

COLORADO DEPARTMENT OF REGULATORY AGENCIES
OFFICE OF POLICY AND RESEARCH

COLORADO MENTAL HEALTH STATUTES

1997 SUNSET REVIEW



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EXECUTIVE SUMMARY

In 1988, the General Assembly was dissatisfied with the public protection afforded by the traditional licensing scheme of mental health professionals in Colorado. In response, the multilevel, disciplinary State Grievance Board (SGB) was created. The fundamental question of this sunset review is whether or not that regulatory oversight mechanism should continue.

This review finds that regulation of mental health practitioners should continue. The state provides protection to the public by identification of practicing therapists, establishing in law a list of prohibited activities, requiring by law that therapists disclose pertinent information to clients, and, significantly, imposing discipline upon practitioners who have violated Colorado law and harmed a client. It is reasonable to conclude that in an unregulated market, clients of therapists would have little or no recourse if harmed.

The second question asks that since state regulation is necessary, does the current model provide the level of protection needed? The SGB has met the burden of proof required by the sunset criteria for the General Assembly to continue the Board. The service to Colorado citizens by this regulatory board - discipline of offenders who have harmed the public - is unquestionably greater than pre-1988 actions by combined licensing/enforcement boards. The SGB, composed of professionals and public members, has accomplished the mission that the General Assembly directed.

From 1988 to June 1997, the SGB received 1,364 complaints and has taken disciplinary action in 233 cases. Although this report finds that there exists significant room for improvement, the SGB performs in the public interest. In fact, disciplinary numbers for the years prior to the creation of the SGB, as one would expect based on the General Assembly's response in creation of the SGB, are a fraction of the Grievance Board's totals.

This review was presented virtually no public opposition to the Grievance Board. There have been no complaints by citizens (excluding mental health practitioners) to the Division of Registrations nor to the Executive Director of the Department of Regulatory Agencies concerning the SGB. Only one complaint has ever been filed with the Governor's Office against the SGB by a citizen.

Further, a survey of Colorado psychotherapists shows that, overall, there is general satisfaction with the SGB. While some psychotherapists would like change in the regulatory system, they generally agree with the present system. Even among psychologists, the professional group most vocal in opposition to the SGB, one does not find an overwhelming objection to the SGB. This survey result was ratified by interviews with members of the profession and leadership in various associations. Most stated that they could not assert that the SGB is doing a poor job.

Even though the SGB has met its statutory burden, this report recognizes that some professionals wish to see the SGB terminated or, at least, to see their profession excluded from the SGB's jurisdiction. Such a change is a policy decision of the General Assembly. To aid in that discussion, this review contains discussion of various options.

This review recommends continuing the licensing boards that are currently in place. Again, the review explores options and alternatives to the present system.

A number of legislative and administrative recommendations are made to improve the present regulation of psychotherapy.

To this end, a significant recommendation is made, to change the composition of the State Grievance Board by the addition of an unlicensed psychotherapist. A study of State Grievance Board sanctions revealed that some bias against unlicensed psychotherapists particularly in terms of severity of sanctions. Adding a representative of this profession could mitigate against that bias.

Representatives of marriage and family therapists and licensed professional counselors asked that the sunset review consider extending reimbursement privileges and 72-hour hold authority to their professions. These provisions currently extend to the other two licensed mental health practitioners. Based on the sunset criteria, this report concludes that such extension stimulates competition and is therefore in the public interest. This review finds that licensed professional counselors and marriage and family therapists are qualified by education, training and experience to have these provisions extended to their practices.

This review recommends that all licensees and all unlicensed psychotherapists complete a jurisprudence course and examination as a condition of practice in Colorado. The review discovered that many practitioners, responding to a complaint, stated that they were unaware that the practice or action was prohibited by state law. This was found especially among unlicensed psychotherapists. A jurisprudence requirement will help establish that all practitioners know the law.

Finally, the report makes other recommendations for statutory changes of an administrative or technical nature. The review makes a number of administrative recommendations with the intent of improving communication and the relationships among the regulated professions, regulatory boards, and the Division of Registrations.

BACKGROUND AND HISTORY OF REGULATION

The Sunset Review Process

The Colorado Mental Health Statutes (§12-43-101, C.R.S., et seq.) are scheduled to terminate on July 1, 1998. In the year prior to that time, the Office of Policy and Research (OPR) within the Executive Director's Office of the Department of Regulatory Agencies (DORA) is responsible for drafting and presenting a sunset review to the General Assembly of the State Legislature, §24-34-104 (8)(a), C.R.S. This sunset review encompasses the statutes regulating the professions and occupations practicing psychotherapy. The sunset review includes an analysis of the State Grievance Board (SGB), the State Board of Marriage and Family Therapist (MFT) Examiners, the State Board of Licensed Professional Counselor (LPC) Examiners, the State Board of Psychologist Examiners, and the State Board of Social Work (SW) Examiners.

A sunset review involves the analysis and evaluation of the operations, regulatory activities, and licensing functions of the various mental health and grievance boards, and recommends both administrative and legislative changes. The criteria used for a sunset evaluation are found in Appendix A. During this review, the agency must demonstrate that there is a need for the program's existence, and that the current regulations are the least restrictive while also protecting the public's interest.

To accomplish this review, OPR undertook extensive research. This sunset review evaluated activities from 1988 to the present, the period since the creation of the SGB. Attention is also given to previous sunset review findings as well as external research. A list of disciplinary actions from 1980 to 1988 against psychologists and social workers are also presented in Appendix B for comparison purposes. Program staff, board members, and professional organizations were interviewed. Input was also sought from the Attorney General's Office. A series of public meetings were attended to gather input on various practices of the profession in Colorado. A statutory analysis and rule review was completed. Input was also encouraged and received from the licensed and unlicensed community in the form of a sunset review mail survey (see Appendix D). Other states who regulate mental health professionals and those with similar and innovative approaches to specific mental health policy issues were contacted by phone. Over 50 individual complaint files were reviewed and a sample of grievances where discipline was imposed were also subjected to analysis. Lastly, a literature and public document review was completed.

The Department of Regulatory Agencies also wishes to express its sincerest thanks and appreciation to the Sunset Review Advisory Committee members

listed in Appendix E, the licensed and unlicensed therapists who were interviewed for this report, the respondents to the sunset survey, representatives of the professional associations, and staff of the Division of Registrations.

Colorado History of Mental Health Legislation

The regulation of mental health professionals in Colorado is intended to safeguard the public health, safety, and welfare. The purpose of such regulation is to identify and take action against mental health professionals who act to harm the public. Mental health professionals provide psychotherapy within a confidential and private setting, one-on-one with clients, or sometimes in groups. This standard scenario can lend itself to potential public harm, since the psychotherapy provided is confidential and is usually undertaken in a time of stress for the client. These circumstances can lead to an abuse of power by the therapist.

The State Board of Psychology Examiners was created in 1961 within the Division of Registrations. This board provided for the public protection by certifying psychologist candidates. In 1981 the statutory protection was codified as licensing of psychologists. This board's authority included examining candidates for licensing, renewal, and suspending or revoking licenses as needed. The board also sought to discipline licensees that engaged in unprofessional conduct and maintained a list of licensed psychologists. The statute since its creation has provided title protection to practicing psychologists.

In 1975, the State Board of Social Worker Examiners was established under the Division of Registrations. The board's authority provided for the licensing function of candidates at three levels: registered social workers, licensed social worker I and licensed social worker II. This statute also outlined extensive educational, work experience, and supervision requirements. This board had the authority to discipline social workers who violated one of the five prohibited acts. This statute was known as the "Social Work Practice Act."

In 1988, professional counselors and marriage and family therapists also became licensed professions. Regulation was enacted, since these professionals were practicing psychotherapy and had credentials and experience similar in nature to psychologists and social workers. The State Board of Marriage and Family Therapy Examiners and the State Board of Licensed Professional Counselor Examiners were subsequently established. These boards are granted the authority to examine candidates for licensure in Colorado, but they do not impose sanctions or discipline. The addition of these two boards also extends title protection to MFTs and LPCs.

In 1988, the Legislature also determined that the mental health field was not regulated in a consistent, comprehensive way. The Legislature had become dissatisfied with the independent boards' pursuit of disciplinary action against licensees engaging in unprofessional conduct. Information in Appendix B shows that the Psychology Board took action against 13 licensees since 1980. Similarly, Appendix B shows that the Social Work Board took disciplinary actions against 11 licensees in that same period.

The disciplinary structure previously in place was completely abandoned and a new structure was created. "Colorado became the first state to pass occupational legislation which separated the state's licensing and disciplinary functions" (SGB Annual Report, July 1994). Previously, the Psychology Board and the Social Work Board had not only engaged in the licensing function, but also had responsibility to discipline any licensees who had violated the codes of professional conduct. The new law removed the disciplinary function from those boards and vested it in a new, inter-disciplinary board composed of professionals and lay persons. In the 1987 Sunset hearings, it was determined that a combined grievance board with members from the public and mixed interdisciplinary representatives could be more effective at policing the mental health professions involved. The SGB was then created by the Legislature to address the situation that had developed out of the previous history of regulation in the mental health field. This board with public and professional representation was intended to regulate all the licensure boards with greater impartiality, fairness, and greater response to the public's need for enforcement.

A significant change in 1992 was the creation of the database. The database provides public protection because all persons practicing psychotherapy with or without a license are listed. Colorado is unique in that unlicensed persons with training in psychotherapy can practice as long as they are listed in this database. The full range of SGB disciplinary action remedies authorized against licensed professionals was also completely extended to the unlicensed psychotherapists. Other changes in 1992 included the implementation of a uniform fee schedule assessed on all persons listed in the database, and the licensing boards were authorized to delegate initial review of standard applications to staff.

In 1995, language was amended to specifically exempt persons regulated by the State Board of Nursing from the jurisdiction of the State Grievance Board. In 1997, the Medical Records Act was amended, and language requiring therapists to provide their clients with a summary record of their therapy was enacted. The mental health records were not required to be fully available to the clients; only a summary was deemed necessary.

REVIEW OF THE MENTAL HEALTH PRACTICES ACT & PROMULGATED RULES

Summary of Current Statute

The Colorado Mental Health Statute (§12-43-101, C.R.S., et seq.) incorporates law concerning the licensing of mental health professionals and the practice of psychotherapy in Colorado. The statute also details the disciplinary structure created to address unprofessional conduct associated with the practice of psychotherapy. In total, the statute contains seven parts. The first part is the Legislative Declaration and the second establishes the General Provisions for the implementation of licensing and disciplinary functions. Four parts detail the licensure protection and regulation for the four professions and occupations: psychologists, clinical social workers, professional counselors, and marriage and family therapists. The seventh part addresses the State Grievance Board. It outlines the organizational structure, powers, and duties of the Grievance Board, and a list of prohibited activities and unlawful acts. Several sections detail the extent and methods of discipline available to the Grievance Board. The statute also provides for the regulation of unlicensed psychotherapists and addresses the level of regulation extended to certified school psychologists, religious ministers, and other groups that may engage in the practice of psychotherapy. The requirements to form a Professional Service Corporation for the practice of psychology, clinical social work, marriage and family therapy, and professional counseling are also contained in §12-43-211, C.R.S.

Licensure protection and regulation currently exists for the four groups referenced in the preceding paragraph. Pursuant to the law, no one else in Colorado may practice psychotherapy and call themselves "licensed" unless they have a license pursuant to this law. This is title protection. Other practitioners may continue to practice psychotherapy in Colorado, as long as they do not use one of the protected titles. Therefore, there is a large group of psychotherapists that practice in this state that are not licensed. These unlicensed psychotherapists are required to record with the Grievance Board their name, current address, educational qualifications, disclosure statements, therapeutic orientation or methodology, or both, and years of experience in each specialty area (§12-43-220 (2), C.R.S.). The licensed professionals are also listed in the database, and all practitioners licensed and unlicensed are required to pay a fee as authorized in §24-34-105, C.R.S.

Psychotherapy has been defined as:

“The treatment, diagnosis, testing, assessment, or counseling in a professional relationship to assist individuals or groups to alleviate mental disorders, understand unconscious or conscious motivation, resolve emotional, relationship, or attitudinal conflicts, or modify behaviors which interfere with effective emotional, social, or intellectual functioning. Psychotherapy follows a planned procedure of intervention which takes place on a regular basis, over a period of time, or in the cases of testing, assessment, and brief psychotherapy, it can be a single intervention. It is the intent of the general assembly that the definition of psychotherapy be interpreted in its narrowest sense to regulate only those persons who clearly fall within the definition” (§12-43-201 (9), C.R.S.).

To help advance public protection, the statute requires that every unlicensed psychotherapist, licensee, or certified school psychologist practicing outside the school setting shall disclose certain information to assist the client (the public) in making an informed choice. The information that must be disclosed to each client during the initial client contact includes the name, business address, and business phone of the practitioner; a listing of any degrees, credentials, and licenses; a statement indicating that the practice of both licensed and unlicensed persons and certified school psychologists is regulated by the Department of Regulatory Agencies; an address and telephone number for the Grievance Board; a statement indicating that a client is entitled to receive information about the methods of therapy, techniques used, duration of therapy, if known, and the fee structure; a statement discussing that the client is always free to seek a second opinion from another therapist and may terminate therapy at any time; a statement saying that in a professional relationship, sexual intimacy is never appropriate and should be reported to the Grievance Board; and the information provided by the client during therapy sessions is legally confidential when the therapist is a licensee or certified school psychologist.

This disclosure is not required when psychotherapy is being administered in an emergency; pursuant to a court order or to involuntary procedures to §§27-10-105 to 27-10-109, C.R.S.; when the sole purpose of the professional relationship is for forensic evaluation; if the client is in physical custody of either the Department of Corrections or the Department of Human Services; if the client is incapable of understanding such disclosure and has no guardian to whom such disclosure can be made; or by a social worker practicing in a hospital that is licensed or certified under 25-1-107(1). If the client has no written language or is unable to read, an oral explanation shall accompany the written copy. Unless the client, parent, or guardian is unable to write, or refuses or objects, the client, parent, or guardian shall sign the disclosure form required not later than the second visit with the psychotherapist.

The statutory requirements of licensure for the four professional groups are very similar. Each state examiner board has a membership of seven: five members are from the profession and two members are from the general public. All state examiner board members are appointed by the Governor. All are authorized to examine applications for licensure; adopt an examination; examine for, deny, withhold, or approve the license of an applicant; and renew licenses pursuant to §12-43-212, C.R.S. The state examiner boards may also issue a license by endorsement to any applicant who is licensed under another jurisdiction if the applicant presents proof satisfactory to the board that, at the time of application for a Colorado license by endorsement, the applicant possesses credentials and qualifications which are substantially equivalent to the requirements of licensee of whatever board is applicable. In terms of administrative policy, each board is empowered to adopt rules and regulations interpreting its statute, to appoint advisory committees to assist it, and to conduct hearings as necessary to conduct its business.

The requirements for licensure are similar in the groups, but not identical. The Psychology Examiner Board requires a doctoral degree in the study of psychology from an American Psychological Association-accredited school or its equivalent. The other three state examiner boards license individuals holding master's degrees in the relevant fields as well as Ph.D. graduates. All boards require one year of post-doctoral experience with supervision, and the three boards accepting M.A. candidates require two years of post-master's experience under supervision. All boards require the applicants to pass their examinations before licensure (unless by endorsement). It should be noted that all four state examiner boards have adopted the national examinations for their respective professions and occupations. Only the Psychology Examiner Board develops an oral exam to give to its applicants and also administers a multiple-choice exam about jurisprudence. The other three state examiner boards require a jurisprudence examination for licensure, but the requirement is in rule not statute. The mental health laws do not standardize the practice of these disciplines in any way. The law does, however, address the practice of psychotherapy, a practice which many of the licensees have in common. To the extent any licensee is construed to be practicing psychotherapy, the disciplinary provisions of the law apply. This appears to be one intent of restructuring the laws in 1988.

