

CHAPTER 169

PROFESSIONS AND OCCUPATIONS

SENATE BILL 19-154

BY SENATOR(S) Court, Fields;
also REPRESENTATIVE(S) Sirota, Bird, Duran, Esgar, Galindo, Gray, Singer, Becker.

AN ACT

CONCERNING THE CONTINUATION OF THE REGULATION OF PSYCHIATRIC TECHNICIANS BY THE STATE BOARD OF NURSING, AND, IN CONNECTION THEREWITH, IMPLEMENTING THE RECOMMENDATIONS CONTAINED IN THE 2018 SUNSET REPORT BY THE DEPARTMENT OF REGULATORY AGENCIES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 12-42-103, **amend** (2) as follows:

12-42-103. State board of nursing - repeal of article - review of licensing and regulation functions. (2) ~~(a)~~ This article 42 is repealed, effective July 1, 2019 SEPTEMBER 1, 2034.

~~(b) Prior to such~~ BEFORE ITS repeal, the licensure and regulation functions of the state board of nursing shall be reviewed as provided in ARE SCHEDULED FOR REVIEW IN ACCORDANCE WITH section 24-34-104. ~~C.R.S.~~

SECTION 2. In Colorado Revised Statutes, 24-34-104, **repeal** (16)(a)(III); and **add** (35) as follows:

24-34-104. General assembly review of regulatory agencies and functions for repeal, continuation, or reestablishment - legislative declaration - repeal. (16) (a) The following agencies, functions, or both, will repeal on July 1, 2019:

~~(III) The licensing and regulation of psychiatric technicians by the state board of nursing in accordance with article 42 of title 12, C.R.S.;~~

(35) (a) THE FOLLOWING AGENCIES, FUNCTIONS, OR BOTH, ARE SCHEDULED FOR REPEAL ON SEPTEMBER 1, 2034:

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(II) THE LICENSING AND REGULATION OF PSYCHIATRIC TECHNICIANS BY THE STATE BOARD OF NURSING IN ACCORDANCE WITH ARTICLE 42 OF TITLE 12.

(b) THIS SUBSECTION (35) IS REPEALED, EFFECTIVE SEPTEMBER 1, 2036.

SECTION 3. In Colorado Revised Statutes, 12-42-102, **amend** (1) as follows:

12-42-102. Definitions. As used in this article 42, unless the context otherwise requires:

(1) "~~Accredited~~ APPROVED psychiatric technician education program" means a course of training conducted by a school for the training of psychiatric technicians carrying out the basic curriculum prescribed by this article 42 and ~~accredited~~ APPROVED by the board.

SECTION 4. In Colorado Revised Statutes, 12-42-104, **amend** (1) and (2) as follows:

12-42-104. Application for license. (1) Every applicant for license as a psychiatric technician ~~shall file a written~~ MUST SUBMIT AN application ~~on forms provided~~ IN A MANNER APPROVED by the board.

(2) Every applicant shall accompany ~~his~~ THE application with a license fee established pursuant to section 24-34-105. ~~C.R.S., together with a statement of whether or not he has been convicted of a felony or a misdemeanor involving moral turpitude.~~

SECTION 5. In Colorado Revised Statutes, 12-42-105, **amend** (1) introductory portion and (1)(c) as follows:

12-42-105. License by examination. (1) Every applicant for license by examination shall submit written evidence, verified by oath, and satisfactory to the board that ~~said~~ THE applicant:

(c) Has completed AND RECEIVED A DIPLOMA FROM the required ~~accredited~~ APPROVED psychiatric technician educational program. ~~and holds a diploma from a state accredited program.~~

SECTION 6. In Colorado Revised Statutes, 12-42-111, **amend** (1)(a), (3), and (4) as follows:

12-42-111. Approved psychiatric technician educational program. (1) (a) Any institution within the state of Colorado desiring to conduct an ~~accredited~~ APPROVED preservice psychiatric technician educational program may apply to the board and submit evidence that it is prepared to carry out a psychiatric technician curriculum that contains theoretical content and clinical practice to prepare the psychiatric technician student to care for clients with intellectual and developmental disabilities or behavioral or mental health disorders in institutional and community settings.

