111(3), C.R.S.

<sup>26</sup> § 12-42-111(1)(a), C.R.S.

<sup>27</sup> § 12-42-111(1)(b), C.R.S.

<sup>28</sup> § 12-42-111(2), C.R.S.

<sup>29</sup> § 12-42-111(4), C.R.S.

<sup>30</sup> § 12-38-116.5(4)(c)(III), C.R.S.

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licensee meets all the requirements for a new applicant, including passing the examination.<sup>31</sup>

When an individual's license is revoked or surrendered, he or she is not eligible to apply for a new license for two years.<sup>32</sup>

The Board may send a letter of admonition by certified mail if it determines that a complaint does not warrant formal action, but it should not be dismissed without merit. Within 20 days of receiving a letter of admonition, a licensee has the right to request a hearing in writing.<sup>33</sup>

The Board must send a confidential letter of concern if it finds that a complaint does not warrant formal action but if continued it could lead to serious consequences if not corrected.<sup>34</sup>

The Board also has the authority to issue an order to cease and desist if it finds that someone is practicing without a license or that a licensee is acting in a way that is an imminent threat to the health and safety of the public.<sup>35</sup>

The grounds for discipline include:<sup>36</sup>

- Procuring or attempting to procure a license by fraud,
- Being convicted of a felony or any crime that would be a violation of the Act,
- Willfully or negligently acting in a manner inconsistent with the health or safety of patients,
- Having a health-care license suspended or revoked,
- Violating the Act,
- Willfully or negligently violating a Board order or rule,
- Willfully or negligently practicing as an LPT in a manner that fails to meet the generally accepted standards of practice,
- Falsifying or negligently making incorrect entries or failing to make essential entries on patient records,
- Having an alcohol use disorder or a substance use disorder,
- Having a physical disability or intellectual or developmental disability that renders him or her unsafe to practice as an LPT,
- Engaging in any criminal conduct that relates to his or her employment as an LPT, and
- Willfully failing to respond to a complaint in a materially factual and timely manner.

Disciplinary proceedings are provided for under the Nurse Practice Act.<sup>37</sup>

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<sup>31</sup> §§ 12-42-115.7(1), (2) and (3), C.R.S.

<sup>32</sup> § 12-38-116.5(4)(e), C.R.S.

<sup>33</sup> § 12-38-116.5(3)(c)(IV), C.R.S.

<sup>34</sup> § 12-38-116.5(3)(c)(III), C.R.S.

<sup>35</sup> § 12-38-116.5(15)(a), C.R.S.

<sup>36</sup> § 12-42-113(1), C.R.S.

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The Board or an administrative law judge has the authority to administer oaths, take affirmations of witnesses and issue subpoenas.<sup>38</sup>

Anyone participating in good faith in making a complaint or a report or by participating in an investigation or administrative proceeding is immune from civil or criminal liability.<sup>39</sup>

Any professional review committee that is established to investigate the quality of care of a licensee must obtain authority to act from the Board.<sup>40</sup> Anyone participating in good faith in a professional review investigation is immune from civil and criminal liability.<sup>41</sup>

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<sup>37</sup> § 12-42-115.3, C.R.S.

<sup>38</sup> § 12-38-116.5(13)(a), C.R.S.

<sup>39</sup> § 12-38-116.5(14), C.R.S.

<sup>40</sup> § 12-42-115.5(1), C.R.S.

<sup>41</sup> § 12-42-115.5(2), C.R.S.

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## Program Description and Administration

The Colorado Board of Nursing (Board) is vested with the authority to regulate licensed psychiatric technicians (LPTs) in Colorado. The laws governing psychiatric technicians are located in Article 42 of Title 12, Colorado Revised Statutes (C.R.S.), and the Board is charged with approving educational programs, examinations, licensing, rulemaking and enforcement of the Act.

The Board is composed of 11 members appointed by the Governor as follows:<sup>42</sup>

- Two licensed practical nurses,
- One licensed professional nurse engaged in professional nursing education,
- One licensed professional nurse engaged in practical nursing education,
- One licensed professional nurse engaged in home health care,
- One licensed professional nurse registered as an advanced practice nurse,
- One licensed professional nurse engaged in nursing service administration,
- One licensed professional nurse engaged as a staff nurse in a hospital,
- One licensed professional nurse engaged as a staff nurse in a nursing care facility, and
- Two members of the public.

Members are appointed to four-year terms and may serve no more than two consecutive terms.<sup>43</sup> Members are paid a per diem of \$50 for each Board meeting and may be reimbursed for actual and necessary expenses.<sup>44</sup>

The 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 Board.

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<sup>42</sup> § 12-38-104(1)(a), C.R.S.

<sup>43</sup> § 12-38-104(1)(c), C.R.S.

<sup>44</sup> § 24-34-102(13), C.R.S.

Table 1 provides the expenditures and staffing associated with the regulation of all licensed nurses, certified nurse aides and LPTs, over the last five fiscal years.

**Table 1  
Agency Fiscal Information  
State Board of Nursing**

| <b>Fiscal Year</b> | <b>Total Program Expenditures</b> | <b>FTE</b> |
|--------------------|-----------------------------------|------------|
| 12-13              | \$2,545,268                       | 10.6       |
| 13-14              | \$3,878,559                       | 11.3       |
| 14-15              | \$3,504,696                       | 11.3       |
| 15-16              | \$3,515,189                       | 11.3       |
| 16-17              | \$4,812,643                       | 10.6       |

Additionally, 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.