The SGB was created to hear and adjudicate complaints about all licensed and unlicensed therapists practicing psychotherapy in Colorado. The board is composed of one member from each of the licensed professions and four members of the general public. No representatives from the unlicensed therapist community are required to be seated on the Board pursuant to law; nothing in the law, however, precludes the Governor from appointing such representatives as all or part of the public representation component. In addition, the law provides that three-person "augmenting panels" for the four licensed communities and the unlicensed community shall be appointed to the Grievance Board for disciplinary proceedings. Three additional members are also appointed from the area of certified school psychologists. State law provides that "the grievance board shall consist of eight members or eleven members, as determined pursuant to this section, who are residents of the state of Colorado" (§12-43-702 (1), C.R.S.). Augmenting panels do not participate in the entire Board processes, such as rule adoption, discussion on preliminary complaints, and public reports.

The Grievance Board has the authority to make investigations, hold hearings, and take evidence in all matters relating to the exercise and performance of the powers and duties vested in it; to subpoena witnesses and documents, administer oaths, and compel testimony of witnesses. The Board is directed to aid the district attorneys of this state in prosecuting violations of the act. The Board may take disciplinary action against licensed and unlicensed persons practicing psychotherapy and can employ hearing officers to hear cases if needed. The board is directed to notify the public of all disciplinary actions taken. The Board has the authority to adopt rules and regulations to administer the provisions of the law. (§12-43-704, C.R.S.).

The Grievance Board is required to maintain a database of all practitioners of psychotherapy, whether licensed or not. This database contains all relevant information about a psychotherapist, which he or she is required to update annually. This database will also contain a copy of the therapist's disclosure statement.

The disciplinary actions the Board can take are those resulting from a violation of the act itself. Prohibited activities are set forth in the statute §12-43-704, C.R.S. This code is applicable to all practicing psychotherapists, whether licensed or unlicensed. Prohibited activities and grounds for discipline are included as Appendix F of this report.

The statutory standard for proceeding in a disciplinary action against a practitioner is whether or not the Board has reasonable grounds to believe that the practitioner has acted or failed to act pursuant to the grounds established in §12-43-704, C.R.S. The remedies available to the Board for disciplinary action against licensed professionals are outlined in §12-43-705 (3), C.R.S., and include revocation of a license; suspension; placement on probationary status with conditions; and the issuance of letters of admonition. It should also be noted that if the Grievance Board has reasonable cause to believe that a licensee or certified school psychologist is unable to practice with reasonable skill and safety to patients, it may require a mental or physical examination be conducted at its direction.

In 1992, the range of disciplinary remedies available for unlicensed psychotherapists who violate any of the provisions of §12-43-704, C.R.S., was expanded. The Grievance Board may now permanently, or for a set period of time, strike the name of such psychotherapist from the database. They may issue a letter of admonition, place the unlicensed psychotherapist on probation with conditions, or apply for an injunction to enjoin him/her from practicing psychotherapy (§12-43-704.5 (3), C.R.S.).

In the case of certified School Psychologists practicing psychotherapy outside the school setting, the Board may issue a letter of admonition, place the person on probation, or apply for an injunction to cease the outside practice. The teacher's certification, however, is still under the authority of the State Board of Education (§12-43-704.5 (2), C.R.S.).

This statute currently exempts:

- Any person engaged in the practice of religious ministry;
- Any person engaged in the practice of employment or rehabilitation counseling as performed in the public and private sectors;
- Employees of the Department of Human Services;
- Employees of the county departments of social services, persons practicing under contract with public schools;
- Mediators resolving judicial disputes, court-ordered custodial evaluations undertaken in domestic relations cases; or
- Employees of community mental health centers.

Each of the above-exempted groups remain exempt as long as their practice of psychotherapy is not conducted within the context of private practice or outside the parameters of their occupation (i.e., ministers working outside role of church minister). Persons licensed by the State Board of Nursing are summarily exempt from the jurisdiction of the Grievance Board.

Final Grievance Board actions may be judicially reviewed by the Court of Appeals. No licensee's or certified school psychologist's right to use his/her title may be denied, revoked or suspended, nor shall he/she be placed on probation until after a hearing has occurred except in emergency situations (adjudicated as mentally ill; jeopardizing the health, safety, and welfare of the citizens of Colorado; or refusing to submit to a Board-ordered mental or physical examination). §12-43-705, C.R.S.

State Grievance Board Rules

The State Grievance Board Rules are promulgated pursuant to §12-43-703(2), C.R.S., and were first made effective on April 15, 1989. Three definitions were later added on February 14, 1990. Mandatory disclosure and database update requirement rules were added in 1992, and Rule 15 concerning therapist records retention was rescinded in June 1997. The Board regularly reviews these rules and regulations. The public is invited to participate in the creation, amendment, and rescinding of the rules. Subjects incorporated within these rules range from definitions and information on Board operations to issues of confidentiality, complaint management, disciplinary procedures, mandatory disclosure statements, the supervision of psychotherapists, and database management concerns.

State License Examiner Boards Rules and Regulations

All of the state license examiner boards are authorized to promulgate rules and regulations pursuant to §12-43-203(3)(a), C.R.S., as may be necessary to carry out their powers and duties. The statute pursuant to §12-43-206, C.R.S., also authorizes the promulgation of rules that set forth the manner in which credentials and qualifications of an applicant will be reviewed by the boards. Each of the license examiner boards have the same 17 rules, which are virtually identical in all respects, save the reference to the specific license offered by that board. The rules promulgated include:

1. Definitions
2. Board Operations
3. Petitions; Public Participation at Board Meetings
4. Board Statements of Policy and Interpretation (Reserved)
5. Proceeding Following Denial of Initial License or Reinstatement of License; Appeals of Initial Decision; Reopening Decisions.
6. Reconsideration
7. Declaratory Orders
8. Forwarding and Transmitting Information to the State Grievance Board; Surrender of License
9. Display of License
10. Reporting Change of Address, Telephone Number, or Name

11. Duplicate or Replacement License
12. Renewal of License
13. Authority to Investigate
14. Licensure by Endorsement
15. Reinstatement of License
16. Physically Challenged Applicants for Licensure
17. Licensure by Examination

PROGRAM DESCRIPTION & ADMINISTRATION

This sunset review was conducted from May 1997 through September 1997. During this review period, a number of methods and tools were used to evaluate both the grievance and licensing activities authorized within the State Mental Health Statute and implemented by the Department of Regulatory Agencies. The following pages will report significant facts and the findings of the sunset review process.

General Statistics and Performance Indicators

The following chart shows the numbers of licensees as of July 16, 1997.

Psychologists	1,749
Clinical Social Workers	2,339
Professional Counselors	1,574
Marriage and Family Therapists	371
Unlicensed Psychotherapists	2,392
TOTAL	8,425

In the period from July 1988 to June 1997, the licensing boards have issued through examination or endorsement 4,701 licenses. An average of 521 licenses are issued each year. Overall, the percentage of licenses issued by examination is 81 percent and those issued by endorsement account for 19 percent. The Psychology Board licenses an average of 106 persons each year; the Social Work Board averages 194 licenses annually; the Professional Counselor Board grants an average of 178 licenses yearly; and the Marriage and Family Therapy Board issues annually an average of 43 licenses. Currently, 28 appointed board members assisted by approximately four staff are responsible for the processing, examination, and issuing of state mental health licenses.

Table 1. Examiner Boards Activity by License Category, July 1988- June 1997

Category of License	Total Licenses by Examination	Percent of Licenses by Examination	Total Licenses by Endorsement	Percent of Licenses by Endorsement	Overall Average Licenses Issued Annually
Psychology	711	75%	239	25%	106
Clinical Social Worker	1,381	79%	373	21%	194
Professional Counselor	1,483	93%	120	7%	178
Marriage and Family Therapist	229	58%	165	42%	43
TOTALS:	3,804	81%	897	19%	521

SOURCE: Mental Health Boards Office, Department of Regulatory Agencies, August 1997.

Grievance Board Statistics and Indicators

The State Grievance Board has received 1,364 complaints from July 1988 to June 1997. A total of 233 complaints, or 17 percent, resulted in disciplinary action. During this nine-year period, some 44 therapists who were disciplined at some level voluntarily ended their practice. Six therapists had their licenses revoked or suspended, and ten therapists are prohibited from practicing psychotherapy in Colorado. Of the therapists prohibited from practicing, nine were disciplined for sexual misconduct and one for maintaining a dual relationship. All six of those who had their licenses revoked or suspended were disciplined for some level of sexual misconduct. Lastly, the 44 therapists who have elected to end their practice received different levels of discipline for maintaining dual relationships (39%), violations of confidentiality (18%), and sexual misconduct (14%). There were even two persons disciplined for Medicaid fraud and three who were found to have some physical or mental disability to render them unsafe to practice.

The summary table below outlines the number of complaint and disciplinary actions taken against each category of therapist since the Grievance Board was created. Overall, the State Grievance Board only takes action on 17% of all the complaints it receives. The percentage of practicing therapists who are the subject of a complaint is very small (approximately 2 percent) and the percentage who are disciplined even lower (less than 1 percent). However, it is important to note the significance of the harm and abuse experienced by individuals in cases leading to discipline of a therapist. A summary table listing the offending therapists and a brief description of the violation and discipline imposed is included within Appendix C. Currently, eight State Grievance Board and some 15 augmenting panel members, assisted by approximately 2 staff, are responsible for all aspects of the grievance process.

Table 2. Total Complaints Resulting in Dismissal or Discipline, by Category of Therapist, July 1988 - June 1997

Category of Therapist	Complaints Dismissed	% Total	Disciplinary Actions	% Total	Totals
Psychologist	385	84%	71	16%	456
Clinical Social Worker	194	86%	31	14%	225
Professional Counselor	96	83%	19	17%	115
Marriage & Family Therapist	32	83%	5	17%	37
Unlicensed Psychotherapist	424	83%	107	17%	531
AVERAGE	126		26		152
TOTALS	1,131	83%	233	17%	1,364

SOURCE: The ARM System, Mental Health Boards Office, Department of Regulatory Agencies, August 1997.

Program Organization and Budgeting Information

The SGB and the Mental Health Examiner Boards are organizationally housed within the Division of Registrations, Department of Regulatory Agencies. A supporting staff of 6.0 FTE provide support to the mental health boards, respond to requests for licensing and grievance information, and complete all other program operation functions.

The table below provides budget, revenue, and expenditure information for the previous five fiscal years, from July 1, 1991, to June 30, 1996. In summary, the mental health boards appear to budget at the same level (102 percent) of earned revenues. These revenues are collected from candidates for licensure and from current licensees who renew their licenses annually. Expenditures as a percentage of the total budget average 93 percent. During the examined budget period, the mental health boards experienced a negative fund balance of less than \$40,000 on two occasions, but overall collect more revenues than they spend. During the five years presented in Table 3, a total fund balance of \$264,289 remains.

Table 3. Mental Health Boards, Summary Financial Information, by State Fiscal Year, 1991 to 1996

State Fiscal Year	Authorized Budget	Earned Revenue	Percent of Earned Revenue to Budget	Budget Expended	% of Budget Expended	Fund Balance (Earned. Rev.-Bud. Exp.)
1991-92	\$ 717,579	\$ 684,950	95%	\$ 643,715	90%	\$ 41,235
1992-93	\$ 559,930	\$ 740,227	132%	\$ 492,095	88%	\$ 248,132
1993-94	\$ 612,902	\$ 551,145	90%	\$ 590,388	96%	\$ (39,243)
1994-95	\$ 657,830	\$ 662,178	101%	\$ 619,347	94%	\$ 42,831
1995-96	\$ 632,452	\$ 597,152	94%	\$ 625,818	99%	\$ (28,666)

SOURCE: Division of Registrations, Mental Health Boards, Budgetary Status Reports.

Notes: The 1991-92 Budget was appropriated by board. Table data represents the total of all mental health budgets.

State Grievance Board Operations

The principal purpose of the State Grievance Board is to provide public protection by disciplining therapists who engage in unprofessional and unethical behavior. The grievance process is the means through which these therapists are identified, and as appropriate, the grievance process leads to the disciplining of such therapists in Colorado.

In most cases, a client or other person wishing to file a grievance can obtain a grievance information package from the Mental Health Boards Office. When a complaint or grievance is received, a notice is mailed to the affected psychotherapist, allowing the therapist 20 days to respond to the allegations. The therapist's response is sometimes sent to the complainant for his/her information. In some cases, the complainant may review and respond to the therapist's comments. This collection of correspondence, information from the database, and a search for previous complaints are all presented to the Board during its initial review of the case.

Each grievance or complaint is first considered during the "Initial Review" portion of the meeting. The Board can elect to dismiss the case due to lack of jurisdiction, dismiss the case finding no violations, or table the "Initial Review" pending additional information. If the case is not tabled or dismissed, additional review and discussion occurs in the closed session of the Board. At this point, the Board can still dismiss the case without endorsement or require the review by an augmenting panel to consider discipline. The four types of discipline imposed by the Board and augmenting panel can include a letter of admonition (LOA), a voluntary agreement and stipulation, a stipulated suspension and/or probation, and injunctive actions causing the loss of practice.

The Board also takes an active role in monitoring all cases referred to the Attorney General's (AG) Office and of cases where probation or loss of practice has been imposed. At each Board meeting, the assistant attorney general is responsible for updating the Board on the status of cases still in the Attorney General's Office, for soliciting the Board's direction on cases under negotiation, and for communicating information about any actions taken on behalf of the Board.

In addition to the AG Report, the Board has created a Monitoring Committee to directly participate in the administration of practice therapy, practice monitoring, and continuing education requirements imposed as conditions of an agreement and/or probation. This committee also monitors the status of therapists who have lost the privilege to practice psychotherapy in Colorado. Those who surrender their licenses, have them revoked, who are restrained from practice and who are ordered to cease and desist are all monitored by this committee and supporting program staff.

The Monitoring Committee

The SGB Monitoring Committee was established three years ago to oversee the monitoring of disciplined psychotherapists, and their practices. This committee at no time sets disciplinary action; this can only be done by the SGB and “augmenting panels.” The committee is composed of six board members: one from each licensed group, one from the unlicensed community, and one public member. Those monitored are the licensed and unlicensed psychotherapists who have restricted practices due to disciplinary action imposed by the Board. The Board also oversees any requirements of practice evaluation and monitors the activities of psychotherapists who have revoked licenses or psychotherapists who cannot return to practice without Board approval. It must be noted that the addition of a Monitoring Committee shows the sincere desire of this Board not only to impose sanctions but to actively involve themselves in the implementation of sanctions. This can have the effect of preventing future violations and improving the quality of psychotherapy practice in Colorado.

The practice evaluation and monitoring activities are remedial efforts intended to amend the behavior of a disciplined therapist. The efforts to amend inappropriate behavior directly contribute to improving public safety and protection. Through the monitoring committee, discipline is not just imposed but behavior changes are sought to help prevent a second violation by the affected psychotherapist. The monitoring of activities of psychotherapists who have revoked licenses or who cannot return to practice without Board approval also contributes to improving public safety and protection. When such psychotherapists are found to be practicing, the Board can move to prevent further practice by the offending psychotherapist. Both the safety and protection of each profession is similarly improved, since unprofessional and unethical psychotherapists are prevented from practicing and further harming the public.