(3) If the requirements of this article 42 for an ~~accredited~~ APPROVED psychiatric technician educational program are met, the ~~institution~~ BOARD must ~~be accredited~~ APPROVE THE INSTITUTION as a psychiatric technician educational program for psychiatric technicians for work with patients with mental health disorders or intellectual and developmental disabilities, AND THE APPROVAL IS VALID for so long as ~~such~~ THE institution meets the requirements of this article 42.

(4) The board shall examine, from time to time, the ~~accredited~~ APPROVED psychiatric technician educational programs of all institutions in the state ~~having~~ ~~such~~ WITH APPROVED programs. ~~Such~~ THE EXECUTIVE SECRETARY OR OTHER AUTHORIZED REPRESENTATIVE OF THE BOARD SHALL CONDUCT THE examinations ~~shall be made by the executive secretary or other authorized representative of the board,~~ and ~~the~~ SUBMIT THE EXAMINATION results ~~thereof shall be submitted~~ to the board in the form of written reports. If the board determines that an institution ~~having an accredited~~ WITH AN APPROVED psychiatric technician educational program is not maintaining the standards required by this article 42, THE BOARD SHALL SERVE notice ~~thereof~~ OF ITS DETERMINATION in writing, specifying the defect, ~~shall be served on such~~ THE institution by certified mail, postage prepaid, return receipt requested. If the institution receiving ~~such~~ THE notice fails, within one year after mailing of ~~such~~ THE notice, to correct the conditions complained of ~~therein,~~ ~~its~~ IN THE NOTICE, THE BOARD SHALL REVOKE THE INSTITUTION'S authority to conduct an ~~accredited~~ APPROVED psychiatric technician educational program. ~~shall be revoked by the board.~~ An institution ~~shall have~~ HAS the right, at any time before the expiration of one year from the date it receives ~~such~~ THE notice, to demand and be granted a hearing before the board. In case of ~~such~~ A demand, ~~no~~ THE BOARD SHALL NOT TAKE action ~~shall be taken by the board~~ until after the hearing.

SECTION 7. In Colorado Revised Statutes, 12-42-113, **amend** (1)(c), (1)(f), (1)(g), (1)(i), and (1)(j) as follows:

12-42-113. Grounds for discipline. (1) "Grounds for discipline", as used in this article 42, means any action by any person who:

(c) Has ~~willfully or negligently~~ acted in a manner inconsistent with the health or safety of ~~persons~~ INDIVIDUALS under ~~his~~ THE PERSON'S care;

(f) Has ~~negligently or willfully~~ practiced as a psychiatric technician in a manner ~~which~~ THAT fails to meet generally accepted standards for ~~such~~ THE practice;

(g) Has ~~negligently or willfully~~ violated any order OR rule OR ~~regulation~~ of the board pertaining to practice or licensure as a psychiatric technician;

(i) ~~Has an alcohol use disorder, as defined in section 27-81-102, or a substance use disorder, as defined in section 27-82-102, is a habitual user of~~ HABITUALLY OR EXCESSIVELY USES OR ABUSES ALCOHOL OR controlled substances, as defined in section 18-18-102 (5), or other drugs having similar effects, or is diverting controlled substances, as defined in section 18-18-102 (5), or other drugs having similar effects from the licensee's place of employment; except that the board has the discretion not to discipline the licensee if ~~such~~ THE licensee is participating in good faith in an alcohol or substance use disorder treatment program approved by the board;