It should be noted that the expenditures and staffing in Table 1 reflect the totals for all the licensees governed by the Board, of which LPTs make up a small part. The staffing and expenditures dedicated solely to the regulation of LPTs were not available.

Table 2 provides the licensing fees for LPTs over a five-year period.

**Table 2  
LPT Licensing Fees**

| <b>Fiscal Year</b> | <b>Original</b> | <b>Endorsement</b> | <b>Renewal</b> | <b>Reinstatement</b> |
|--------------------|-----------------|--------------------|----------------|----------------------|
| 12-13              | \$65            | \$65               | \$20           | \$35                 |
| 13-14              | \$65            | \$65               | Not applicable | \$35                 |
| 14-15              | \$65            | \$65               | \$20           | \$35                 |
| 15-16              | \$65            | \$65               | Not applicable | \$35                 |
| 16-17              | \$65            | \$65               | \$20           | \$35                 |

Licenses expire on March 31 of odd numbered years, and LPTs must renew their licenses on or before that date in order to continue to practice.

LPTs are not required to complete any continuing education in order to renew their licenses.

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## Licensing

In order to be licensed, an LPT must complete an online application and pay a fee.

Applicants are qualified to be licensed if they have:

- Completed high school or its equivalent,
- Completed an LPT educational program accredited by the Board, and
- Passed an examination offered by the Division.<sup>45</sup>

If an applicant is licensed in another state with licensing qualifications that are substantially equivalent to those of Colorado, he or she may be licensed by endorsement.

An LPT educational program teaches theoretical and clinical practice in order to prepare students to care for clients with intellectual and developmental disabilities or behavioral or mental health disorders in institutional and community settings.

The LPT educational programs cover:

- Fundamental nursing principals and skills,
- Growth and developmental and other physical and behavioral skills,
- Intellectual and developmental disabilities theory and rehabilitation nursing principles and skills if the psych tech is to be licensed to care for clients with intellectual and developmental disabilities, and
- Psychopathology and psychiatric nursing principles and skills if the psych tech is to be licensed to care for clients with behavioral or mental health disorders.

LPTs may be licensed to work with people who are mentally ill (LPT-MI) or people with intellectual or developmental disabilities (LPT-DD).

Table 3 illustrates the number of LPTs for both license types over a five-year period.

**Table 3**  
**Number of Licenses Issued**  
**Both License Types**

| Fiscal Year | Examination | Endorsement | Renewal        | Reinstatement | Active* |
|-------------|-------------|-------------|----------------|---------------|---------|
| 12-13       | 39          | 3           | 1,019          | 6             | 1,045   |
| 13-14       | 77          | 2           | Not applicable | 12            | 1,137   |
| 14-15       | 62          | 2           | 968            | 1             | 994     |
| 15-16       | 20          | 0           | Not applicable | 3             | 1,023   |
| 16-17       | 67          | 10          | 837            | 6             | 871     |

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

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<sup>45</sup> § 12-42-106(1), C.R.S.

The number of LPTs fluctuates dramatically from year to year. The decreases in active licenses coincide with renewal periods, which occur every other year. In fiscal year 14-15, the number of active licenses decreased about 13 percent, and in fiscal year 16-17, it decreased about 15 percent. These decreases are likely due to LPTs leaving the field and allowing their licenses to lapse.

Table 4 shows the number of LPT-MI licenses over a five-year period.

**Table 4  
Number of LPT-MI Licenses**

| Fiscal Year | Examination | Endorsement | Renewal        | Reinstatement | Active* |
|-------------|-------------|-------------|----------------|---------------|---------|
| 12-13       | 7           | 2           | 765            | 4             | 786     |
| 13-14       | 8           | 1           | Not applicable | 9             | 866     |
| 14-15       | 9           | 2           | 730            | 1             | 750     |
| 15-16       | 5           | 0           | Not applicable | 3             | 775     |
| 16-17       | 12          | 10          | 633            | 3             | 665     |

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

The number of active LPT-MI's has decreased significantly since fiscal year 13-14. Only a few licenses by examination are issued each year because there is only one educational program in the state for this license type, and few students graduate from this program annually, which limits the ability for new licenses to be issued.

Table 5 illustrates the number of LPT-DD licenses over a five-year period.

**Table 5  
Number of LPT-DD Licenses**

| Fiscal Year | Original | Endorsement | Renewal        | Reinstatement | Active* |
|-------------|----------|-------------|----------------|---------------|---------|
| 12-13       | 32       | 1           | 254            | 2             | 259     |
| 13-14       | 69       | 1           | Not applicable | 3             | 271     |
| 14-15       | 53       | 0           | 238            | 0             | 244     |
| 15-16       | 15       | 0           | Not applicable | 0             | 248     |
| 16-17       | 55       | 0           | 204            | 3             | 206     |

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

The number of actively licensed LPT-DD licenses does not seem to fluctuate as drastically as the LPT-MI licenses. It may be that working with the population of mentally ill in a state psychiatric hospital is more challenging than working with people with intellectual or developmental disabilities.