Issues from Observation of the July State Grievance Board Meeting

The State Grievance Board meets monthly. A quorum of five SGB members is needed for the Board to take final action on complaints it reviews. In general, the Board appears well directed in its objectives to complete an initial review of complaints and discuss the status of existing cases. The Board is also closely involved with cases referred to the Attorney General's Office. The Board also completes "Case Considerations," which involve the decision to request additional information from candidates for licensing or listing in the database. If a candidate has answered "Yes" to a question regarding past irregularities (e.g., complaint from another state, previous discipline, previous license denial), the Board can solicit additional information from such individuals. Additionally, the program administrator gives a report on current issues and any new concerns. In closed session, the Board discusses in detail cases receiving discipline. The details of this discipline are usually decided on during this session. Interesting elements of the July meeting which raised some questions are presented in the following paragraphs.

An observer has a difficult time identifying the parties present during the monthly Board meeting. The chairman was easily identified, but this applied to virtually no one else in the room. To a general audience, it was unclear who represented state staff or who represented the Attorney General's Office. The audience of students and members of professional associations may not have known which persons represented the Grievance Board and which represented "augmenting panels." It was completely unclear which professions were represented since discussion on all categories of therapists tended to solicit responses from the entire group, often with several primary voices involved in each case. Even when discipline was being discussed, it was not clear who was participating as a member of the augmenting panel and who was participating as a member of the Grievance Board.

The Board appears to struggle with the question of jurisdiction and often with the question of whether a psychotherapy relationship exists. Often the result is a prolonged discussion on these points, which is usually followed by a need to refocus on the details of the complaint. On rare occasions, it is conceivable that the details of the complaint are completely lost within the jurisdiction and relationship debates. The prevailing sense is that the gravity and severity of offenses in specific cases, where jurisdiction or the type of therapeutic relationship is not clear, creates these diversions. It is also true that §12-43-215 and §12-43-219, C.R.S., often exempt large populations of therapists who are the subject of grievances. The public is not aware of existing exemptions and has no reason not to file a grievance. The public would also expect such a grievance to be considered on its merits against any therapist.

Lastly, the SGB views their activities as meetings and not public hearings. The Board relies heavily on the initial complaint information, the response of the therapist, reports on additional communications with program staff, any formal investigations, comments from the Attorney General's representative, information from the database and mandatory disclosure statements, and any information within the existing complaint files.

In light of the 1997 sunset review, the OPR and the Mental Health Grievance Board Program Administrator requested comments from Grievance Board members on the functioning of the Board. One member of the social worker augmenting panel elected to respond. The main concerns expressed involved procedural issues of how and when to use augmenting panel members; the lack of clarity on the role of the Attorney General's Office representative; and uncertainty with respect to jurisdictional issues. These same concerns have surfaced in other aspects of this sunset review.

State Mental Health Examiner Board Operations

General Information

The examiner boards are seven-member boards with two public members and five professional members. The current administration reports no chronic difficulties in staffing these boards. Each board meets an average of four times annually. Only the Psychology Board meets more frequently (eight times) to accommodate the review of oral examination results. Each board has adopted the national examination from the individual profession as one requirement for licensure. The national examination for social workers can even be administered electronically. Only the Psychology Board uses an additional oral examination. The MFT and LPC boards in statute and rule also emphasize the need for supervised post-graduate degree experience in the delivery of psychotherapy services.

Licensing Fees

Licensing fees are significantly uniform. The license fee paid to the state is \$109 per application. The cost for a psychology oral examination is \$25 per application. Each license and database listing must be renewed annually at a cost of \$70. Each candidate for licensing also pays a fee ranging from \$100 to \$250 to take the national examination for that profession. The unlicensed psychotherapist must by statute be listed in the database and also shares in the cost to administer regulation. Each unlicensed psychotherapist is assessed a \$70 fee to be listed. This fee is strategically established to avoid a negative incentive against formal licensing. For an additional \$39 to \$65, the psychotherapist may obtain a professional license and the privilege of Title. Candidates for licensing by endorsement also pay a fee of \$209 for a Colorado license. Lastly, the Psychology Board offers a \$75 Candidate for Licensing Status to psychology students completing their supervised post-doctorate experience.

Administration of Licensing

The administration of licensing is an important activity to help establish a minimum level of knowledge, training, and experience necessary for the safe, professional, and ethical practice of psychotherapy. The review and examination of candidate licensing materials, however, is labor-intensive and consumes large portions of the examiner board's resources.

A recommendation to move the responsibility for much of this process to state staff was made in 1992 and has been completely implemented. Each examiner board in Colorado has worked carefully to develop a set of guidelines that assist staff with the initial review of candidate-for-licensing materials. The result according to these staff members is an enhanced method to identify questionable applicants. The examiner boards are consequently free to invest additional resources on these questionable applicants and devote remaining resources to investigate other issues and concerns of the profession or discipline.

Review of Minutes

Copies of the approved FY 1996-97 minutes available in late August were examined to gain a general understanding of the examiner board activities and to provide information on the activities and issues where resources are routinely invested. The following section reports the review findings.

The MFT Examiner Board met five times during FY 1996-97. The board directs licensing for a developing profession in Colorado. The most significant use of board time is in ratifying administrative action to issue a license and, ratifying administrative action to allow a candidate admittance to the national examination. The board directly invests resources in determining whether candidates should be admitted to the examination, and in determining whether a candidate's supervisor meets the requirements for board approval. It is notable that this board just reviewed proposed guidelines for candidates in their selection of potential supervisors at its March 21, 1997 meeting.

Each meeting contains a report from the chair, the program administrator, and the Attorney General's Office representative. Often a report on SGB activities is also made by the chair. Subjects raised in these reports include, among others, discussing standards for the release of information and training for the SGB monitoring committee.

The Professional Counselor Examiner Board was also created by the Legislature in 1988. During the last fiscal year, four candidates for licensure made direct appeals to the board for special consideration. In all four cases, the board seems to have found middle ground in accommodating these candidates' needs. It appears the overwhelming majority of applicants are administratively approved to take the national examination, receive a license, or qualify for a license provisionally. The usual provision involves the documentation of course work and some 2,000 hours of supervised post-graduate experience and direct service delivery training. Sometimes the documentation involves obtaining copies of transcripts and determining educational equivalence.

As with other examiner boards, each meeting contains a report from the chair, the program administrator, and the AG's representative. Information on SGB activities is also often reported. The Americans with Disabilities Act (ADA) requirements and special testing considerations appears to be a subject of considerable interest to the board. Other issues addressed during board meetings include record keeping and supervision rules, mandated vendorship, and judgment of therapists treating children.

The Social Work Examiners Board met a total of four times during FY 1996-97. The board was involved in the special monitoring of one conditional social work license this year and ultimately requested a psycho-sexual evaluation of the therapist. This board also delegates the administrative review of licensing applications to staff and ratifies these applications at its meetings. The board also routinely holds in abeyance the eligibility of a candidate for examination and endorsement until specific requirements are met and documented.

The Psychology Examiner Board met six times during FY 1996-97. The board was involved in a legal action and worked with the SGB on a licensing question during the year. The legal action involved a civil rights claim that one of the licensing tests used was unfair. No further action was taken by the claimant in this case. The board also completed an investigation of a candidate for licensing and referred the issue for review by the SGB.

In general, this board, like the other examiner boards, has delegated the initial review of licensing applications to staff. The board then votes to affirm and grant licensure. The board grants eligibility for examination to candidates in the same fashion. What is unique to this board is its activity of reviewing resumes and vitas of psychologists wishing to participate in the oral examination process. Also unique is the board's role in selecting the questions for the oral examination.

External to licensing issues and reports, the board has held discussions on topics including CPA membership on the board in the past and present; the risks and rewards of supervision and practice monitoring; the SGB rule on record keeping; association conference subjects of national licensure and electronic therapy; the sunset review; and other legislative activities.

Sample of Complaints Resulting in Discipline

A selected group of 25 therapist cases, that resulted in discipline, was conducted to gain a general understanding of the situations where the state Grievance Board may impose discipline. This analysis helps to evaluate whether the mental health board agency is performing its statutory duties efficiently and effectively. It also helps to evaluate if the agency operates in the public interest. Specifically, this analysis helps in evaluating “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” (Sunset Statutory Evaluation Criteria, III, IV and VII).

General Information

The information from 25 therapist cases was selected using the recent State Grievance Board disciplinary action list printed in the Mental Health Professions Newsletter. Five cases from each therapy category were used. Only 20 therapist cases, a total of 9 percent of the State Grievance Board-disciplined cases, were usable in the analysis. Of the five rejected cases, one was never found in the agency’s files, and in the remaining four cases, the primary complaint sought in the analysis was not found. Files on earlier cases were found, but not the cases resulting in disciplinary action. Two marriage and family therapist cases were lost, one involving a clinical social worker and one unlicensed psychotherapist.

Origin of Complaints

Overwhelmingly, complaints are initiated by the patients of therapists, the parents of children in therapy or another family member. In three cases, colleagues of the therapist are responsible for filing complaints. In two cases, the State Grievance Board initiated a complaint, one involving an unlicensed psychotherapist and the other a clinical social worker. Of the remaining two cases, a guardian ad litem and a victim’s advocacy group reported the complaints.

Violations of the Statute and Action Taken

This analysis attempts to broadly identify specific sections and subparagraphs of the statute that are actually violated by offending therapists. It is apparent, for procedural and administrative reasons, that a violating therapist will submit to the discipline of the State Grievance Board, but will not stipulate to any specific violation of the Act. To gather this level of data, all violations directly referenced in letters of admonition and stipulated orders are counted. Additionally, information about likely or possible violations is collected by reviewing the original complaint allegations, the results of an investigation, and the terms of a stipulated order.

A total of 48 violations were identified in the 20 therapist cases, for an average of 2.4 violations per disciplined case. Subparagraph G (“Standards of Practice”) is a catch-all category that does not clearly address or identify the specific unprofessional or unethical conduct. Subparagraph G is cited in 17 of the 20 cases reviewed and in 5 cases is the only violation mentioned. In this sample, Subparagraph H (“Competence”) is the next most frequently cited violation. Violations of confidentiality, dual relationships, and sexual contact with patients are the next most frequent citations, with four each. Nine additional violations involved therapists who were cited for failure to terminate, refer, or consult. The five remaining violations involved failure to report a felony, a general violation of the article, a database violation, a violation of mandatory disclosure, and a Medicaid insurance fraud.

A total of 8 therapists (40 percent) were placed on probation, 7 Letters of Admonition (35 percent) were issued, and 5 (25 percent) therapists either voluntarily ended their practice or their licenses were revoked. It is interesting to note that one therapist from each of the therapy categories lost the privilege to practice psychotherapy in Colorado. Probation, which averages 3 years, was given to 4 professional counselors, 2 unlicensed psychotherapists, and 2 clinical social workers. Letters of admonition were sent to 4 psychologists, a marriage and family therapist, an unlicensed psychotherapist, and a clinical social worker.

In conclusion, the violations and the action taken in this sample of cases are comparable to the Handelsman study completed in March 1997. In these selected cases, LOAs are issued 35 percent of the time, probation is used in 40 percent of the cases and 25 percent of therapists in this sample lost their license to practice. The Handelsman study reveals that LOAs were issued by the Board in 32 percent of disciplined cases, probation was imposed in 42 percent of the cases involving discipline and 24 percent of all disciplined cases result in a loss of license action. The loss of license among licensed and unlicensed therapists sampled here appears to be balanced. However, it appears psychologists are more likely to receive a LOA compared to probation. In reviewing the disciplinary actions of the board, using this sample, it appears the State Grievance Board is function to protect the public and the final disposition of complaints are in the public interest.

Centralized Investigations

The State Grievance Board is empowered to directly take action on complaints, refer the complaint to staff for additional investigation, or refer the case to the Complaints and Investigations Section for a more formal discovery of case facts. In this sample of 20 cases of disciplined therapists, the Division of Investigations was used 40 percent of the time (8 cases).

When a formal investigation of the unlicensed psychotherapists' cases was conducted, the result in both cases was probation. The investigated psychologists in this sample received a Letter of Admonition. Finally, the professional counselor and social worker cases investigated resulted in one probation and one loss-of-practice action each. It should be noted only three of the five selected marriage and family therapist cases were usable in the analysis; therefore, it would not be correct to conclude that this group is not formally investigated by the State Grievance Board. It is possible, however, that the resulting discipline against unlicensed psychotherapists and psychologists, following a formal investigation, may reflect a lower rate of severe violations among psychologists or that some level of disciplinary bias exists against unlicensed psychotherapists.

Table 4: Action Taken on Cases Referred to Investigations by Category of Therapist.

Category	LOA	Probation	Loss of License	Total
Marriage & Family Therapist	0	0	0	0
Unlicensed Psychotherapist	0	2	0	2
Psychologist	2	0	0	2
Professional Counselor	0	1	1	2
Social Worker	0	1	1	2
Total	2	4	2	8

Time Management of Therapist Complaints

The administration of disciplinary action against a psychotherapist consumes large amounts of time. The balance needed is to ensure disciplinary action taken is appropriate while also being cognizant of the public's need for resolution to their grievances. The purpose of this analysis is to identify where large amounts of time are expended within the entire disciplinary case management process. To measure the efficiency and effectiveness of the disciplinary case management process, six separate time management intervals are presented within this analysis.

- Time from original complaint to final Board action, all cases.
- Time from original complaint to final Board action, cases referred to Investigations.
- Time from original complaint to final Board action, cases not referred to Investigations.
- Time from original complaint to referral to investigation.
- Time from referral to investigation to date of return (Division of Investigations time).
- Time from date of return from Investigations to final Board action.

For all 20 cases, a total of 8,366 calendar days elapsed before final board action was taken. This amounts to an average of 418 calendar days per case. The most expedient resolution of a case took 64 days and the longest resolution took 1,311 days. If we remove these two extreme cases from the analysis, the result is an adjusted 388 average days to close a case involving discipline. For eight cases referred to investigations, a total of 3,868 calendar days elapsed before final board action was taken. This amounts to an average of 484 calendar days per case. The most effective resolution took 122 days and the longest resolution took 745 days. The adjusted average is 500 calendar days. For 12 cases NOT referred to investigations, a total of 4,498 calendar days elapsed before final board action was taken. This amounts to an average of 375 calendar days per case. The most expedient resolution took 64 days and the longest resolution took 1,311 days. The adjusted average is 312 calendar days.

Three time intervals are presented below for the eight cases that involved referral to the Complaints and Investigations Section to determine how this process impacts the entire disciplinary case management process. A total of 684 calendar days elapsed from the date of the original complaint to the referral to investigations. This amounts to an average of 86 days. The most effective case management took 31 days and the longest management involved 147 days. The adjusted average is 84 calendar days for the Board to refer a case to the Complaints and Investigations Section. A total of 1,225 calendar days elapsed while the Complaints and Investigations Section completed its work. This amounts to an average of 153 days per investigation. The most effective investigation took 38 days and the longest investigation took 238 days. The adjusted average time to complete and return an investigations report is 158 days. The last time interval involves the time from the return of an investigations report to the date of final Board action. A total of 1,959 calendar days was needed to process these eight cases, averaging 245 days each. The most effective case management took 14 days and the longest management took 540 days. The adjusted average is 234 days to reach a final Board action following an investigation by the agency.

Table 5. Time Management Intervals for Sampled Cases resulting in Disciplinary Action

Time Interval	Shortest Time	Longest Time	Avg. per Case	Adjusted Avg. per Case
Date of Orig. Complaint to Final Action All 20 Cases	64 days	1,311 days	418 days	388 days
Date of Orig. Complaint to Final Action 8 Invest. Cases	122 days	745 days	484 days	500 days
Date of Orig. Complaint to Final Action 12 Non-Invest.	64 days	1,311 days	375 days	312 days
Date of Orig. to Investigations (8 Cases)	31 days	147 days	86 days	84 days
Division of Investigations	38 days	238 days	153 days	158 days
Date Returned from Investigations to Date of Final Board Action	14 days	540 days	245 days	234 days

The Licensed-Community Concerns

Mandatory Vendorship

Both the licensed professional counselor and marriage and family therapist communities have expressed concern that mandatory vendorship is not extended to their disciplines. Mandatory vendorship would require Colorado insurance companies to approve and directly reimburse these psychotherapists for mental health services provided. These communities argue that many managed care systems currently use LPCs and MFTs to provide equally effective services at a reduced cost to everyone. The LPC and MFT communities also argue that their training, experience and license status leads to similar outcome results in terms of psychotherapy effectiveness and consumer satisfaction.