(j) ~~(I) Has failed to notify the board, as required by section 12-42-122(1), of a physical disability or an intellectual and developmental disability that renders him or her unable~~ PHYSICAL ILLNESS; PHYSICAL CONDITION; OR BEHAVIORAL, MENTAL HEALTH, OR SUBSTANCE USE DISORDER THAT AFFECTS THE PSYCHIATRIC TECHNICIAN'S ABILITY TO PRACTICE AS A PSYCHIATRIC TECHNICIAN WITH REASONABLE SKILL AND SAFETY TO THE PATIENTS AND WHICH OR THAT MAY ENDANGER THE HEALTH OR SAFETY OF PERSONS INDIVIDUALS UNDER HIS OR HER THE PERSON'S CARE;

(II) HAS FAILED TO ACT WITHIN THE LIMITATIONS CREATED BY A PHYSICAL ILLNESS; PHYSICAL CONDITION; OR BEHAVIORAL, MENTAL HEALTH, OR SUBSTANCE USE DISORDER THAT RENDERS THE PSYCHIATRIC TECHNICIAN UNABLE TO PRACTICE AS A PSYCHIATRIC TECHNICIAN WITH REASONABLE SKILL AND SAFETY TO PATIENTS OR THAT MAY ENDANGER THE HEALTH OR SAFETY OF INDIVIDUALS UNDER THE PERSON'S CARE; OR

(III) HAS FAILED TO COMPLY WITH THE LIMITATIONS AGREED TO UNDER A CONFIDENTIAL AGREEMENT ENTERED PURSUANT TO SECTION 12-42-122;

SECTION 8. In Colorado Revised Statutes, 12-42-116, **amend** (2) as follows:

12-42-116. Exclusions. (2) This article 42 shall not be construed to prohibit the practice as a psychiatric technician by students enrolled in an ~~accredited~~ APPROVED psychiatric technician educational program or by graduates of ~~such accredited~~ AN APPROVED psychiatric technician educational program pending the results of the first licensing examination scheduled by the board following their graduation.

SECTION 9. In Colorado Revised Statutes, **add** 12-42-122 as follows:

12-42-122. Confidential agreement to limit practice - violation grounds for discipline. (1) (a) IF A PSYCHIATRIC TECHNICIAN HAS A PHYSICAL ILLNESS, PHYSICAL CONDITION, OR BEHAVIORAL OR MENTAL HEALTH DISORDER THAT RENDERS THE PSYCHIATRIC TECHNICIAN UNABLE TO PRACTICE AS A PSYCHIATRIC TECHNICIAN WITH REASONABLE SKILL AND SAFETY TO PATIENTS, THE PSYCHIATRIC TECHNICIAN SHALL NOTIFY THE BOARD OF THE PHYSICAL ILLNESS, PHYSICAL CONDITION, OR BEHAVIORAL OR MENTAL HEALTH DISORDER IN A MANNER AND WITHIN A PERIOD OF TIME DETERMINED BY THE BOARD.

(b) THE BOARD MAY REQUIRE THE PSYCHIATRIC TECHNICIAN TO SUBMIT TO AN EXAMINATION TO EVALUATE THE EXTENT OF THE PHYSICAL ILLNESS, PHYSICAL CONDITION, OR BEHAVIORAL OR MENTAL HEALTH DISORDER AND ITS EFFECT ON THE PSYCHIATRIC TECHNICIAN'S ABILITY TO PRACTICE WITH REASONABLE SKILL AND SAFETY TO PATIENTS.

(2) (a) UPON DETERMINING THAT A PSYCHIATRIC TECHNICIAN WITH A PHYSICAL ILLNESS, PHYSICAL CONDITION, OR BEHAVIORAL OR MENTAL HEALTH DISORDER IS ABLE TO RENDER LIMITED PSYCHIATRIC TECHNICIAN SERVICES WITH REASONABLE SKILL AND SAFETY TO PATIENTS, THE BOARD MAY ENTER INTO A CONFIDENTIAL AGREEMENT WITH THE PSYCHIATRIC TECHNICIAN IN WHICH THE PSYCHIATRIC TECHNICIAN AGREES TO LIMIT THE PERSON'S PRACTICE BASED ON THE RESTRICTIONS IMPOSED BY THE PHYSICAL ILLNESS, PHYSICAL CONDITION, OR BEHAVIORAL OR MENTAL HEALTH DISORDER, AS DETERMINED BY THE BOARD.