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## Examinations

All applicants for licensure are required to pass a written examination approved by the Board.

Each license type has a separate examination:

- Licensed Psychiatric Technician Examination - Behavioral or Mental Health Disorders Specialty (LPT-MI Examination)
- Licensed Psychiatric Technician Examination - Intellectual or Developmental Disability Specialty (LPT-DD Examination)

Iso-Quality Testing, Inc., administers both examinations in the following locations:<sup>46</sup>

- Centennial,
- Delta,
- Durango,
- Pueblo, and
- Sterling.

The LPT-MI Examination is a two-hour, computer-based examination, consisting of 130 multiple-choice questions, and candidates must answer at least 70 questions correctly in order to pass.<sup>47</sup>

The LPT-MI Examination covers the following content areas:<sup>48</sup>

- Assessing Behavioral and Physical Changes (16 questions),
- Performing Defined Nursing Activities (45 questions),
- Communicating with Others (8 questions),
- Anticipating Crises and Initiate Interventions (10 questions),
- Performing Security Checks (8 questions),
- Maintaining Safe and Orderly Environments (13 questions),
- Adhering to Legal Policies and Procedures (16 questions), and
- Establishing Therapeutic Environments (14 questions).

The LPT-DD Examination is a two-hour, computer-based examination, consisting of 145 multiple-choice questions, and candidates must answer at least 70 questions correctly in order to pass.<sup>49</sup>

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<sup>46</sup> ISO Quality Testing. *Locate a Testing Center: Colorado*. Retrieved September 12, 2018, from <http://www.isoqualitytesting.com/locations.aspx>

<sup>47</sup> Licensed Psychiatric Technician Examination, Behavioral or Mental Health Disorders Specialty: Candidate Handbook. State Board of Nursing. 2018 (p. 3)

<sup>48</sup> Licensed Psychiatric Technician Examination, Behavioral or Mental Health Disorders Specialty: Candidate Handbook. *State Board of Nursing*. 2018 (p. 5)

<sup>49</sup> Licensed Psychiatric Technician Examination, Intellectual and Developmental Disabilities Specialty: Candidate Handbook. *State Board of Nursing*. 2018 (p. 3)

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The LPT-DD Examination covers the following content areas:<sup>50</sup>

- Client Assessment (30 questions),
- Medication Administration (17 questions),
- Treatment Application (21 questions),
- Activities of Daily Living (15 questions),
- Behavior Management (8 questions),
- Maintaining Safe and Orderly Environments (30 questions),
- Adhering to Legal Policies and Procedures (11 questions), and
- Infection Control (13 questions).

A candidate may take the examination three times and must pass the examination within one year after submitting a licensing application to the Board. Each examination attempt costs \$115.

Table 4 shows the total number of examinations and pass rates for both license types over a five-year period.

**Table 6**  
**LPT-MI and LPT-DD Examinations**

| <b>Fiscal Year</b> | <b>Number of Examinations</b> | <b>Pass Rates</b> |
|--------------------|-------------------------------|-------------------|
| 12-13              | 66                            | 62%               |
| 13-14              | 110                           | 71%               |
| 14-15              | 96                            | 66%               |
| 15-16              | 33                            | 64%               |
| 16-17              | 89                            | 72%               |

The number of examinations varies significantly from year to year. On average 68 percent of all examinees passed the examinations.

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<sup>50</sup> Licensed Psychiatric Technician Examination, Intellectual and Developmental Disabilities Specialty: Candidate Handbook. *State Board of Nursing*. 2018 (p. 5)

## Complaints & Disciplinary Actions

Anyone may file a complaint against an LPT. However, nearly all complaints originate from an employer.

Table 7 demonstrates the number and type of complaints received by the 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                                    | 1         | 0         | 0         | 1         | 0        |
| Standard of Practice  | 20        | 12        | 8         | 17        | 3        |
| Physical or Mental Disability                                   | 0         | 0         | 1         | 1         | 1        |
| Alcohol or Substance Abuse                                      | 1         | 1         | 6         | 7         | 2        |
| Felony Conviction   | 0         | 1         | 0         | 1         | 0        |
| Criminal Conduct  | 0         | 0         | 1         | 1         | 0        |
| Procuring or Attempting to Procure a License by Fraud or Deceit | 1         | 0         | 1         | 0         | 0        |
| Failing to Make Essential Entries                               | 0         | 0         | 2         | 0         | 0        |
| License Revoked or Suspended in Another Jurisdiction            | 0         | 0         | 1         | 0         | 0        |
| <b>Total</b>  | <b>23</b> | <b>14</b> | <b>20</b> | <b>28</b> | <b>6</b> |

Complaints involving standard of practice make up the largest number of complaints against LPTs, followed by complaints related to substance abuse. In fiscal year 16-17, the number of complaints against LPTs decreased significantly. The reason for the decrease is unknown.

The Board has authority to suspend, revoke or deny a license. A licensee may surrender his or her license prior or subsequent to an investigation or a hearing. The Board may send a letter of admonition if it determines that a complaint does not warrant more serious disciplinary action, but it should not be dismissed outright. The Board must send a confidential letter of concern if it finds that a complaint does not warrant formal action but if continued it could lead to serious consequences if not corrected.