Extension of 72 Hour Hold Authority

The authority to hold an individual in a mental health facility for psychiatric evaluation for 72 hours if they appear to be a threat to themselves or others is a significant and effective tool used in psychotherapy, law enforcement, and many other fields of health and public service. Currently, this authority is given to, among others, physicians, psychologists, social workers, law enforcement officers, and even game wardens. However, Colorado statute does not extend this authority to the licensed professional counselor or the marriage and family therapist professionals.

Currently, if an LPC or MFT has a patient that presents as a threat to themselves or others, the therapist must bring the patient to an appropriate facility and present the reasons for their actions to another licensed mental health provider or police officer. This individual then determines if the request is valid and signs the hold order. Should the LPC or MFT not present a sufficient argument, the patient could be released and commit the feared harm to themselves or others.

A proponent of extension of this authority argued, "When emergency evaluations are being done and one of the currently authorized groups...is unavailable it is awkward and potentially dangerous for the client, who needs to be held and evaluated by a psychiatrist." The advocate further notes that in some communities mental health organizations who need and hire a child therapist with an MFT license will also employ an LCSW to write 72-hour holds. Ideally, the organization would find an LCSW with a child therapy background. However, if "...the available pool of candidates doesn't include someone with both of these qualifications, the hiring [organization] is in a difficult bind." The argument continues "... it is a matter of equity that all master's level clinicians should have equivalent privileges if their training, experience and supervision allow them to be competent at a particular task."

The LPC and MFT community argues that such a limitation can lead to a failure to provide generally accepted standards of care for these patients. The current practice is seen as inequitable, dangerous, and inefficient for the patient, public, and therapist.

FINDINGS FROM OTHER STATES

Information from *The Professional and Occupational Licensing Directory, 2nd Edition* reveals that all 50 states and the District of Columbia regulate the practice, in some manner, of social workers and psychologists. The National Association of Marriage and Family Therapists reports that regulation of their profession exists in 40 states. The Professional Counselor Association reports 44 states offer certification or licensing to professional counselors.

The types of licensing and certification structures used in the surveyed states are considerably varied. The usual trend is that psychologists and social workers are always licensed. In many cases, licensing also extends to MFTs and professional counselors. Certification programs for bachelor-level social workers, alcohol and drug abuse counselors, sex offender treatment counselors, domestic violence counselors, and others were also found among the states surveyed. Often this certification is voluntary. All of the states surveyed have some form of licensing by endorsement, but very few offer direct reciprocity to licensees. Those that do follow the national guidelines of the specific professional group.

The majority of surveyed states who use professional boards grant authority for licensing and disciplining to the same body. Kansas is the only state with a combined grievance board. Only Washington state does not use professional boards. The licensing and disciplining of mental health providers is the responsibility of the state. Some of the more interesting regulatory features from many of the surveyed states are outlined in the following paragraphs.

California

The Board of Behavioral Sciences licenses and disciplines marriage, family, and child therapists, clinical social workers, and educational psychologists. A separate Board of Psychology exists to license and discipline this profession. In total, there are over 50,000 licensed therapists in California. The board's primary focus is on licensing and overseeing the administration of the state regulatory program. The complaint management process involves an initial review by staff. If judged appropriate, the complaint is forwarded to an investigations unit who may solicit the advise of an "expert" to complete their investigation. The results of the investigation are returned to staff and if "the parameters of practice" are found to be violated, the staff refers the matter to the Attorney General's Office. The AG's office then drafts an agreement or stipulation that is presented to the appropriate board. The board can then adopt, amend, or reject the stipulation or agreement. A recent change in this process is the authority by the state agency to cite and fine an offending therapist without the need of such a formal disciplinary process.

Kansas

The model of regulation in this state is the closest in structure and activity to the Colorado State Grievance Board. Mandatory licensing exists for three levels (B.S., M.S., M.S.W.) of clinical social workers and two levels (M.S., Ph.D.) of psychologists, professional counselors, and MFTs. Voluntary registration of drug and alcohol counselors also exists in Kansas. A single board of 11 members both licenses and disciplines these seven mental health groups. The board is composed of one representative from each of the licensed groups and four public members. This board also has the authority to call into session professional advisory committees to assist with the formulation of rules, policies, and other matters. As of September 1, 1997 there are 6,667 licensed individuals. The licensing process in Kansas is very simplistic. A candidate must hold an appropriate-level degree from an accredited university or college or they are not licensed. Consequently, 95 percent of the licenses are reviewed by staff and only 5 percent of the applications for licensing are brought to the board by a credential specialist for further clarification. This is similar to the effort initiated in Colorado.

The complaint management process used in Kansas is unique. The state believes that since it licenses and disciplines these professionals, it must take special measures to maintain an unbiased status and to avoid conflicts of interest. To this end, a special investigator on staff acts as a clearinghouse for complaints. When possible, this investigator will work towards a resolution on simple practice issues. When the investigator feels a complaint is substantial, he drafts a report and assigns the complaint to a “consulting board member” (CBM). The CBM is usually from the same profession as the therapist being grieved. This CBM then conducts a detailed investigation of the complaint, comparing the complaint to the standards of practice and ethics of their profession. When this process is complete, the CBM makes a decision on discipline and reports the finding back to the staff investigator. The CBM can dismiss the complaint, refer the case directly to the AG’s office for action against a license, or direct staff to develop a consent agreement with the AG’s office. When action against a license or a consent agreement is prepared, it is then adopted by the board. If the therapist requests a hearing, the board as a whole has not heard or reviewed the case and is able to convene a three-member hearing panel that sits as the final investigator and adjudicator. The CBM is specifically excluded from the hearing panel to avoid bias and any conflict of interest. The administrator reports that investigations by CBMs and work within the AG’s office are two areas of administrative ineffectiveness with this model.

Minnesota

Mental health professionals are licensed and disciplined by three separate professional boards. A board of psychology, social work, and marriage and family therapists exists to license over 13,000 professionals. Social workers are licensed at both the bachelor and master levels. At the master's level, the designation of (a) licensed independent social worker, (b) licensed graduate social worker or (c) licensed independent clinical social worker is used. Mandatory disclosure is required of psychologists and MFTs but is not required of social workers. Reciprocity is offered to psychologists, following the guidelines of the national association. Minnesota reports over 300 complaints and approximately 70 to 75 will result in discipline. Each board is empowered to impose fines, recover costs for investigations, reprimand therapists, issue stipulations, restrict licenses, suspend licenses, or revoke licenses.

Nebraska

This state has a board of Examiners of Psychology and a board of Examiners in Mental Health Practice. The Board of Psychology both licenses and disciplines. The Mental Health Board offers certifications to professional counselors, bachelor- and master-level social workers, and MFTs. Reciprocity is not offered in Nebraska, and the only required disclosure involves the law on confidentiality. The complaint process begins with three staff members who review and investigate the complaint. Following the investigation, the professional board in closed session will review the case. The board can take nondisciplinary action and issue a letter of concern. Should the board elect to take disciplinary action, it must formulate a recommendation to the Attorney General's Office. The Attorney General is empowered to decide if disciplinary action is warranted. The Attorney General is free to follow or disregard the board's recommendation. Prior to any action being taken against the license, an administrative hearing is also held. This process varies in time required but can take a year to complete. Nebraska receives 75-100 complaints each year, processed by three staff and an office of investigations.

Virginia

In Virginia three boards exist for psychologists, social workers, and professional counselors. The Professional Counselor Board licenses professional counselors, substance abuse treatment providers, MFTs, and sex offender treatment therapists. There is no mandatory disclosure requirement and reciprocity doesn't currently exist, but work on a licensure-by-endorsement program has begun. There are over 8,000 licensed professionals, with MFTs being the most recent addition this year. In the area of licensing, Virginia is piloting an idea to privatize the application review and candidate management tasks by contracting with the National Board of Certified Counselors (NBCC). The NBCC is responsible for implementing a detailed application review and management process. The state board simply issues licenses to those candidates who meet the requirements in law and those outlined in the proposal by the board and state staff.

In the area of complaint management, the initial complaint is reviewed by an enforcement division to determine jurisdiction. If jurisdiction is found, the complaint is moved to an informal conference involving the therapist, the complainant, the general public, and usually two board members. At this informal conference, the complaint can be dismissed, resolved among the parties, or recommended for further action. This action occurs at a formal conference where more of the board members are involved and the setting is more like a hearing. If discipline is warranted, the board has a full range of remedies at its disposal.

Washington

In Washington State, no professional licensing or grievance boards exist. Registration of counselors and hypnotherapists is required. Psychologists, clinical social workers, MFTs, and other mental health counselors with a master's level degree must meet specific educational requirements, have two years of post-graduate supervised experience, and must pass the profession's national exam. The state agency staff are responsible for addressing all citizen complaints (approximately 10-15 each month). An investigations unit searches for case facts. Disciplinary action is then coordinated with the AG's Office and imposed in approximately 10-15 percent of cases.

Wyoming

Wyoming has a combined licensing and grievance board that regulates psychologists, clinical social workers, marriage and family therapists and professional counselors. The Wyoming board also offers a provisional license to candidates completing post-graduate supervised experience requirements. The Board offers a certified mental health worker title to persons who do not have graduate-level education. There are approximately 500 mental health professionals certified or licensed in Wyoming. Officials report that the voluntary licensing scheme resulted in many abuses and limited the disciplinary authority of the Board.

Wyoming has moved this year from voluntary to mandatory licensing. The state has raised the cost of licensing and certification and has adopted a severe penalty for practicing without a license or without appropriate supervision. The expectation is that these changes will reduce harm to the public significantly.

SUNSET REVIEW SURVEY OF MENTAL HEALTH PROFESSIONALS

As part of this sunset review, a survey was developed and mailed to a sample of mental health professionals regulated by the boards under review. This section of the sunset review provides a discussion of a number of survey responses that could be most beneficial to the General Assembly in its deliberations concerning the regulation of psychotherapy.

The survey was developed by the Office of Policy and Research with direction from the Sunset Review Advisory Committee. This advisory committee represented a variety of disciplines, and its membership incorporated input from private associations. The Sunset Review Survey is presented in Appendix D. The Advisory Committee membership is attached as Appendix E of this report.

The purpose of the survey was to gather information on how practitioners feel about a variety of issues related to the regulation of psychotherapy in Colorado. The six-page survey contained 28 questions. Respondents were asked to answer questions measuring attitudes about the current regulatory system, comment on suggested changes to the regulatory system, and indicate their perception on the degree of overlap among mental health groups. Six open-ended questions were also included to solicit perceptions of the major problems, proposed solutions, top priorities for change, and other comments.

On June 30, 1997, a total of 8,288 psychotherapists were listed in the state database. A random sample of 30 percent of the total number of therapists by category was selected to receive the survey. The proportion of each therapy category sampled was equal to the representation in the state database.

A total of 2,503 surveys were mailed on June 30, 1997 to the sampled therapists. Forty-seven of the surveys were undeliverable by the U.S. Postal Service. As of August 29, 1997, 735 of these surveys were returned; the response rate was 29 percent. Seven of the respondents did not answer the critical question on their primary professional identification and are not included within the analysis.

Complete surveys were returned by 728 respondents. A breakdown of respondents by group follows:

Marriage and family therapists	62
Unlicensed psychotherapists	101
Professional counselors	165
Psychologists	198
Clinical social workers	202

Characteristics of Respondents

In addition to the five therapy categories listed above, information on the types of certifications and licenses held by respondents was solicited. A total of 94 respondents are also certified alcohol and drug abuse counselors (CAC), 25 respondents are domestic violence counselors (DV), and 11 respondents are sex offender treatment-certified counselors.

When asked about their highest educational degree relevant to mental health, 706 therapists responded. The results of this variable are presented in the following table. The overwhelming majority of respondents, 447 or 63 percent, have a master-level degree. An additional 239, or 34 percent, have a doctorate-level degree. Among psychologists, 191, or 98 percent, of respondents, have a doctorate-level degree. Of the master-level degrees held by social workers, only 11 are not MSW degrees, and overall, 95 percent of clinical social workers hold master-level degrees. A total of 18, or 21 percent of the unlicensed psychotherapists, have no or non-graduate-level degrees. An additional two respondents from the unlicensed community cited degrees that were unknown. The remaining 65, or 76 percent of the unlicensed community, also possess graduate-level degrees, 7 of which are doctorate-level.

Distribution of Highest Relevant Degree by Category of Therapist

Highest Degree	PSY	CSW	PC	MFT	NON-L	TOTALS
No Degree	0	0	0	0	2	2
Associate	0	0	0	0	2	2
Bachelor's	0	0	0	0	14	14
Master's	4	190	147	48	58	447
Doctorate	191	9	18	14	7	239
Unknown	0	0	0	0	2	2
TOTALS.	195	199	165	62	85	706

When asked about work settings, 713 therapists responded. The responses varied from the simple designation of private practice to college-hospice-private and any number of other combinations. For purposes of comparison, a list of practice-setting categories was developed and data for each professional identification is presented in the following table.

Categories of Practice Setting by Primary Professional Identification

Categories of Practice Setting	PSY	CSW	PC	MFT	NON-L	TOTALS
Private Practice	84	63	61	29	34	271
Group Practice	22	18	11	8	5	64
Community/Social Service Organization	0	18	10	0	9	37
Substance Abuse Org.	0	0	0	0	10	10
Not-for-Profit Org.	3	4	3	2	2	14
Religious Organization	1	1	7	3	6	18
School Setting	14	10	9	3	1	37
Education/Research	22	7	8	1	5	43
Hospital Setting	16	16	4	2	3	51
Residential Treatment	3	4	14	0	8	29
Mental Health Centers	16	30	23	7	4	80
Social Service Dept.	0	5	1	1	1	8
Prison System	5	2	4	1	1	13
Other Government Agency	0	13	4	2	5	24
Military	0	2	0	1	0	3
Other	8	7	4	0	2	21
TOTALS	194	200	163	60	96	713

Are Licensees and Unlicensed Psychotherapists Satisfied With Colorado’s Regulatory System?

In 1996, two legislative bills sought to exclude the regulation of clinical social work and the regulation of psychology from the present regulatory system. The sunset survey asked several questions to determine whether there was general dissatisfaction across the professions.

Respondents were asked two multiple-part questions regarding the SGB and the licensing activities and requirements. A five-point scale was used to measure responses.

On the question of satisfaction with the way Colorado regulates mental health groups, 58 percent of respondents were either satisfied or very satisfied. Another 21 percent were not sure or were neutral, and the remaining 21 percent were either dissatisfied or very dissatisfied.

In total, 50 percent of respondents agreed or strongly agreed with the composition of the SGB. A total of 49 percent of respondents agreed or strongly agreed with the SGB activities. However, 27.8 percent of respondents were not sure about the composition of the SGB, and a significant 33.5 percent of respondents were not sure about the SGB's activities.

A total of 448 licensed respondents, or 75.8 percent, agreed or strongly agreed with the composition of the licensing boards. A total of 424 licensed respondents, or 72 percent, also agreed or strongly agreed with the activities of the licensing boards. Only 10 percent and 10.2 percent of licensed respondents disagreed or strongly disagreed with the composition or activities of the licensing boards. This suggests that there is little reason to significantly change the direction of licensing regulation in Colorado.

As mentioned previously, professional associations representing psychology and social work have been outspoken in opposition to the current regulatory structure. The Sunset Survey data was broken down by category of therapist to get a more detailed picture of the level of satisfaction. These findings are presented in the table below.