(b) AS PART OF THE AGREEMENT, THE PSYCHIATRIC TECHNICIAN IS SUBJECT TO PERIODIC REEVALUATIONS OR MONITORING AS DETERMINED APPROPRIATE BY THE BOARD.

(c) THE PARTIES MAY MODIFY OR DISSOLVE THE AGREEMENT AS NECESSARY BASED ON THE RESULTS OF A REEVALUATION OR OF MONITORING.

(3) BY ENTERING INTO AN AGREEMENT WITH THE BOARD PURSUANT TO THIS SECTION, THE PSYCHIATRIC TECHNICIAN IS NOT ENGAGING IN ACTIVITIES THAT CONSTITUTE GROUNDS FOR DISCIPLINE PURSUANT TO SECTION 12-42-113. THE AGREEMENT DOES NOT CONSTITUTE A RESTRICTION OR DISCIPLINE BY THE BOARD. HOWEVER, IF THE PSYCHIATRIC TECHNICIAN FAILS TO COMPLY WITH THE TERMS OF AN AGREEMENT ENTERED INTO PURSUANT TO THIS SECTION, THE FAILURE CONSTITUTES GROUNDS FOR DISCIPLINARY ACTION UNDER SECTION 12-42-113 (1)(j), AND THE PSYCHIATRIC TECHNICIAN IS SUBJECT TO DISCIPLINE IN ACCORDANCE WITH SECTION 12-38-116.5.

(4) THIS SECTION DOES NOT APPLY TO A PSYCHIATRIC TECHNICIAN SUBJECT TO DISCIPLINE UNDER SECTION 12-42-113 (1)(i).

SECTION 10. In Colorado Revised Statutes, 12-38-116.5, **amend** (3)(c)(IV)(A) and (3)(c)(IV)(B) as follows:

12-38-116.5. Disciplinary procedures of the board - inquiry and hearings panels. (3) (c) On completion of an investigation, the inquiry panel shall make a finding that:

(IV) (A) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the board, does not warrant formal action by the board but that should not be dismissed as being without merit, a letter of admonition may be issued and sent ~~by certified mail,~~ to the licensee.

(B) When a letter of admonition is sent by the board ~~by certified mail,~~ to a licensee, ~~such~~ THE licensee shall be advised that he or she has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

SECTION 11. In Colorado Revised Statutes, 12-295-103, **amend as relocated by House Bill 19-1172** (1) as follows:

12-295-103. Definitions. As used in this article 295, unless the context otherwise requires:

(1) ~~"Accredited~~ "APPROVED psychiatric technician education program" means a course of training conducted by a school for the training of psychiatric technicians carrying out the basic curriculum prescribed by this article 295 and ~~accredited~~ APPROVED by the board.

SECTION 12. In Colorado Revised Statutes, 12-295-104, **amend as relocated by House Bill 19-1172** (2) as follows:

12-295-104. State board of nursing - repeal of article - review of licensing and regulation functions. (2) This article 295 is repealed, effective ~~July 1, 2019~~ SEPTEMBER 1, 2034. Before the repeal, the licensure and regulation functions of the board are scheduled for review in accordance with section 24-34-104.

SECTION 13. In Colorado Revised Statutes, 12-295-105, **amend as relocated by House Bill 19-1172** (1) and (2) as follows:

12-295-105. Application for license. (1) Every applicant for license as a psychiatric technician ~~shall file a written~~ MUST SUBMIT AN application ~~on forms provided~~ IN A MANNER APPROVED by the board.