The Board also has the authority to issue an order to cease and desist if it finds that someone is practicing without a license or that a licensee is acting in a way that is an imminent threat to the health and safety of the public.<sup>51</sup>

<sup>51</sup> § 12-38-116.5(15)(a), C.R.S.

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   |
|-------------------------|-----------|-----------|----------|----------|-----------|
| Denials                 | 0         | 0         | 0        | 0        | 0         |
| Revocations             | 16        | 1         | 0        | 5        | 10        |
| Suspensions             | 1         | 0         | 0        | 0        | 0         |
| Stipulated Agreements   | 0         | 1         | 1        | 0        | 0         |
| Letters of Admonition   | 10        | 2         | 3        | 3        | 5         |
| Cease & Desist Orders   | 0         | 0         | 0        | 0        | 0         |
| <b>Total Actions</b>    | <b>27</b> | <b>4</b>  | <b>4</b> | <b>8</b> | <b>15</b> |
| Dismiss                 | 17        | 2         | 0        | 5        | 11        |
| Letter of Concern       | 10        | 8         | 4        | 3        | 4         |
| <b>Total Dismissals</b> | <b>27</b> | <b>10</b> | <b>4</b> | <b>8</b> | <b>15</b> |

Approximately 64 percent of complaints resulted in disciplinary action over the five-year period. This is an unusually high percentage for occupational and professional regulation. This may be because the complaints all originate from the employers, and only the most serious complaints are forwarded to the Board.

### **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 has authority to deny or revoke a license of anyone who has been convicted of a felony or any crime that would be a violation of the Act, or who has engaged in criminal conduct that relates to his or her employment as an LPT.

No licenses were disqualified based on past criminal history from fiscal year 12-13 to fiscal year 16-17.

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## Analysis and Recommendations

### Recommendation 1 – Continue the licensing and regulation of psychiatric technicians for 15 years, until 2034.

The laws that govern licensed psychiatric technicians (LPTs) are contained in Article 42 of Title 12, Colorado Revised Statutes (C.R.S.) (Act), and the Colorado Board of Nursing (Board) located in the Division of Professions and Occupations (Division) in the Department of Regulatory Agencies is responsible for enforcing the Act.

Psychiatric technicians (psych techs), both licensed and unlicensed, provide care to patients with mental or emotional conditions or developmental disabilities.<sup>52</sup> They are charged with monitoring the patients' well-being and reporting to the medical staff. They may participate in rehabilitation and treatment programs, assist patients with personal hygiene and administer medication.<sup>53</sup>

Psych techs encompass a variety of workers with various levels of training, up to a bachelor's degree. They have numerous titles which may begin with psychiatric, mental health or behavioral health and be followed by aide, technician, worker, counselor, assistant or associate, such as mental health assistant or behavioral health technician.<sup>54</sup>

Entry-level psych techs help patients with personal grooming and activities of daily living, such as bathing, dressing and feeding. They also conduct educational, recreational and therapeutic activities. At this level, they may be referred to as psychiatric aides.<sup>55,56</sup>

Psych techs with more formal training, such as LPTs, participate in planning and implementing patient treatment plans. They may also admit and interview patients, maintain patient records, conduct therapy sessions and administer medication.<sup>57</sup>

All psych techs work on interdisciplinary teams with psychiatrists, psychologists, social workers and licensed professional nurses, also known as registered nurses (RNs).<sup>58</sup>

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<sup>52</sup> American Association of Psychiatric Technicians. *Are you helpful, compassionate, and a good listener?* Retrieved on October 30, 2017, from <https://psychtechs.org/>

<sup>53</sup> U.S. Bureau of Labor Statistics. *Occupational Employment and Wages, May 2016: 29-2053 Psychiatric Technicians.* Retrieved on October 30, 2017, from <https://www.bls.gov/oes/current/oes292053.htm>

<sup>54</sup> American Association of Psychiatric Technicians. *Are you helpful, compassionate, and a good listener?* Retrieved on October 30, 2017, from <https://psychtechs.org/>

<sup>55</sup> American Association of Psychiatric Technicians. *Career Paths.* Retrieved on October 30, 2017, from <https://psychtechs.org/about-psychiatric-technicians/>

<sup>56</sup> American Association of Psychiatric Technicians. *Are you helpful, compassionate, and a good listener?* Retrieved on October 30, 2017, from <https://psychtechs.org/>

<sup>57</sup> American Association of Psychiatric Technicians. *Career Paths.* Retrieved on October 30, 2017, from <https://psychtechs.org/about-psychiatric-technicians/>

<sup>58</sup> American Association of Psychiatric Technicians. *Career Paths.* Retrieved on October 30, 2017, from <https://psychtechs.org/about-psychiatric-technicians/>

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Practice by an unqualified or incompetent psych tech could result in physical, emotional or psychological harm resulting from incorrect dosing of medications, failure to report serious changes in a patient's condition, neglect and abuse. For instance, a patient may become combative and difficult to work with, and a psych tech who is not trained in de-escalating situations and, when necessary, safely restraining patients, may injure a patient and put others in danger. Also, a psych tech could fail to monitor a patient properly after administering medication, which could prove to be fatal.

Clearly, it is necessary to have competent and qualified psych techs. Is it, however, necessary for the state to regulate them?