Percent of Respondents Satisfied With SGB Composition by Category of Therapist

Category of Therapist	Strongly Disagree	Disagree	Not Sure / Neutral	Agree	Strongly Agree	TOTAL
Psychologist	21.4%	22.9%	22.9%	25.0%	7.8%	100.0%
Clinical Social Worker	7.9%	13.8%	28.0%	45.0%	5.3%	100.0%
Professional Counselor	2.5%	4.4%	31.3%	40.6%	21.3%	100.0%
Marriage & Family Therapist	3.3%	1.6%	26.2%	41.0%	27.9%	100.0%
Unlicensed Psychotherapist	8.2%	7.1%	32.7%	36.7%	15.3%	100.0%

Percent Distribution of Satisfaction With SGB Activities by Category of Therapist

Category of Therapist	Strongly Disagree	Disagree	Not Sure / Neutral	Agree	Strongly Agree	TOTAL
Psychologist	13.0%	19.8%	30.7%	29.2%	7.3%	100.0%
Clinical Social Worker	7.4%	11.6%	36.5%	38.1%	6.3%	100.0%
Professional Counselor	2.5%	3.7%	33.5%	42.2%	18.0%	100.0%
Marriage & Family Therapist	1.7%	3.3%	28.3%	35.0%	31.7%	100.0%
Unlicensed Psychotherapist	5.1%	5.1%	36.7%	37.8%	15.3%	100.0%

This data indicates that even the two professions seeking change to the system are not of a single point of view on this matter.

The first table shows that when asked whether they are satisfied with the SGB composition, approximately 56 percent of responding psychologists strongly agreed, agreed, or were neutral. Further, 78 percent of responding clinical social workers strongly agreed, agreed or were neutral.

When asked whether they are satisfied with the SGB’s activities, 67 percent of psychologists responded that they strongly agreed, agreed, or were neutral. In response to the same question, 80 percent of the clinical social workers answered they strongly agreed, agreed, or were neutral.

Should the Legislature Create Practice Acts and Limited Scopes of Practice?

Colorado has a fairly unique regulatory structure for the practice of psychotherapy. In the instant case, Colorado law does not attempt to carve out specialized niches that can only be practiced by certain professions. Instead, Colorado law regulates the practice of psychotherapy through a variety of mechanisms including disciplining practitioners who are found to have violated the prohibited activities section of the statute.

This has caused some consternation among groups. The survey asked if respondents thought the General Assembly should restrict practice among mental health groups by defining scopes of practice.

Again, there was little uniformity in this area. Fifty-two percent of psychologists agreed or strongly agreed with the need for a practice act but only 33 percent of clinical social workers, 15 percent of professional

counselors, 26 percent of marriage and family therapists, and 18 percent of unlicensed therapists agreed or strongly agreed with the need for practice acts.

Conversely, 72 percent of unlicensed therapists, 68 percent of professional counselors, 61 percent of marriage and family therapists, and 49 percent of clinical social workers either disagreed or strongly disagreed with the need for practice acts.

Should Colorado Expand Regulation Beyond Psychotherapy?

This question is related to previous survey questions concerning the scope of practice.

Most mental health professionals engage in activities that are outside the practice of psychotherapy. Examples of these activities include neuropsychology, psychological testing, custody evaluations, and a variety of other activities.

The Sunset Survey asked whether the General Assembly should expand existing regulation beyond psychotherapy. The greatest support for expansion comes from psychologists and social workers, who agreed or strongly agreed, 55 percent and 56 percent respectively. Only 40 percent of professional counselors felt similarly, as did 44 percent of marriage and family therapists. Only 37 percent of unlicensed therapists agreed or strongly agreed with regulatory expansion.

The survey results suggest that there is no consistent support or opposition to the idea of regulatory expansion. One member of the Sunset Advisory Committee found that a reasonable interpretation of this might be that regulatory expansion means different things to different people.

Other Significant Findings and Summary Information

- Generally, 80 percent of respondents agreed with SGB composition and activities.
- Over half of the unlicensed psychotherapists responding hold some type of certification and 76 percent hold graduate degrees.
- Nearly 40 percent of respondents provide therapy services in private practice.
- Only 5 percent of the respondents have ever attended a SGB meeting and only 10 percent have ever had a complaint before the SGB.
- Education requirements, supervision and the investigation and adjudication of complaints are regulatory elements supported by over 90 percent of all respondents.
- Almost 70 percent of respondents either disagree or are neutral on establishing separate practice acts.
- When asked whether the SGB should be sunset, 77 percent of respondents disagreed or strongly disagreed.
- Seventy-four percent of respondents agreed or strongly agreed that the SGB should regulate licensed and unlicensed psychotherapists.
- When asked whether the SGB should only regulate unlicensed psychotherapists, using separate licensing boards to discipline licensees, 54 percent of all respondents disagreed or strongly disagreed, 28 percent agreed or strongly agreed and 18 percent were neutral. The percent distribution by category of therapists who agreed that the SGB should only regulate unlicensed therapists is presented below:

Psychologists	46%
Clinical social workers	37%
Professional counselors	15%
Unlicensed therapists	14%
Marriage and family therapists	6%

OTHER RESEARCH STUDIES

Colorado Grievance Board Sanctions - 1997

In a March 14, 1997 report presented to the State Grievance Board, Mitchell M. Handelsman, Ph.D., analyzes in considerable detail, the Board's sanctions from July 1988 to January 1997. The author uses three comparison groups representing dismissed cases and a random control group of 150 psychotherapists- licensed and unlicensed- from the state database. The text that follows presents a summary review of this research and selected findings.

1. The Grievance Board distributed sanctions as follows: letters of admonition (34 percent), probation (42 percent) and loss of practice (24 percent).
2. The Grievance Board uses a number of remedial and probation activities such as practice monitoring, required therapy, and education.
3. Competence of the therapist accounts for 31 percent of potential violations identified from complaints. Sexual contact accounts for 24 percent of the potential violations identified from complaints by patients and other professionals. Dual relationships with a client account for 26 percent of potential violations and mandatory disclosure violations in total account for 22 percent of potential violations.
4. Apparent patterns regarding sanctions include: a) a greater number of complaints yielded the more severe sanctions, b) when sex is involved, a violation was most likely to be found, and 58 percent of the most severe sanctions (loss of practice) involved sexual allegations, c) there were no differences in likelihood of cases involving sex due to either license type or degree, and d) competence, dual relationships, failure to terminate, and failure to refer resulted in more severe sanctions.
5. The report also states "it is also clear that the severity of offenses is not the only factor involved in board decisions. For example, no indicators of case severity were related to how many months of monitoring or therapy were required" (p. 14). The author suggests a number of factors that might explain why severity of offense does not directly predict Board decisions. Included among these are statistical and data limitations, no good reason to assign different types of probation in different cases, changes in Board members, thus creating unfamiliarity with usual practices, or other appropriate and inappropriate factors possible influencing each case individually.

6. The report indicates that in most cases demographic variables do not help much with predicting who will misbehave.
7. The report finds that “Overall, people going to less educated psychotherapists face no greater risk of misbehavior. It appears, however, that misbehavior among these psychotherapists more predictably includes competence, dual relationships, mandatory disclosure, and record-keeping” (p. 23).
8. A test regarding the effectiveness of licensing, without the confounding variable of degree level, is presented in the remaining pages of this report. The study data shows that among doctoral-level psychologists and unlicensed psychotherapists, there is an equal chance of sanctions. However, it also appears that the unlicensed therapist is more likely to receive probation or loss of practice.
9. The tentative conclusions presented were (a) that no type of license is a perfect guarantee against unprofessional behavior, (b) attention to “non-committed” unlicensed psychotherapists is warranted, (c) the Grievance Board appears to be fulfilling its mission in that therapists engaging in serious misbehavior are either removed or steps are taken to prevent their future misbehavior (p. 22).
10. Additional findings and suggestions within the conclusion are offered. The author suggests it may be appropriate to consider expanding the Grievance Board membership to include representatives of unlicensed psychotherapists, since there is some indication that bias may exist. It is likewise suggested that a more informative and specific mechanism for documenting and categorizing complaints be instituted.
11. The last significant finding is that licensing and a grievance process are not entirely sufficient at preventing unprofessional behavior of therapists. It is recommended that licensing boards may wish to develop alternate methods of screening for safe practice. Variables that may be better at predicting misbehavior might include specific personal characteristics, empathic skills, and the degree of commitment held by an applicant.

Survey of Former and Current Board Members - 1996

Mitchell M. Handelsman, Ph.D. completed “A Survey of Current and Former Grievance Board Members.” The survey is a useful tool for identifying issues and concerns from the perspective of Board members. It also solicits their perceptions on what factors or variables might predict unethical behavior by therapists. Lastly, this survey provides insight on how the former and current Board members perceive their actions on complaints and other concerns.

The sample selected includes all 54 former and current members. A response rate of 67.9 percent (36 of 53 people surveyed) was achieved with a balance of 19 current and 16 former Board members. Only 1 member did not answer the relevant question. Grievance Board members account for 16 responses, and 19 surveys were received from augmenting panel members. These results allow the researcher excellent latitude in arguing the validity of this survey.

Selected Findings

1. Thirty-five percent of those surveyed disagreed when asked, “Should licensed psychotherapists have to be re-licensed after several years to assure their continuing competence?” Another 29 percent neither agreed or disagreed with this question. Currently, each licensed and nonlicensed therapist must renew their listing in the database by July 1 at a cost of \$70 annually.
2. The question of greater representation on the Board by nonlicensed therapists appeared to be favored mostly by nonlicensed therapists and was clearly not supported by the social workers questioned. Public members on the Board were more neutral in their responses. This would seem to suggest that the Board composition is satisfactory to a large number of members (approximately one-third of those surveyed).
3. Those surveyed appear neutral on the question of whether therapists who willingly undergo practice restrictions should be able to enter into agreements that do not include an official finding. This allows them to avoid the negative implications of a public finding of discipline, and the agreement is not publicly reported as a violation.
4. The top three factors identified as being most important in predicting unethical or unprofessional behavior by therapists included a) personality factors of the therapist, b) type of training the therapist has, and c) experience level of the therapist.

5. The most important factors that influence Board decisions include a) severity of the complaint, b) strength of the evidence, and c) amount of harm done. This finding is further supported by Board members who believe the a) strength of the evidence, b) severity of the complaint, c) amount of harm done, and d) expertise and input of the augmenting panel should influence their decisions. Nearly 75 percent of the Board's actions are perceived as being just right in terms of sanctions imposed.
6. On licensing policy options, those questioned overall see mandatory licensing as desirable. Nonlicensed and public members saw this option considerably less desirable than did other therapy groups. Most are neutral or disagreed with the idea of an omnibus psychotherapy licensing board. Fifty-one percent found this undesirable and again differences by type of therapist exist. Equally undesirable were any suggestions to abolish licensing boards (92 percent disagreed, with a large percentage strongly disagreeing). Only nonlicensed therapists rated this option as desirable.
7. On grievance policy options, those questioned overall prefer no major change in current grievance policy (74 percent found current policy desirable). As expected, a similar percentage of respondents (81 percent) were against separate grievance boards (profession-specific). Lastly, over 90 percent disapproval exists on any suggestion to abolish the Grievance Board.

An Analysis of Complaints Filed Against Mental Health Professionals In Colorado -1995.

In May 1995, Kara Schmitt, Ph.D., University of Michigan, presented a report to the Colorado Legislature. This report fulfilled the requirement that the Department of Regulatory Agencies undertake a study to evaluate the mental health complaints and determine whether a higher level of public protection was needed. The conclusion reached was that the combination of licensing, the listing of unlicensed psychotherapists in the database, and the activities of the Grievance Board afforded the public adequate protection. However, "because of the limitations associated with the data,...no definitive answer can be made regarding the 'need for a higher level of protection for the public'" (p. 42).

The report indicates that the frequency of complaints and disciplinary action taken against therapists dramatically increased in the period 1988-1994. The report said “the increase in both complaints filed and disciplinary action may be the result of the requirement of mandatory disclosure, expansion in the type of violations for which action can be taken, and expansion in the possible sanctions” (Executive Summary). A caution is also given that the increased numbers should not be taken to mean there is a greater threat to the public in 1995 compared to earlier years. It is also noted that 80 percent of complaints are ultimately dismissed.

The author next enters a discussion on competency among psychotherapy groups. She states that “this determination is typically made on the basis of education, training and examination results” (p. 35). The report goes on to conclude that based on these factors alone, higher levels of competence and fewer complaints cannot be assumed. Another measure of competence introduced by the author, involved the comparison of the percentage of complaints from each group relative to their percentage representation in the licensed population. The argument being that if one group were less competent, a larger number of complaints would exist. An extension of this idea is to also compare the severity of complaints in determining competence. The final argument of factors that predict competence, involves a discussion on the benefits of jurisprudence examinations for therapists to increase awareness and knowledge of ethics and state laws. With the exception of jurisprudence examinations, it is difficult to find sufficient data to support these arguments.

The 1986 Sunset Review

The 1986 sunset review involved an examination of the State Board of Psychologist Examiners and the State Board of Social Work Examiners. Also, the report contained a proposal for the regulation of people practicing psychotherapy.

The 1986 review of the Psychology Board suggested continuation of regulation, recommended a number of administrative changes to the law, attempted to focus board activities in areas of psychology practice involving “direct client contact,” and suggested clarifications on what prohibited behaviors required disciplinary action against a person’s license. The review also suggested that mandatory disclosure of information to clients be included within the law and also made a number of recommendations that sought to relax restrictions which limited the number of licensed psychologists in Colorado.

The 1986 review reported that the vast majority of complaints alleged illegal use of the title “psychologist.” Specifically, in six years, only 115 complaints were received, and most of the complaints not pertaining to title violations (approximately 43 complaints) were dismissed. The review found that of the five specialty areas of psychology regulated, only the clinical and counseling practice areas involved “direct client contact.” A total of nine recommendations further clarified where the Board could and should use disciplinary action. These areas included many of the current list of 24 prohibited acts. A survey of persons practicing psychotherapy provided the basis to recommend that the law be amended to include mandatory disclosure of information to clients. Lastly, a total of 12 recommendations sought to relax the wide range of requirements and restrictions imposed upon candidates for licensing. These 12 recommendations addressed the areas of advertising, providing copies of the act to candidates and licensees, supervisor qualifications, education equivalency, testing, private business incorporation, and the availability of testing during the year.

The 1986 review of the Social Work Examiners Board suggested continuation of regulation, recommended the licensing at only one level of social work, recommended the expansion of prohibited acts where the Board could and should impose discipline, recommended some change to the requirements for licensing, and sought to correct a few administrative issues.

The 1986 review reported that this section of the statute remained largely unchanged since the first sunset review in 1979. It further reported that in six years, only 61 complaints were filed, resulting in three stipulations and no revoked or suspended licenses. The review questioned the need for multiple levels of licensing, especially since the RSW and LSW I levels did not engage in “independent practice.” The context of the current regulation was to regulate the independent practice of social work, not independent and supervised practice. The review also reported that the Board provided specialty exams in four areas, whereas only clinical practice in applied psychotherapy involved “direct client contact.” The existing statute only identifies five broad reasons that a social worker can be disciplined. This 1986 report made 14 recommendations to extend and clarify when the board could and should use disciplinary action. As referenced above, these areas included many of the current list of 24 prohibited acts. Recommendations to enact mandatory disclosure and to lessen the barriers to licensure were also included. The most notable barrier was the requirement of five years of post-master’s experience for licensure as an LSW II. This was found to be the most restrictive requirement of its kind in the United States.

The proposal for regulation of people practicing psychotherapy is perhaps the most significant section of the 1986 sunset review. It can be argued that this section provided the basis for the current state grievance and mental health

board regulation model. The analysis focused on the question: “What regulation is needed in this field as a whole?”