(2) Every applicant shall accompany the application with a license fee established pursuant to section 12-20-105. ~~together with a statement of whether or not the applicant has been convicted of a felony or a misdemeanor involving moral turpitude.~~

SECTION 14. In Colorado Revised Statutes, 12-295-106, **amend as relocated by House Bill 19-1172** (1)(c) as follows:

12-295-106. License by examination. (1) Every applicant for license by examination shall submit written evidence, verified by oath, and satisfactory to the board that the applicant:

(c) Has completed AND RECEIVED A DIPLOMA FROM the required ~~accredited~~ APPROVED psychiatric technician educational program. ~~and holds a diploma from a state-accredited program.~~

SECTION 15. In Colorado Revised Statutes, 12-295-109, **amend as relocated by House Bill 19-1172** (1)(a), (3), and (4) as follows:

12-295-109. Approved psychiatric technician educational program. (1) (a) Any institution within the state of Colorado desiring to conduct an ~~accredited~~ APPROVED preservice psychiatric technician educational program may apply to the board and submit evidence that it is prepared to carry out a psychiatric technician curriculum that contains theoretical content and clinical practice to prepare the psychiatric technician student to care for clients with intellectual and developmental disabilities or behavioral or mental health disorders in institutional and community settings.

(3) If the requirements of this article 295 for an ~~accredited~~ APPROVED psychiatric technician educational program are met, the ~~institution~~ BOARD must ~~be accredited~~ APPROVE THE INSTITUTION as a psychiatric technician educational program for psychiatric technicians for work with patients with mental health disorders or intellectual and developmental disabilities, AND THE APPROVAL IS VALID for so long as the institution meets the requirements of this article 295.

(4) The board shall examine, from time to time, the ~~accredited~~ APPROVED psychiatric technician educational programs of all institutions in the state ~~having such~~ WITH APPROVED programs. The EXECUTIVE SECRETARY OR OTHER AUTHORIZED REPRESENTATIVE OF THE BOARD SHALL CONDUCT THE examinations ~~shall be made~~

by the executive secretary or other authorized representative of the board; and the SUBMIT THE EXAMINATION results thereof shall be submitted to the board in the form of written reports. If the board determines that an institution having an accredited WITH AN APPROVED psychiatric technician educational program is not maintaining the standards required by this article 295, THE BOARD SHALL SERVE notice thereof OF ITS DETERMINATION in writing, specifying the defect, shall be served on the institution by certified mail, postage prepaid, return receipt requested. If the institution receiving the notice fails, within one year after mailing of the notice, to correct the conditions complained of therein, its IN THE NOTICE, THE BOARD SHALL REVOKE THE INSTITUTION'S authority to conduct an accredited APPROVED psychiatric technician educational program. shall be revoked by the board. An institution shall have HAS the right, at any time before the expiration of one year from the date it receives the notice, to demand and be granted a hearing before the board. In case of a demand, no THE BOARD SHALL NOT TAKE action shall be taken by the board until after the hearing.

SECTION 16. In Colorado Revised Statutes, 12-295-111, amend as relocated by House Bill 19-1172 (1)(c), (1)(f), (1)(g), (1)(i), and (1)(j) as follows:

12-295-111. Grounds for discipline. (1) "Grounds for discipline", as used in this article 295, means any action by any person who:

(c) Has willfully or negligently acted in a manner inconsistent with the health or safety of individuals under the person's care;

(f) Has negligently or willfully practiced as a psychiatric technician in a manner that fails to meet generally accepted standards for the practice;

(g) Has negligently or willfully violated any order or rule of the board pertaining to practice or licensure as a psychiatric technician;

(i) Has an alcohol use disorder, as defined in section 27-81-102, or a substance use disorder, as defined in section 27-82-102, is a habitual user of HABITUALLY OR EXCESSIVELY USES OR ABUSES ALCOHOL OR controlled substances, as defined in section 18-18-102 (5), or other drugs having similar effects, or is diverting controlled substances, as defined in section 18-18-102 (5), or other drugs having similar effects from the licensee's place of employment; except that the board has the discretion not to discipline the licensee if the licensee is participating in good faith in an alcohol or substance use disorder treatment program approved by the board;