The Act is unusual in that psych techs are only required to be licensed if they work within their full scope of practice. That is, if they perform certain activities but not others, they are not required to be licensed. A representative of the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) spoke to several public and private facilities where psych techs work, including the two state psychiatric hospitals and three regional centers for people with disabilities, and it appears that the most significant difference between LPTs and unlicensed practitioners is that LPTs have the authority to administer medications under their own license.

At this time, the only employers hiring psych techs to work to their full scope of practice, thus necessitating a license in Colorado, are the Colorado Mental Health Institute at Pueblo (the Pueblo Institute) and the three regional centers for people with intellectual and developmental disabilities, all of which are run by the Colorado Department of Human Services (CDHS).

Private health-care facilities may hire unlicensed practitioners (typically referred to as mental health technicians or behavioral health technicians in the private sector) who function as psych techs, but, in practice, these practitioners work in a different capacity than LPTs do in CDHS facilities. Formerly, only those working in CDHS facilities could be licensed as psych techs, and this legacy has continued even though this restriction was repealed in 1994.

Considering this, a strong argument to repeal the Act is apparent since oversight of employees of one state agency by another state agency is inefficient and ostensibly unnecessary to protect the public health, safety and welfare. Moreover, few other states regulate psych techs.

In 2009, COPRRR did, in fact, recommend repealing the Act. The General Assembly, however, did not adopt the recommendation, and the licensure of psych techs was continued for 10 years. Before taking that step again, however, COPRRR must review the facts, many of which were unavailable during the last sunset review, and ascertain whether regulation is necessary to protect the public.

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Sunset reviews at their core are about improving government efficiency, effectiveness and, most importantly, public protection. In order to understand the importance of the regulation of LPTs, it is important to take a comprehensive view of the matter.

LPTs in Colorado work to a different scope of practice than unlicensed practitioners who function as psych techs in the private sector or in other states. In Colorado, LPTs function more as nursing staff than technicians, and the Pueblo Institute and the regional centers in Pueblo and Grand Junction report that LPTs play a critical role in their facilities, one which would be difficult to replace.

At the Pueblo Institute, this may be due to the fact that in addition to their coursework in basic nursing and pharmacology, LPTs receive 15 credit hours of coursework dealing specifically with psychiatric care. Compare this to licensed practical nurses (LPNs) who obtain only one credit hour of coursework dealing with mental illness, which is inadequate for this setting. LPNs receive more education overall than LPTs, however, the focus of their educational programs is on medical and surgical care rather than psychiatric care.

Because the education of LPTs is calibrated specifically for the facilities where they are working, it is reasonable to conclude that they are more effective at caring for the populations they serve than other nursing staff who do not receive as much education in psychiatric care.

Another reason that LPTs play a critical role in CDHS facilities has to do with resources.

Both the Pueblo Institute and the regional centers are regulated by the federal Centers for Medicare and Medicaid Services (CMS) and the Joint Commission on the Accreditation of Healthcare Organizations (Joint Commission). In order to maintain federal funding from CMS and accreditation with the Joint Commission, the Pueblo Institute must maintain appropriate staffing levels 24 hours a day, seven days a week.

Importantly, this includes very specific levels for licensed staff relative to unlicensed staff. The number and type of staff required depends on several factors, including the type of unit, the number and type of patients in the unit and the shift. In a maximum security forensic unit with no more than 18 patients, for instance, at least eight staff members must be on duty during day and evening shifts, including at least five licensed nursing staff and three unlicensed staff. In a minimum security forensic unit, at least six people must be on duty, including at least four licensed nursing staff and two unlicensed staff. However, in some cases, such as when there has been a suicide attempt, one staff person must be assigned to shadow a patient continuously.<sup>59</sup>

If the licensure of psych techs were to sunset, more licensed nurses would be required to ensure staffing levels were appropriate. As such, the licensed nurses would likely

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<sup>59</sup> Office of the State Auditor. *Colorado Mental Health Institute at Pueblo Department of Human Services: Performance Audit*. November 2009, p. 63.

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take on the higher level duties of the LPTs, such as medication administration, and former LPTs, who would be considered unlicensed staff, would no longer be able to work to the full scope of their training.

These facilities have difficulty attracting and maintaining nursing staff in general since they must compete with private facilities where working conditions and compensation are often better. Facilities in Pueblo and Grand Junction struggle more with this issue than facilities in the Denver area where, as a rule, more nurses are available.

In fact, the Colorado Mental Health Institute at Fort Logan does not use LPTs; instead, it relies on RNs to staff these positions. However, the psychiatric hospital at Fort Logan is much smaller than the one in Pueblo, and it is located in a metropolitan area, where more nurses and other health-care providers are available.

The Pueblo Institute, on the other hand, is a large psychiatric hospital in a small city that serves a different population than Fort Logan. The Pueblo Institute, unlike Fort Logan, provides inpatient hospital treatment to people with the most complex and difficult psychiatric disorders. The Pueblo Institute is the only state facility that provides treatment for those who have been accused or convicted of a crime and committed for evaluation and treatment, including convicted sex offender evaluations, presentence examinations and evaluations to determine if individuals are not guilty by reason of insanity or incompetent to stand trial. However, not all patients at the Pueblo Institute are criminals. It also provides treatment to individuals who have been either committed or referred to the facility for psychiatric care because they are severely disabled or a danger to themselves or to others because of their mental illness.<sup>60</sup>

In Pueblo, an LPT educational program has been created at the Pueblo Community College. This ensures a pipeline of LPTs who receive training specifically designed to care for the patients that the Pueblo Institute serves.