The findings suggested that the greatest potential for public harm is in clinical practice/psychotherapy, given the dependent relationship of an individual and therapist. The report suggested that the public is not adequately protected from unregulated practitioners nor are they protected from practitioners who lose or have their license suspended. The report recommended the creation of a practicing psychotherapy database, a five-person board to impose discipline, a complaint process that is open to public participation, and a requirement to disclose relevant information to patients of psychotherapists.

The 1991 Sunset Review

The 1991 sunset review was the first to review the State Grievance Board and the four professional license examiner boards structure created by the General Assembly in 1988. This review recommended changes to the scope of the law, clarifications to the definition of psychotherapy, a more equitable distribution of the cost of regulation, improvement in the administration of the program, and changes in the focus and attention of examiner boards.

The most significant recommendation accepted by the General Assembly was to expand the scope of the law by creating a directory or “the database” of unlicensed therapists. This information is now available to the public to gather information about their therapist or a potential therapist. This database listing also provides public protection by giving the state information regarding the therapist’s education, and areas of training and experience. It also requires the filing of the therapist’s disclosure form. Much of this information is used during a complaint investigation.

Another significant recommendation involved the revision of the entire fee system of the mental health law. The sunset review argued that the cost burden of licensing and discipline needed to be shared by both licensed and unlicensed psychotherapists. The recommendation also suggested that the fees and the overall costs of the mental health board programs should be shared to allow for administrative efficiency and fairness.

The sunset review reported on the need for clarification of the definition of psychotherapy within the context of legislative intent. The report recommended that the statute defining psychotherapy be clarified so that the Board's jurisdiction is clearer and comports with legislative intent. Additional language was added to the definition which places the practice of psychotherapy within a procedural and time context. Language of intent was also added, requiring psychotherapy to "...be interpreted in its narrowest sense to regulate only those persons who clearly fall within the definition...." §12-43-201 (9), C.R.S.

A recommendation that the statute be changed to allow the four license examiner boards to delegate preliminary approval of standard applications to staff was suggested. This approach allowed the boards to direct their attention to problematic or unusual applications and allowed the board members to participate more actively in discussions of policy matters involving the profession.

RECOMMENDATIONS

Should the Regulation of Mental Health Professionals Be Continued?

One element in the argument for the state regulation of mental health professionals involves the nature of the therapeutic relationship.

The practice of psychotherapy involves a dependent relationship between the client and the therapist. A person seeking psychotherapy services has problems or issues needing resolution. He/she looks to the therapist for help and guidance, and must build a trust relationship with the therapist in order to improve. This constitutes a situation where a client may be especially vulnerable to abuse by a trusted advisor. (Sunset Review, June 1991, p. 8).

It is clear that one line of communication between the citizen and state in psychotherapy regulation is when a client is harmed, or has received poor or inadequate services from a therapist. It is appropriate, as one measure of regulatory effectiveness, to measure the performance of this regulatory structure by its response to complaints.

Chapter 3 of this report shows that some 44 therapists voluntarily ended their practice and were found to have engaged in dual relationships (39 percent), sexual misconduct (14 percent), and violations of confidentiality (18 percent). Three were found to have some physical or mental disability that impaired their ability to provide mental health services. Additionally, 16 therapists either lost their licenses or were prohibited from practicing. In 15 of these cases, some level of sexual misconduct was found, and the remaining case involved a dual relationship. The analysis of Dr. Handelsman reaffirms these data by reporting 24 percent of complaints allege some level of sexual contact, 26 percent allege a dual relationship, and 31 percent of complaints allege a lack of competence.

Given the significance of the harm and abuse experienced by individuals in these cases, one can argue there is considerable benefit to the public in the state's being able to identify practicing therapists, establishing a legal list of prohibited activities, requiring disclosure of therapist information, and providing information on how to file a grievance. The current regulatory program offers these services through the mental health statute and the SGB.

Some might argue that education, examination, and supervised experience are sufficient to protect the public and that regulatory processes are not needed. However, these tools or some similar set of tools would be used in any regulated or unregulated system. Education, examinations, and

supervised experience only establish minimum competence to practice a given occupation or profession. A state regulatory program establishes specific rules and procedures stipulating how a competent therapist must practice. Regulation also defines specific discipline that can be taken if the rules are not followed. The rules can also be established to reflect the interests of Colorado citizens rather than be merely a set of national rules and disciplinary guidelines that reflect some collection of wider interests and opinions.

This 1997 sunset review recommends that the Division of Registrations continue to regulate those individuals who provide psychotherapy services in Colorado pursuant to §12-43-101, C.R.S., et seq. This sunset review concludes that continued regulation contributes to informed consumer decisions and increased public protection. This policy option allows for the continued protection of both the public and the practitioners in Colorado.

Recommendation 1: The General Assembly should continue the regulation of mental health professionals as provided for in §12-43-101, C.R.S., et seq.

Should the State Grievance Board Model Be Used to Regulate Psychotherapists?

The SGB is a unique multidisciplinary board that reviews grievances against practitioners and imposes discipline against offending therapists. The disciplining of licensed and unlicensed therapists practicing psychotherapy in Colorado is the essential regulatory function this Board performs. From July 1988 to June 1997, the SGB received 1,364 complaints and has taken disciplinary action against 233 therapists. Data from the March 1997 report on board sanctions reveals that letters of admonition are issued in 34 percent of these cases. Probation results 42 percent of the time, and loss of practice results 24 percent of the time.

The survey of the regulated community, discussed in Chapter 5 of this review, showed that 80 percent of respondents are either satisfied with the regulatory structure in Colorado or are neutral towards it. Only 20 percent who responded to the survey are unhappy with the structure. When these findings are considered with the lack of public criticism of the SGB, it is reasonable to conclude that the structure enacted by the General Assembly in 1988 has strong support.

Even though the survey shows no overall opposition to the Colorado model, state associations representing the professions of social work and psychology were outspoken during this sunset review in their desire that the professions of psychology and social work be excluded from the jurisdiction of the State Grievance Board.

Interviews and discussions with members of the two professions desiring to be excluded from the present regulatory structure and discussions with some professionals revealed one common reason for their dissatisfaction. Many psychologists and social workers simply do not believe that complaints against members of their profession should be reviewed by marriage and family therapists or licensed professional counselors. These opponents of the Colorado regulatory model argue that the professions of psychology and social work are significantly different from other professions, and that the judgments of other mental health professionals are possibly uninformed and inappropriate. They argue that public protection may be lessened as a result.

In fact, clinical social workers and psychologists are not the only therapists who believe that their profession is unique. The sunset survey showed that 68 percent of all respondents disagree with the idea that psychotherapy is the same, regardless of the field of study.

This sunset review is not persuaded to recommend changes in Colorado's regulatory scheme based on this argument. Observations of the SGB, reviews of minutes and discussions with the broad field of mental health professionals is convincing that outcomes protective of the public certainly can be generated by quality SGB members of all four disciplines. This argument is made even more forceful by the inclusion of public members (who, by definition, are not professional counselors, social workers, marriage and family therapists or psychologists) in the decision-making process. Observations of the SGB show that public members contribute to this deliberation process equally with their licensed colleagues.

It can reasonably be held that one factor which diminishes the requirement for highly specialized knowledge among Board members is the fact that only the practice of psychotherapy, as defined by statute, is regulated by this Board. The Board does not wrestle with esoteric and highly-specialized areas of any of the professions it regulates.

The complaints resulting in disciplinary action by the SGB demonstrates this point. Typical complaints might include: sexual misconduct, insurance or Medicaid fraud, breach of confidentiality, relationships with patients, or failure to keep proper records. The ability of reasonable people to reach determinations in these areas is apparent.

One complaint considered frequently by the SGB deserves special attention. A number of disciplinary actions result from a finding of substandard practice. At this point, especially, one may argue that only licensed peers can effectively consider the complaint. Although it may be true that the particular standards of practice of any group may be best understood by members of that group (even this reasoning is suspect because the complaint is filed against a member of the group who allegedly has violated these standards) the strength of the Colorado system accounts for that concern. The use of an augmenting panel made up of peers of the complaint respondent allows for more than adequate explanations of the practice standards to the SGB.

The SGB structure allows for public observation of complaints against licensed and unlicensed mental health professionals. The presence of four public members helps to reduce concerns that professionals on such boards may not be efficient or effective at regulating their own professionals. The involvement of a psychologist, clinical social worker, professional counselor and marriage and family therapist in the initial review of all complaints affords the regulatory process a unique cross-pollination. This advantage bears fruit in the application of sanctions against therapists. The March 1997 study of sanctions, reports that the SGB appears to be fulfilling its mission in that therapists engaging in serious misbehavior are either removed or steps have been taken to avoid their future misbehavior.

Further, it is reasonable to assume that if Colorado's regulatory system is unacceptable to practitioners, the state would see a decrease in the number of psychotherapists. However, data shows that from July 1988 through June 1997, Colorado has seen an increase in therapists in all categories of practice. Per year, on average, the supply of practitioners has increased by 106 psychologists, 194 clinical social workers, 178 professional counselors, and 43 marriage and family therapists.

A reasonable interpretation of this data is that Colorado is a desirable environment in which to practice, therapists believe that they can succeed practicing here and that the regulatory structure is not a barrier to practice.

In conclusion, this review finds no evidence that a multidisciplinary mental health board is an inappropriate regulatory model. There is no reason to conclude that the public is not protected. Indeed, this review finds that the public is well-served by this model.

Are There Other Regulatory Options?

As stated previously, some members of the regulated community seek significant change in Colorado's regulation of mental health professionals. It is beyond the statutory mandate of a sunset review to recommend such a change unless it improves protection of the public.

Proponents of the current system argue they want Colorado to return to a traditional regulatory model. Often, the Board of Medical Examiners is used as an example of this traditional model. Certainly, this is a more traditional structure and it is one of the most effective regulatory boards in the country.

However, the proposal to regulate psychotherapy and mental health practice the same way is not a good comparison. In Colorado, a seven-member board regulates approximately 16,000 physicians. Essentially, this board regulates all of the various practices of medicine, regardless of specialty.

Psychotherapy regulation, on the other hand, requires 54 board members to regulate approximately 8,000 therapists. This is so because of the perception that these groups practice such disparate forms of psychotherapy that regulation must be compartmentalized to address these differences.

If serious consideration were given to developing a traditional regulatory model, a single board of psychotherapists would license and discipline all practitioners.

Can these disciplines be regulated by a traditional regulatory model? The answer is yes. Most other states use such models (although discipline in some states is lax), and Colorado uses such models in most other professions.

In an effort to aid the General Assembly in its policy deliberations, this review presents alternatives to the existing scheme along with advantages and disadvantages of each option.

Policy Option 1: Continue the State Grievance Board Without Substantial Change.

Under this option the SGB would continue to receive complaints, complete an initial review and either dismiss the case or involve the augmenting panels in further disciplinary activities. The SGB would retain all of its existing powers and disciplinary remedies. There would be no expansion of jurisdiction and no amendments to the SGB structure.

The advantage to this option is that a regulatory scheme that has demonstrated successful protection of the public would be continued.

Disadvantages to this option include continued opposition by professional associations unhappy with the multidisciplinary model.

Policy Option 2: Continue the State Grievance Board and Enhance the Role of Augmenting Panels.

In terms of the application of the specific orientations and standards of practice, the suggested resolution is to redefine the role of augmenting panels. It appears from a review of the 1988 sunset report, that the intent of the augmenting panels was to ensure that these orientations and standards would be applied if discipline were considered against a therapist. In observing the SGB and in interviews with stakeholders, it was evident that statutory language regarding the use of these panels is unclear. The SGB members have not been consistent in their use of augmenting panels. Confusion exists over the time at which augmenting panels should become involved in the complaint process.

Under this option the complaint management process would be more clearly defined and proceed as follows:

- A. The State Grievance Board of eight members and 3 augmenting panel members would determine:
 1. Does the SGB have jurisdiction over the therapist in this case?
 2. Does this complaint involve the practice of psychotherapy?
 3. Does a therapeutic relationship exist?

- B. If a finding of “NO” is found for any of the screening questions the case would be immediately dismissed.

If a finding of “YES” is found for all of the screening questions, the case would be immediately referred to the appropriate professional augmenting panel for additional review.

- C. The augmenting panel would then:
1. Determine if additional information were needed and direct staff to collect this information.
 2. Refer the complaint, if appropriate, for a formal investigation with a memo assigning priority and instructions to guide the investigations process.
 3. Review the complaint against the code of ethics and standards of practice .
 4. Vote on a recommended action to include:
 - a. Dismissal
 - b. Dismissal without endorsement
 - c. Letter of admonition
 - d. Probation (with details)
 - e. Revocation of licensure (with details).
 5. Report to the SGB on the recommended action.
- D. The SGB and the reporting augmenting panel would hold final discussions on the complaint and vote on a final disciplinary action in open session.

Currently, the eight members of the SGB conduct an initial review, request an investigation or additional information, review the results of these investigations, engage in a second review of the case and then offer a motion to dismiss or to seek discipline. At this point, if discipline is selected, the “augmenting panels” are included in the final vote on the type of discipline to impose. The above process suggests that “augmenting panels” need to be more involved in the review of complaints and that they should recommend dismissal or discipline to the SGB.

The advantages of this option include the continuation of the present model. Increasing the responsibilities of the augmenting panel members could appease some critics of the SGB by allowing more input by the various disciplines. Also, this option would aid in managing complaints, resulting in a reduction in the time it now takes the SGB to resolve a complaint.

Disadvantages of this option include the potential that Colorado's regulation of psychotherapists will fail to adequately protect the citizens harmed by incompetent or unethical psychotherapists. This policy option suggests that a refocusing and redefining of roles and responsibilities in the complaint management process can ultimately lead to compliance with this sunset evaluation criterion. The intent here is to retain the advantages of the SGB and to address concerns that the specific orientations and standards of practice from each profession may not be incorporated in all cases. Additionally, an improvement in the administration and management of complaints is sought.

Policy Option 3: Continue the State Grievance Board as an Appellate Body and Move Disciplinary Authority Back to Professional Licensing Boards.

This policy option was proposed by representatives of social work associations. The representatives argued that the Grievance Board is limited by legislative intent to the regulation of psychotherapy. They further argued that the profession of social work encompasses much more than psychotherapy. Social workers perform case management functions, custody evaluations, adoption studies, and a number of other nonclinical activities. While the General Assembly could move to expand the SGB's jurisdiction, the feeling is that the Board may not be competent to address the entire spectrum of each profession's activities and services. This option recommends moving disciplinary authority to the individual licensing boards. These licensing boards would have authority to license and discipline therapists within their profession. However, if the complainant or the grieved therapist were unsatisfied with the findings of the professional board, they could appeal to the State Grievance Board for a final decision. A significant disadvantage of this option is that it represents a huge departure from American administrative and criminal law by making the complainant a party.

The implementation of this policy option is possible, and there are both advantages and cautions to this approach. The database of unlicensed psychotherapists and the disciplining of this community would remain the same. The Grievance Board would need to retain all of the authority and disciplinary remedies currently available to serve as a final appellate body. Language authorizing the licensing boards to impose discipline on all professionals practicing within the orientation of the specific profession would need to be added. Language establishing the appellate procedure would also be needed. An advantage to this option is that grieved therapists would know that the ethics and standards of their profession were being applied. An obvious disadvantage is the creation of more bureaucracy. It seems reasonable to predict that most parties would exhaust all administrative remedies, resulting in an increase in the amount of time needed to resolve a citizen's complaint.