Similarly, the regional centers serve people with the most severe intellectual and developmental disabilities. Patients in these facilities come from all over the state since they cannot otherwise be served in their communities. The regional centers have created a system in which they hire employees to work in unlicensed positions, and then the facilities themselves provide in-house didactic education and clinical training necessary for these workers to become licensed. Similar to Pueblo Community College, these educational programs create pipelines for LPTs to work in regional centers and, at the same time, for the staff to obtain training specifically designed for the clients they serve.

Without LPTs, CDHS would not otherwise have the qualified staff necessary to keep these facilities running.

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<sup>60</sup> Office of the State Auditor. *Colorado Mental Health Institute at Pueblo Department of Human Services: Performance Audit*. November 2009, p. 12-13.

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It is common knowledge that the United States has a nursing shortage. The need for nurses is expected to increase considerably as baby boomers age, and nursing schools struggle to keep up with the demand. This is compounded by the fact that the majority of nurses in the workforce today are nearing the age of retirement. Importantly, the nursing shortage is projected to be worse in the Southern and Western states than other areas of the country.<sup>61</sup>

In fact, Colorado is one of three states projected to experience the most severe nursing shortages in the country. Over the next seven years, the state is expected to be short approximately 12,900 nurses, according to the federal Health Resources and Services Administration.<sup>62</sup>

The Pueblo Institute has already experienced critical staffing shortages for many years. In 2017, federal regulators threatened to terminate federal funding when they found that the Pueblo Institute posed an “immediate and serious threat to the health and safety” of its patients due to a severe staffing shortage. Despite the Pueblo Institute’s best efforts to attract applicants, the psychiatric hospital must compete for nursing staff in Pueblo, a small city with many hospitals and a small pool of applicants, and it simply does not have the ability to pay as well as other area employers.<sup>63</sup>

If the psychiatric hospital could no longer utilize LPTs, it would only exacerbate this problem, and the facility’s federal funding and accreditation would again be at risk.

Without LPTs, the Pueblo Institute would have to rely on other licensed nurses to fill these positions. Unfortunately, there is a shortage of LPNs. Because of this, the psychiatric hospital would be required to replace LPTs with RNs, which would be more costly. The starting salary for an RN with the state is \$29.79 an hour and \$61,956 a year, and the starting salary for an LPT at the Pueblo Institute is \$19.75 an hour and \$41,088 a year.

The regional centers could also face this problem. Like the Pueblo Institute, the Grand Junction Regional Center must compete with other hospitals and long-term facilities in the area, where working conditions and compensation for these workers are typically better. In the past, the regional center attempted to attract certified nurse aides (CNAs) with the intent of training them to become LPTs instead of hiring people without these credentials as it usually does. This experiment failed when it only received six applications from CNAs, two of which failed the background checks, and it needed to fill 20 open positions. However, when it subsequently advertised for unlicensed people for the LPT educational program, it received close to 100 applications.

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<sup>61</sup> American Association of Colleges of Nurses. *Fact Sheet: Nursing Shortage*. May 18, 2017.

<sup>62</sup> Svaldi, Aldo; Seaman, Jessica; Rubino, Joe, “Colorado employers stretched thin by the tight labor market,” *The Denver Post*, July 22, 2018.

<sup>63</sup> Brown, Jennifer, “State mental hospital in Pueblo found in ‘immediate jeopardy’ of patient safety, could lose federal funds,” *Denver Post*, June 9, 2017.

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It is clear that LPTs help to mitigate staffing problems at these facilities, and the educational programs in turn provide workforce opportunities to these communities. Individuals who would not otherwise be qualified to work at these facilities are provided the opportunity to further themselves, and the facilities gain qualified staff.

Some may argue that other states rely on licensed nurses, such as LPNs and RNs, to staff their state psychiatric hospitals. Why not do the same thing in Colorado?

Colorado's situation is simply different than other states. The nursing shortage is expected to be worse here than in other states, and because of the nursing shortage and other conditions, there are not enough licensed nurses to fill these positions, especially in Pueblo and Grand Junction. This creates a dangerous situation for patients, staff and the community in general.

Could these facilities rely on CNAs with Medication Aide Authority (Medication Aides) to staff these positions? Theoretically, it may be possible. However, psychiatric hospitals generally do not use this model because of training and access issues. Basically, there are not enough Medication Aides to staff these positions.

Also, the training programs for the regional centers are located in house. Since it is a violation of federal law for the CNA training programs to be run by the facilities where the graduates will be working, the regional centers would not be able to hire individuals without credentials and train them in the facility. They would, therefore, be required to hire CNAs from outside training programs, which would severely restrict the pool of applicants.

If Medication Aides were used, the facilities would still be required to provide Medication Aides with additional training since CNAs are trained to work in geriatric populations, not mentally or intellectually or developmentally ill populations. Also, LPTs receive at least 400 hours of theory and clinical training whereas Medication Aides only receive 100 hours of training. Eliminating this license type may create some efficiencies in the Division; however, these efficiencies may not be worthwhile considering the consequences of doing so.

While there are valid arguments in favor of repealing the Act, there are also compelling reasons to continue it.

Sunset criteria question whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel. Without licensure, LPTs would not be able to work to the full scope of their training, and the pool of available applicants would be significantly restricted so that the state facilities that rely on these workers would not have sufficient staff to fill these positions.

Patients benefit from having more highly trained nursing staff, and LPTs are specialists in psychiatric care. They serve some of the most vulnerable members of our society, and the state has a responsibility to care for them.

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Additionally, having sufficient, adequately trained and licensed staff for the Pueblo Institute and the regional centers is important to public protection.

When appropriate staffing levels are not met, it puts the patients' and the employees' safety at risk. Having appropriate staffing levels is especially important at the Pueblo Institute since it is the only state psychiatric facility with a forensic unit for criminals, many of whom are dangerous. The Pueblo Institute also provides services to adolescent, adult and geriatric patients who are gravely disabled, meaning they pose a danger to themselves or to others because of their mental illness. If these facilities do not have sufficient staff that is adequately trained, they would be forced to reduce their available beds to serve these populations. This would put the patients' health, safety and welfare at risk, since they cannot obtain the appropriate level of care they need in their community, and many would not obtain any care at all.

By not providing adequate psychiatric services to those who desperately need them, the community is also at an increased risk of harm from patients who require psychiatric treatment and cannot obtain it.

Without LPTs, these facilities would struggle to provide services to their patients, which would put the patients' health and safety at risk. Moreover, it would also place the employees and communities' safety at risk.

For all these reasons, the regulation of LPTs should continue.

The General Assembly may continue the Act for anywhere between one and 15 years. Overall, there are only some minor, clean-up amendments that are recommended in this sunset report, so a 15 year continuation is reasonable.

Therefore, the General Assembly should continue the licensing and regulation of LPTs for 15 years, until 2034.

**Recommendation 2 – Replace references to “accredited” in relation to educational programs and change to “approved by the Board.”**

Throughout the Act and the Nurse Practice Act, there are several references to “accredited” educational programs for LPTs. The term accredited in this context is erroneous and may be confusing to the public.

In higher education, accredited has a very specific meaning. It typically refers to a formal process in which a program or institution meets the standards set by an organization approved by the U.S. Department of Education. Typically, there is a process for peer review of the activities for the specific disciplines being taught, such as nursing or medicine.

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In fact, the LPT educational programs in Colorado are simply approved by the Board, and representing them as accredited is misleading to the public.

Therefore, the General Assembly should replace references to “accredited” in relation to LPT educational programs with “approved by the Board” or similar language, as appropriate.

**Recommendation 3 – Amend the grounds for discipline to include the excessive or habitual use or abuse of alcohol or controlled substances.**

Pursuant to section 12-42-113(1)(i), C.R.S., an LPT may be disciplined upon a finding that the licensee:

Has an alcohol use disorder, as defined in section 27-81-102, C.R.S., or a substance use disorder, as defined in section 27-82-102, C.R.S., is a habitual user of controlled substances, as defined in section 18-18-102 (5), C.R.S., or other drugs having similar effects,

This provision should be amended to instead prohibit the habitual or excessive use or abuse of alcohol or controlled substances, and references to “alcohol use disorder” and “substance use disorder” should be repealed.

In *Robinson v. California*, 370 U.S. 660 (1962), the U.S. Supreme Court held that narcotic addiction is an illness and that any state law that seeks to punish a person because of an illness violates the Eighth and Fourteenth Amendments. Although this case involved a criminal prohibition, it may be considered persuasive in the administrative context.

Furthermore, in *Colorado State Board of Nursing v. Crickenberger*, 757 P.2d 1167 (Colo. App. 1988), the Colorado Court of Appeals addressed a provision in the Nurse Practice Act substantially similar to the one at issue here. In vacating the Board’s disciplinary action, the court held that the plain language of the statute requires addiction at the time of hearing.

These two cases, taken together, suggest that disciplinary action based on addiction is not the best way to discipline practitioners who abuse alcohol or controlled substances.

In *Colorado State Board of Medical Examiners v. Davis*, 893 P.2d 1365 (Colo. App. 1995), the Colorado Court of Appeals held that disciplinary action based on excessive use of alcohol or a controlled substance does not require current addiction or use of alcohol or controlled substances at the time of the disciplinary hearing.

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Since it may be unconstitutional to discipline a practitioner based on addiction to controlled substances or alcohol and since “excessive use” does not require current addiction or use at the time of the disciplinary hearing, the current language should be amended.

Therefore, the General Assembly should repeal the prohibition against an alcohol or substance use disorder, and instead prohibit the excessive or habitual use or abuse of alcohol or controlled substances.

**Recommendation 4 – Amend the Act so that failure to act within the limitations created by an illness or other health condition is grounds for discipline and authorize the Board to enter into confidential agreements with practitioners to address conditions that may impact an LPTs ability to practice.**

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

To determine if an LPT has a health condition that impacts his or her ability to practice, the application for initial licensure asks the following question:<sup>64</sup>

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 psychiatric technician 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 an LPT 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 LPTs act within the limitations created by an illness or health condition, thus avoiding discipline, is to authorize the 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 LPTs 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.