As regards this option, and in order to help ensure continued public protection, this sunset review recommends that 50 percent of the individual SGB members be representatives of the public at large. If the General Assembly were to choose this option, the composition of the SGB would have to change significantly. Further, as an appellate body, the primary function of the SGB would probably consist of considering complaints against unlicensed psychotherapists. The present composition, which consists of licensed professionals and public members, could be seen as an inappropriate body to regulate the unlicensed community.

It is reasonable to conclude that Board composition would need to change to some combination of unlicensed psychotherapists and public members. In considering appeals of licensing board actions, the SGB would either use augmenting panels or representatives from the licensing board itself to reach a final decision.

Additionally, this review recommends that all disciplined therapists who receive some form of restricted or suspended practice should continue to be monitored by the SGB Monitoring Committee. This committee is fairly unique. Often, discipline is imposed by a board and the assumption is that the therapist conforms and becomes an improved practitioner. The monitoring committee, through the selection of practice monitors and evaluators, assists the offending therapist in the task of behavior modification and remedial education and training.

Another idea has been presented that the envisioned appellate board would only review the actions of the licensing boards on procedural grounds. This review opposes that position. The members of the SGB are appointed to regulate the practice of psychotherapy as concerns public complaints against practitioners. SGB members are not judges and that is not an appropriate role for this body. In any case, final agency action can be appealed to the Colorado Court of Appeals for just such a review.

Policy Option 4: Sunset the State Grievance Board and Create a Separate Board of Psychology Examiners, a Board of Clinical Social Worker Examiners, and a Professional Counselors Examiners Board.

Under this policy option the SGB would be sunset and three professional boards with both licensing and disciplinary authority would be created. The Professional Counselors Examiners Board would be responsible for the regulation of professional counselors, marriage and family therapists, and the regulation of unlicensed psychotherapists.

Question 14 on DORA's survey of practitioners directly examines the option of separate licensing boards that both license and administer discipline. This option received 58.7 percent support among all respondents. Almost 84 percent of psychologist respondents favor this option, and 64 percent of clinical social workers agree with separate boards. The remaining body of licensed and unlicensed groups centers around 30 percent.

Findings from other states suggest that the most common model is one where a professional board both licenses and disciplines. Only Washington has no professional boards. In cases where the common model prevails, it is also true that complaints are largely processed by staff and investigators and that professional boards are only minimally involved in the disciplining of therapists. Only Minnesota reports a significant number of complaints that result in discipline (70 to 75 cases). In Washington, where no professional boards are used and agency staff complete all investigations, an average of 120 to 180 complaints are received monthly. Disciplinary action is imposed in 10 to 15 percent of these cases.

Some support for this option exists. However, the experiences of surveyed states suggest that even with the current list of prohibited activities and other requirements of regulation, the primary focus of individual professional boards is sometimes in the licensing of their professional membership and not in disciplining practitioners. If this policy option is adopted, this sunset review again would recommend that these boards have a majority of public members and that monitoring committees be established.

Recommendation 2: The General Assembly should adopt Policy Option 2: Continue the State Grievance Board and Enhance the Role of Augmenting Panels.

Should the State Licensing Boards Continue to License Mental Health Professionals?

Colorado currently has four seven-member licensing examiner boards. These boards are responsible for issuing licenses to psychologist candidates, clinical social worker candidates, professional counselor candidates, and MFT candidates.

Additionally, the psychology board enlists the assistance of 50 to 90 psychologists during the year, in administering oral examinations. In nine years, 4,701 licenses were issued through examination or endorsement, an average of 521 new licenses per year. If one assumes the number of new licenses issued annually is relatively constant, then 521 new licenses could be issued in any given year. Over these same nine years, nearly 20 percent of licenses were issued by endorsement to candidates from other states who are seeking licensing in Colorado. The administration of licensing can be achieved in many ways. The following policy options were considered during the sunset review.

Policy Option 1: Continue the Four Licensing Boards Without Substantial Change.

Under this policy option, the four licensing examiner boards would continue to work with staff in the issuance of licenses for each individual professional group. Currently, some 95 percent of applications are routinely processed by staff, following board guidelines. The actions of staff are ratified in board meetings and the 5 percent of applications where questions exist are discussed by board members.

There are currently no complaints filed against an examiner board for failing to perform their statutory responsibilities. There is also general satisfaction with the activities of examiner boards according to the sunset survey. In terms of structure, over 75 percent of licensed respondents agree or strongly agree that the structure is satisfactory. Similarly, over 70 percent of licensed respondents agree or strongly agree that the activities of their licensing board are satisfactory.

Policy Option 2: Sunset the Four Licensing Boards and Administer Licensing by the Division of Registrations.

Under this policy option, the four licensing examiner boards would be sunset and authority to issue licenses would move to the Division of Registrations.

Washington offers an example where professional boards are no longer involved in licensing decisions. Psychologists, clinical social workers, MFTs and mental health counselors must hold a master-level degree, have two years of post-graduate supervised experience, and pass the national examination.

It must be noted that the sunset survey reports some 71 percent of respondents prefer a state-administered licensing program, but one of the least supported licensing options is to sunset the licensing boards.

Advantages to this option include increased efficiency and potential cost savings.

A significant disadvantage is an administrative licensing model would complicate the ability of the state to administer an oral examination to psychologists. Elimination of the exam would greatly impact the ability of psychologists to secure licenses in other states.

All other states require an oral examination, although this may be simply an interview before the state board. Still, if Colorado ceased requiring the oral exam, licensees wishing to obtain a license in another state would have to pass an oral exam in another state.

Policy Option 3: Sunset the Four Examiner Boards and Direct the State Grievance Board to Administer Licensing.

Under this policy option, the four licensing examiner boards would be sunset and the SGB would be responsible for the administration of the licensing function. The use of oral examinations by the Board of Psychology Examiners would also be discontinued.

A number of administrative efficiencies are gained using this policy option. It has already been established by agency staff and through interviews with other states, that 95 percent of licensing applications are routine and could be summarily ratified or accepted by any professional board or department director, using existing laws and the review parameters already in place.

It stands to reason that the small number of applications requiring professional expertise could be reviewed by a panel representing the specific profession. The state would benefit by reducing the costs associated with convening four licensing boards an average of six times annually.

A disadvantage of this option is the possibility that marriage and family therapists and unlicensed psychotherapists might oppose regulation by one board. If this objection were raised, the General Assembly could be faced with four licensing boards and the need to create an oversight body for unlicensed psychotherapists.

Policy Option 4: Continue the Psychology and Clinical Social Worker Licensing Boards, Sunset the MFT and Professional Counselor Licensing Boards and create a new combined Mental Health Counselors Licensing Board.

Under this policy option, the two more recent licensing examiner boards of professional counselors and marriage and family therapists would be sunset and a new combined mental health counselors licensing board created to address licensing of these communities. This policy option is based on the premise that the current professional counselor and MFT licensing requirements and activities are not significantly different and that a joint licensing board would adequately address public protection and public interest concerns. These boards would continue to license their respective professionals and disciplinary authority would remain with the SGB.

Among the states surveyed for this review, two have boards which issue licenses for two or more professional groups. In Nebraska, the Board of Examiners in Mental Health Practice issue licenses to professional counselors, certifies social workers, and MFTs. In Arizona, the Board of Behavioral Health Examiners issues licenses to general counselors, social workers and MFTs. In California and Virginia, a separate Psychology Board regulates psychology, but all other professions are regulated by a combined professional board.

Policy Option 5: Sunset the Four Licensing Boards and Create One Omnibus Mental Health Professionals Licensing Board.

Under this option, the four licensing boards would be sunset and authority to issue licenses would move to an omnibus licensing board. This option is based on the premise that mental health licensing can be administered by a multi-disciplinary board for all regulated professions. Disciplinary authority would remain with the SGB.

The special licensing requirement of an oral examination for psychologists would also be manageable under this model. Currently, the psychology licensing board solicits and recruits practicing psychologists to serve as oral examination proctors. The psychologist representatives of the omnibus board would direct efforts to recruit oral examiners and administer the oral examination. The process for the development of test questions already exists. Testing of the statistical validity of the oral examination is presently completed by the Division of Registrations and would not require board resources.

Conclusion

The four licensing boards have met the burden of proof by showing that they contribute to protection of the public through the licensing and examination of psychotherapists.

Recommendation 3: The General Assembly should adopt Policy Option 1: Continue the four examiner boards without substantial change.

Other Legislative Recommendations

Recommendation 4: Section 12-43-702 (4), C.R.S., should be amended to delete language that directs the State Grievance Board to schedule discipline with the purpose of reducing the number of additional members needed from augmenting panels. Language should also be added in a new article (4.5) that details the roles and responsibilities of augmenting panels in the complaint management process as presented in Recommendation 2.

This recommendation is related to a previous recommendation that the complaint management process be amended to enhance and increase the role of “augmenting panels”. The existing language has also been the source of confusion regarding the use of these panels. This sunset review argues that augmenting panel members should be included in more of the disciplinary process. New language should be added in article 4.5 which details the recommended complaint management process.

Recommendation 5: Section 12-43-702, C.R.S., should be amended to add a representative from the unlicensed psychotherapy community to the State Grievance Board and reduce the number of public members to three.

The purpose of this recommendation is to proactively address concerns regarding a disciplinary bias against the unlicensed psychotherapist community. Concerning qualifications, the sunset survey data reveals that many in this community hold master-level degrees and almost half hold other certifications such as sexual treatment or domestic violence certifications. This community is currently the largest group of mental health professionals (2,392 therapists or 28 percent of total) regulated. As a result of 1992 legislation, this group also shares in the cost of regulation, and should consequently participate equally in the administration of discipline. Other administrative and legislative recommendations in this review will impact the unlicensed psychotherapist community and representation on the Grievance Board may help in building support for these recommendations.

Specifically, article 2 should be amended to read “Three members...”, article 3 should be amended to read “Five members of the grievance board...” and a new article 3(e) should be added that reads “(e) An unlicensed psychotherapist to serve a term of three years”.

Recommendation 6: Section 12-43-704.5 (3.5), C.R.S., should be amended to allow the State Grievance Board to refuse to add the name

of an unlicensed psychotherapist to the database if the Board finds the applicant has violated any of the provisions of §12-43-704, C.R.S.

If a person wishes to be listed in the database as an unlicensed psychotherapist, there is now no provision for the Grievance Board to deny the listing request. This recommended provision might be used when it is learned that the requester had lost another professional license or certification for cause. It might also be used if the requester reports having previously violated provisions of the mental health statute. The principle is the same as that used by licensing examiner boards in determining the eligibility of an applicant for licensing and even for admittance to the national examination. The current method involves the Grievance Board's initiating a complaint and then imposing discipline to strike the name from the database pursuant to §12-43-704.5(3), C.R.S.

Recommendation 7: Section 12-43-705(2)(d), C.R.S., involving mental and physical examination powers of the Board should be amended to include unlicensed psychotherapists.

Currently, only licensed psychotherapists and certified school psychologists whom the Board has cause to believe may have some mental or physical disability can be directed to "submit to mental or physical examinations designated by the board." Should such a therapist fail to pass a mental or physical examination, the Board is able to enjoin them from the practice of psychotherapy. In the past nine years, the Board has acted against three individuals on such grounds. While rare in occurrence, it is prudent to extend this power to include unlicensed psychotherapists.

Suggested language: "If the board has reasonable cause to believe that a licensee, certified school psychologist, or unlicensed psychotherapist is unable to practice without reasonable skill and safety to patients, it may require such therapist to submit to mental or physical examinations designated by the board. Upon the failure of such therapist to submit to such mental or physical examinations, unless one shows good cause for such failure, the board may act pursuant to paragraph (c) of this subsection (2) or enjoin such therapist pursuant to §12-43-708, C.R.S., until such time as said therapist submits to the required examinations."

Recommendation 8: The Legislature should amend §27-10-105, C.R.S., and extend the 72-hour health hold authority to licensed professional counselors and licensed marriage and family therapists.

The sunset review suggests that sufficient justification exists to extend the 72-hour health hold authority to licensed professional counselors and licensed marriage and family therapists. It appears reasonable that if professional counselors and marriage and family therapists are licensed, it follows that they have sufficient competence to determine if such a health hold is warranted. It also appears unreasonable to require a competent therapist to need the signature of a police officer or a third party, who is not familiar with the details of the client's case. In addition, providers may be required to hire an LCSW to authorize 72-hour health holds in addition to their regular duties and even though the therapy is being provided by a licensed professional counselor or a marriage and family therapist.

Recommendation 9: The Legislature should extend reimbursement privileges to licensed professional counselors and licensed marriage and family therapists.

This sunset review suggests that licensure establishes a minimum set of competencies to practice psychotherapy in Colorado. This sunset review further believes that if said licensee is in good standing with the SGB, then no reasonable cause exists to deny reimbursement privileges to these licensed professionals. When evaluating the desirability of this recommendation, nearly 70 percent of respondents from these professions feel such authority is absolutely essential. Sunset evaluation criteria also direct this sunset review to consider whether the regulation stimulates or restricts competition. By extending this authority, the Legislature would stimulate competition in both private and managed care settings.

Recommendation 10: Section 12-43-704.5 (4)(a), C.R.S., should be amended to clarify the protections of a cease and desist order.

The Grievance Board pursuant to this section, has the authority to “enjoin a licensee from practicing the profession for which they are licensed under this article.” However, if the Board finds that an emergency condition exists, it can issue a cease and desist order, but the order is limited to the activity which is believed to be a violation. It is possible that several violations may exist and that the Grievance Board investigation might not be fully informed of all possible violations. It seems prudent and advisable to allow the Grievance Board to issue a cease and desist order that for a specific period of time causes the affected therapist to cease and desist all psychotherapy services. This would allow for emergency public protection, and give time for a complete investigation to be completed.

The amended language might read “...and the grievance board determines that any such violation creates an emergency condition which may affect the health, safety, or welfare of any person, the grievance board may issue an order to cease and desist from practicing the profession for which he is licensed under this article.”

Recommendation 11: Section 12-43-220, C.R.S., should be amended to add a new subsection requiring all licensed and unlicensed psychotherapists to complete a jurisprudence course and examination as a licensing or database requirement.

The license examiner boards have used in customary practice the requirement of attendance of a jurisprudence workshop. When the statute is examined, however, there is no reference to any jurisprudence workshop requirement. The jurisprudence workshop requirements are outlined in rule. This sunset review believes that the jurisprudence workshop requirement serves the purpose of better educating candidates on the regulatory system and increases awareness of ethical issues faced by therapists daily. This sunset review therefore recommends that a new section be added that requires completion of a jurisprudence course and examination as a licensing or database requirement.

The state has approved the jurisprudence workshops of eight providers. Providers are located in Colorado Springs and Denver. One provider offers a single annual workshop in Snowmass and a few providers visit Grand Junction two to four times a year. Often the providers are trainers for CAC certification and other health specialties.

Many providers incorporate the jurisprudence workshop in the first day of a two day training or examination preparation course. Attendance for the jurisprudence workshop averages ten persons. One provider noted that candidates for licensure by endorsement are represented in greater numbers and another noted that therapists being disciplined by the Board are also routine attendees.

The workshop content follows general state guidelines, but each provider is free to present the material in a form specific to their style. One provider is a former “augmenting panel” member and references information from that experience; another combines their presentation with an attorney to present a more legal perspective; and a third provider has self-published a book on mental health ethics and jurisprudence.

Each of the providers interviewed expressed that attendees receive information and are made aware of ethical issues that were not within the scope of their educational or examination experiences. Providers also note the workshop can help therapists develop better skills and improve ethical judgments. Often attendees express they had no knowledge about the database, mandatory disclosure, or other requirements of the mental health statute and rules.

Recommendation 12: The Legislature should approve the transfer of disciplinary authority for certified alcohol and drug counselors from the Department of Health to the Department of Regulatory Agencies.