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<sup>64</sup> Division of Professions and Occupations, Board of Nursing. *Application for Original License by Examination: Psychiatric Technician*. December 2016.

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If an LPT has a disability and is no longer able to practice safely, the current remedy is to require the LPT to enter into a stipulated agreement that limits his or her practice, which is a public disciplinary action.

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

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

Rather than taking disciplinary action against the licensee, the Board should instead be granted the authority to enter into a confidential agreement with the 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 illness, condition or disability, 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 Board to enter into confidential agreements with practitioners to address conditions that may impact an LPTs ability to practice. These should be based on similar provisions in other practice acts.

**Recommendation 5 – Repeal the terms “willfully” and “negligently” from sections 12-42-113(1)(c), 12-42-113(1)(f), and 12-42-113(1)(g), C.R.S., in the grounds for discipline.**

Several sections of the grounds for discipline include the language, “willfully” and “negligently” including:

- **Section 12-42-113(1) (c), C.R.S.**, prohibits an LPT from *willfully* or *negligently* acting in a manner inconsistent with the health or safety of persons under his care;
- **Section 12-42-113(1) (f), C.R.S.**, prohibits an LPT from *negligently* or *willfully* practicing as a psychiatric technician in a manner which fails to meet generally accepted standards for such practice; and
- **Section 12-42-113(1)(g), C.R.S.**, prohibits an LPT from *negligently* or *willfully* violating any order, rule or regulation of the board pertaining to practice or licensure as a psychiatric technician.

The term “willful” implies that an act was intentional. Regulatory oversight focuses on whether a regulated professional has violated the Act or the rules, which could

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harm consumers, not whether the violation was intentional. As such, the Board should be able to pursue formal discipline if a violation of the Act or rules has occurred, not whether the violation was intentional or “willful.”

Similarly, the term “negligently” involves a higher standard than appropriate for the Board to take action against a licensee. For example, acting inconsistently with the health and safety of the patients, in and of itself, should be grounds for discipline. Failing to meet the generally accepted standards of practice should be grounds for discipline, and violating an order or rule of the Board should be grounds for discipline. The Board should not also be required to prove that the practitioner acted negligently in doing so.

In order to clarify the prohibited activities in the Act, the General Assembly should repeal the terms “willfully” and “negligently” from sections 12-42-113(1)(c), 12-42-113(1)(f), and 12-42-113(1)(g), C.R.S., in the grounds for discipline.

**Recommendation 6 – Repeal the requirement that letters of admonition be sent by certified mail.**

Section 12-38-116.5(3)(c)(IV), 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.<sup>65</sup> 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.

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<sup>65</sup> 3 CCR § 716-1-5-4.3-B, Colorado Board of Nursing Rules.

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## Recommendation 7 – Make technical changes to the Act.

The Act has been in place for several decades. As with any law, it contains instances of obsolete, duplicative and confusing language. The Act should be revised to reflect current terminology and administrative practices. These changes are technical in nature, so they will have no substantive impact on the regulation of LPTs.

The General Assembly should make the following technical changes:

- **Section 12-42-104(1), C.R.S.** Revise to read, “Every applicant for license as a psychiatric technician ~~shall file a written application on forms provided~~ MUST SUBMIT AN APPLICATION IN A MANNER APPROVED by the board.” This would reflect the Division’s move to electronic applications, allowing for applications to be processed more quickly.
- **Section 12-42-104(2), C.R.S.** Revise to read, “Every applicant shall accompany his OR HER application with a license fee established pursuant to section 24-34-105, C.R.S., ~~together with a statement of whether or not he has been convicted of a felony or a misdemeanor involving moral turpitude.~~” Information related to criminal history is captured during the application process and a separate statement is not necessary.

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## Appendix A - Survey

During the sunset review, the Colorado Office of Policy, Research and Regulatory Reform surveyed all actively licensed psychiatric technicians via email. The response rate was 22 percent. The survey questions and the results of the survey are as follows.

**1. Is regulation of psychiatric technicians necessary to protect the public?**

|     |     |       |
|-----|-----|-------|
| Yes | 193 | 95.1% |
| No  | 10  | 4.9%  |

**2. Are you currently working as a psychiatric technician?**

|     |     |       |
|-----|-----|-------|
| Yes | 146 | 71.9% |
| No  | 57  | 14.7% |

**3. If so, where do you work?**

|   |    |       |
|---|----|-------|
| Colorado Mental Health Institute Fort Logan | 2  | 1.4%  |
| Colorado Mental Health Institute Pueblo     | 22 | 15.1% |
| Grand Junction Regional Center              | 42 | 28.8% |
| Pueblo Regional Center                      | 25 | 17.1% |
| Wheat Ridge Regional Center                 | 46 | 31.5% |
| Other                                       | 9  | 6.2%  |

**4. If you answered “other”:**

Does your current employer require you to be licensed as a psychiatric technician?

|     |   |      |
|-----|---|------|
| Yes | 0 | 0    |
| No  | 9 | 100% |

In your role as a psychiatric technician, are you currently administering medications?

|     |   |       |
|-----|---|-------|
| Yes | 4 | 44.4% |
| No  | 5 | 55.6% |