A 1996 State Auditor Review determined that CAC counselors were the subject of duplicate regulation. The Department of Public Health and Environment and the Department of Regulatory Agencies each regulate the activities of this occupation. Since the creation of the database, CAC counselors have been included as unlicensed psychotherapists but were exempt from the \$70 listing fee. CAC counselors were already being charged for certification by the Department of Public Health and Environment. Data from DORA reveals that nearly half of the unlicensed psychotherapists also are CAC-certified. The Department of Public Health and Environment established the requirements for CAC counselors and regulated the training activities of private vendors offering certification training.

Recommendation 13: The Legislature should repeal all sections of the Mental Health Statute which have language from the 1988 and 1992 amendments which have expired. Those which the 1997 sunset review identifies include Sections 12-43-220(2),(3), and (4)(a)(b); 302(5); 402(4)(b); 502(3),503(2)(III)(d); 602(3); and 710. C.R.S.

During the review of this statute, the references cited in this recommendation were found to have obsolete language. Many of the obsolete references are the result of changes from the 1988 and 1992 legislative sessions. This sunset review makes the recommendation to repeal those references and update references within the statute.

Recommendation 14: Section 12-43-502(2), C.R.S., should be amended to eliminate the practice of staggering terms within the Marriage and Family Therapy Board. Nonstaggered terms are consistent with the practices of the Psychology and Clinical Social Worker Boards.

This sunset review recommends a consistent practice of using nonstaggered terms within the Marriage and Family Therapy License Examiner Board. This is recommended to assist with administrative consistency between all license examiner boards.

Recommendation 15: Section 12-43-602(2), C.R.S., should be amended to eliminate the practice of staggering terms within the Professional Counselor Board. Nonstaggered terms are consistent with the practices of the Psychology and Clinical Social Worker Boards.

This sunset review recommends a consistent practice of using nonstaggered terms within the Professional Counselor License Examiner Board. This is recommended to assist with administrative consistency between all license examiner boards.

Recommendation 16: Sections 12-43-203(11)(a),(b) and 12-43-218(c)(III), C.R.S., related to professional review committees, should be repealed.

The program administrator reports that professional review committees have been used on two known occasions. The first was to develop guidelines for the Board to determine when a religious minister was practicing psychotherapy outside of the religious context and the second related to the regulation of unlicensed psychotherapists. The Grievance Board elected to use this provision but could have just as effectively commissioned an ad hoc committee to investigate these issues.

This sunset review recommends that the Grievance Board elect to commission an ad hoc committee in lieu of a professional review committee in the future. To this end, it is recommended that the sections authorizing the use of professional review committees be repealed.

Recommendation 17: Section 12-43-203(5), C.R.S., regarding annual reports, should be repealed.

The General Assembly has historically repealed requirements for this type of annual reports. All of the information contained in these reports is communicated to the legislators through DORA's annual budget request.

Recommendation 18: The Legislature should consider changing the name of this statute to The Colorado Psychotherapy Regulation Statute.

In meetings with representatives from the social work associations, the issue of the official statute name was raised. Representatives noted that the legislative intent calls for the narrow interpretation and regulation of psychotherapy as defined. These representatives also note that a mental health statute already exists that outlines the authorized practice of mental health in Colorado.

Administrative Recommendations

Recommendation 1: The Division of Registrations should identify as a top priority developing a plan to improve the complaint management procedures. The Division of Registrations should directly participate in efforts to assist the Grievance Board with complaint management.

As reported in Chapter 3, on average, 388 days are needed for the Grievance Board to take final action on a typical complaint involving discipline. The largest delays appear to exist in initial discussions of jurisdiction. It appears that this issue is often debated in a case on more than one occasion.

Another area of delay occurs when a complaint referred to investigations is returned to the Board. In the sample reviewed, an average of 234 days passes before a final action can be determined. One possible cause for the lengthy process is that cases are completely reviewed a second time in light of the investigation report

This review concludes that the length of time required to take action is excessive and not in the public interest. A previous recommendation to increase the use of augmenting panels may help reduce the lag.

Recommendation 2: The Division of Registrations should continue to work with the professional communities to develop a regulatory environment of mutual participation and trust. This can be done through periodic meetings with the professional community and its associations as well as through town meetings.

Throughout the review process, tensions between the Division of Registrations and the regulated profession have been observed. In some cases, letters from association representatives outline their displeasure with the Division and Grievance Board. Psychologist respondents are clearly outspoken in their disapproval, where one in five are strongly opposed to the Grievance Board. Additionally, one in three psychologist respondents disagree or strongly disagree with the Board's activities. As expected, therapists who have been disciplined by the Board are even less satisfied with the Board's activities.

This sunset review recognizes that regulation of mental health professionals presents unique challenges. These professionals are highly educated and skilled, have met an extensive list of requirements for licensing, work independently, and are accustomed to operating in a position of control and authority. It is conceivable that such a group of professionals would be more sensitive to issues of discipline and action against their licenses. It is for these reasons that special efforts at communication and efforts to encourage participation should continue.

It appears there exist plans for the monitoring committee to conduct public awareness meetings. This sunset review would recommend that the monitoring committee increase public awareness and that it also involve community members in revisiting and revising, as appropriate its operational guidelines and materials. It may also be beneficial to gain input from the community on their understanding of LOAs, probation stipulations, dismissed-without-endorsement findings, and other disciplinary actions.

As a first action, the State Grievance Board should set aside the first hour of each meeting to public comment and questions. Presently, the Board sets aside such time at the completion of the agenda. However, it is very difficult for therapists to predict with any accuracy what time they may address the Board.

Recommendation 3: The Division of Registrations and the State Grievance Board should develop procedural guidelines on the subject of Board member recusal and conflicts of interest.

In the course of its deliberations, it is reasonable for a Board member or augmenting panel member to encounter a complaint case involving a friend, colleague, or business partner. Currently, the Board relies on the interpretation of the AG's office representative for many decisions on recusal and on conflicts of interest. While this method may be effective, a better and more legally consistent method would be for Board members to individually judge their need to recuse themselves and avoid conflicts of interest. This can more easily be accomplished if a written set of guidelines exists to help with these Board member decisions. Also, the Board should establish a policy to contract for outside investigations when a complaint is received against a Board member.

Recommendation 4: The Division of Registrations should work with the Grievance Board and the information systems office to develop an improved records retention system and an expanded complaint information database.

In recent years, a number of research efforts have been conducted to evaluate or report on the activities of the State Grievance Board and the licensing of mental health providers in Colorado. Often the collection of this information is hindered by an inadequate records retention system and a limited complaint information database. While the mental boards office and Grievance Board meet all statutory record-keeping requirements, the availability of this information for summary analysis and review is sometimes limited. In many cases, the official record of minutes or a collection of legislative reports are the only source of information.

On the issue of an improved records retention system, it should be noted that grievance case file materials are found in at least four different locations. The bulk of grievance case file materials are collected together and filed alphabetically by therapist name. A number of more recent cases are found in a second location. Therapists who are currently under probation or who are under restricted practice are stored in a third location. The Division of Registrations has a collection of case file materials that are under a prolonged review or that were selected for a research project currently being developed. Lastly, there are other grievance case file materials being used by the licensing analysts, and even the cases reviewed for this sunset analysis are separately stored. This is expected to create undue challenges in finding materials that the public is requesting for legal action or other informational purposes. The Division of Registrations should work with the information systems office in exploring options for improved records retention systems.

Data on complaint information can also be difficult to obtain. The March 1997 research was a successful project, but the collection of data largely involved the manual coding of information, since no comprehensive data set exists. This review originally intended to examine all the disciplined cases for time management measurements and other descriptive factors. This effort was abandoned when the time investment was evaluated and the case record retrieval process became too burdensome.

The one reliable data source is the Department's automated records management system. Summary information on the number of complaints, cases involving discipline, type of discipline, and charges cited in complaints were all readily available by type of therapist. Information on the licensing activities by examination and endorsement was also available. However, an attempt to further analyze the educational characteristics of the unlicensed psychotherapists was not possible. Also, an examination of previous-experience questions on the application for licensing and the database listing was not completely available.

With appropriate staff training and support, it seems reasonable that an existing Microsoft Office product could be used to collect a more expansive set of data on complaints processed by the State Grievance Board. At a minimum, a complete set of data on disciplined cases should be available. This would improve the management of this regulatory program and make future evaluations more useful and specific.

Recommendation 5: The Division of Registrations should provide additional training on customer service and public relations skills to the mental health board staff.

This sunset review heard on a number of occasions from individual therapists, citizens, professional associations, and other groups that responses to many inquiries were not satisfactorily addressed. There is often a perception from visitors that help is difficult to receive. While a receptionist is always available, often the receptionist is not prepared to address consumer questions. Some visitors also perceive a degree of suspicion and distrust of their motives. While it is important to safeguard confidential information, the largest number of requests are for public documents, licensing applications, and grievance packets, which do not warrant suspicion. This review suggests that additional customer service and public relations staff training may help to improve the perception of customer service and help enhance public relations with the public, therapists, associations, and other groups working with this office.

APPENDICES

Sunset Statutory Evaluation Criteria

- (I) 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;
- (II) 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;
- (III) 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;
- (IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- (V) 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;
- (VI) The economic impact of regulation and, if national economic information is available, whether the agency stimulates or restricts competition;
- (VII) 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;
- (VIII) Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;
- (IX) Whether administrative and statutory changes are necessary to improve agency operations to enhance public interest.

Appendix B
Complaint Summary Table

January 1980 - June 30 1988

State Board of Psychologist Examiners and State Board of Social Work Examiners

Psychologist	Nature of Complaint	Disposition	Date of Disposition
Beyer, Harold	sexual harassment	Stipulation	11/85
Donahue, Richard	N/A	Revoked	5/81
Drew, Margaret	check fraud	LOA	10/87
Joyce, Carol	dual relationship	Stipulation	3/88
Kirkland, Karen	drugs with patient	Stipulation	5/88
Knott, Paul	supervision	LOA	7/88
Kuhlman, Carl	sex with patient	Stipulation	7/88
Lang, Edward	dual relationship/sexual harassment	Stipulation	7/87
Lower, Earl	unprofessional conduct	Stipulation	5/87
Mason, Michael	sex with patient	LOA	7/86
Nyholm, Stewart	improper supervision	LOA	10/87
Whisler, R. Hugh	sex with patient	Stipulation	3/89
Wilson, Kenneth	live with patient	Stipulation	5/87

Practitioner	License Type	Nature of Complaint	Disposition	Date of Disposition
Barone, Nicoletta	LSW	Gross negligence	Stipulation	6-15-83
Barone, Nicoletta	LSW I	Failure to Report Child Abuse	One Year Probation	6-15-83
Cressman, Joseph	LSW II	Breach of Confidentiality	One Month Probation - Stipulation	8-24-87
Feinberg, Neil	LSW II	Failure to Report Child Abuse	One Year Probation - Stipulation	4-11-84
Feinberg, Neil	LSW	Failure to report child abuse	Stipulation	4-84
Jones, Emery	LSW II	Sexual Assault	Surrender of License	4-18-80
Montoya, Ronald	LSW II	Fraudulent Medicaid Claims	Stipulated 2 Year Revocation	8-12-81
Price, Robert	LSW II	Breach of Confidentiality	One Month Probation - Stipulation	5-9-85
Price, Robert	LSW II	Breach of Confidentiality	One Month Probation - Stipulation	5-9-85
Rybicki, Richard	Unlicensed	Cheating on Licensing Examination	Re-examination	11-9-83
Westfall, Christina	LSW	Alcoholism	Probationary License	5-15-85

Appendix C

Disciplinary Actions through December 31, 1992

Appendix D

Sunset Survey

Appendix E

Sunset Survey Advisory Committee

Ron Werner-Wilson, Ph.D.

John Bermudez, Ph.D.

William Sobesky, Ph.D.

Andrew Helwig, Ph.D.

John Kayser, Ph.D.

Mitch Handelsman, Ph.D.

Amos Martinez, Ph.D.

Ben Leichtling, Ph.D.

Sandra Holman, Ph.D.

Mark Lyon, Ph.D.

Charles Hazelhurst, Ph.D.

Appendix F

Prohibited Activities

- (a) Has been convicted of a felony or has had accepted by a court a plea of guilty or nolo contendere to a felony if the felony is related to the ability to practice psychotherapy. A certified copy of the judgment of a court of competent jurisdiction of such conviction or plea shall be conclusive evidence of such conviction or plea. In considering the disciplinary action, the grievance board shall be governed by the provisions of §24-5-101, C.R.S.
- (b) Has violated, or attempted to violate, directly or indirectly, or assisted or abetted the violation of, or conspired to violate any provision or term of this article or rule or regulation promulgated pursuant to this article or any order of a board established pursuant to this article;
- (c) Has used advertising which is misleading, deceptive, or false;
- (d) (I) Has committed abuse of health insurance pursuant to §18-13-119, C.R.S.;
- (II) Has advertised through newspapers, magazines, circulars, direct mail, directories, radio, television, or otherwise that the person will perform any act prohibited by §18-13-119, C.R.S.;
- (e) Is addicted to or dependent on alcohol or any habit-forming drug, as defined in §12-22-102(13), or is a habitual user of any controlled substance, as defined in §12-22-303 (7), or any alcoholic beverage;
- (i) Has a physical or mental disability which renders him unable to treat with reasonable skill and safety his clients or which may endanger the health or safety of persons under his care;
- (g) Has acted or failed to act in a manner which does not meet the generally accepted standards of his practice. A certified copy of a malpractice judgment of a court of competent jurisdiction shall be conclusive evidence of such act or omission, but evidence of such act or omission shall not be limited to a malpractice judgment.
- (h) Has performed services outside of his area of training, experience, or competence;
- (i) Has maintained relationships with clients that are likely to impair his professional judgment or increase the risk of client exploitation, such as treating employees, supervisors, close colleagues, or relatives;
- (j) Has exercised undue influence on the client, including the promotion of the sale of services, goods, property, or drugs in such a manner as to exploit the client for the financial gain of the practitioner or a third party;

(k) Has failed to terminate a relationship with a client when it was reasonably clear that the client was not benefiting from the relationship and is not likely to gain such benefit in the future;

(l) Has failed to refer a client to an appropriate practitioner when the problem of the client is beyond his training, experience, or competence;

(1.5) Has failed to obtain a consultation or perform a referral when such failure is not consistent with generally accepted standards of care;

(m) Has failed to render adequate professional supervision of persons practicing psychotherapy under his supervision according to generally accepted standards of practice;

(n) Has accepted commissions or rebates or other forms of remuneration for referring clients to other professional persons;

(o) Has failed to comply with any of the requirements pertaining to mandatory disclosure of information to clients pursuant to §12-43-214;

(p) Has offered or given commissions, rebates, or other forms of remuneration for the referral of clients. Notwithstanding this provision, a licensee, certified school psychologist, or unlicensed psychotherapist may pay an independent advertising or marketing agent compensation for advertising or marketing services rendered on his behalf by such agent, including compensation which is paid for the results of performance of such services on a per patient basis;

(q) Has engaged in sexual contact, sexual intrusion, or sexual penetration, as defined in §18-3-401, C.R.S., with a client during the period of time in which a therapeutic relationship exists or for up to six months after the period in which such a relationship exists;

(r) Has resorted to fraud, misrepresentation, or deception in applying for or in securing licensure or taking any examination provided for in this article;

(s) Has engaged in any of the following activities and practices: Willful and repeated ordering or performance, without clinical justification, of demonstrably unnecessary laboratory tests or studies; the administration, without clinical justification, of treatment which is demonstrably unnecessary; or ordering or performing, without clinical justification, any service, X ray, or treatment which is contrary to the generally accepted standards of his practice;

(t) Has falsified or repeatedly made incorrect essential entries or repeatedly failed to make essential entries on patient records; or

(u) Has committed a fraudulent insurance act, as defined in §10-1-127, C.R.S.