(j) (I) Has FAILED TO NOTIFY THE BOARD OF a physical disability or an intellectual and developmental disability that renders him or her unable ILLNESS, PHYSICAL CONDITION, OR BEHAVIORAL, MENTAL HEALTH, OR SUBSTANCE USE DISORDER THAT AFFECTS THE PSYCHIATRIC TECHNICIAN'S ABILITY to practice as a psychiatric technician with reasonable skill and safety to the patients and OR that may endanger the health or safety of patients INDIVIDUALS under the person's care;

(II) HAS FAILED TO ACT WITHIN THE LIMITATIONS CREATED BY A PHYSICAL ILLNESS, PHYSICAL CONDITION, OR BEHAVIORAL, MENTAL HEALTH, OR SUBSTANCE USE DISORDER THAT RENDERS THE PSYCHIATRIC TECHNICIAN UNABLE TO PRACTICE

AS A PSYCHIATRIC TECHNICIAN WITH REASONABLE SKILL AND SAFETY TO PATIENTS OR THAT MAY ENDANGER THE HEALTH OR SAFETY OF INDIVIDUALS UNDER THE PERSON'S CARE; OR

(III) HAS FAILED TO COMPLY WITH THE LIMITATIONS AGREED TO UNDER A CONFIDENTIAL AGREEMENT ENTERED INTO PURSUANT TO SECTION 12-30-108;

SECTION 17. In Colorado Revised Statutes, 12-295-117, **amend as relocated by House Bill 19-1172** (2)(a) as follows:

12-295-117. Exclusions. (2) This article 295 shall not be construed to prohibit:

(a) The practice as a psychiatric technician by students enrolled in an ~~accredited~~ APPROVED psychiatric technician educational program or by graduates of an ~~accredited~~ APPROVED psychiatric technician educational program pending the results of the first licensing examination scheduled by the board following their graduation;

SECTION 18. In Colorado Revised Statutes, **add to article 295 as relocated by House Bill 19-1172** 12-295-120 as follows:

12-295-120. Confidential agreement to limit practice. (1) EXCEPT AS SPECIFIED IN SUBSECTION (2) OF THIS SECTION, SECTION 12-30-108 CONCERNING CONFIDENTIAL AGREEMENTS TO LIMIT PRACTICE APPLIES TO THIS ARTICLE 295.

(2) THIS SECTION AND SECTION 12-30-108 DO NOT APPLY TO A PSYCHIATRIC TECHNICIAN SUBJECT TO DISCIPLINE UNDER SECTION 12-295-111 (1)(i).

SECTION 19. In Colorado Revised Statutes, 12-255-119, **amend as relocated by House Bill 19-1172** (3)(c)(IV) as follows:

12-255-119. Disciplinary procedures of the board - inquiry and hearings panels - mental and physical examinations - definitions - rules. (3) (c) On completion of an investigation, the inquiry panel shall make a finding that:

(IV) An instance of misconduct OCCURRED that, in the opinion of the board, does not warrant formal action by the board but that should not be dismissed as being without merit, in which case the board may issue and send a letter of admonition ~~by certified mail~~, to the licensee in accordance with section 12-20-404 (4);

SECTION 20. In Colorado Revised Statutes, 12-30-108, **repeal as relocated by House Bill 19-1172** (4)(a)(I)(G) as follows:

12-30-108. Confidential agreement to limit practice - violation grounds for discipline. (4) (a) This section does not apply to:

(I) The following health care professionals:

(G) ~~Psychiatric technicians regulated pursuant to article 295 of this title 12; or~~

SECTION 21. Effective date. This act takes effect July 1, 2019; except that

sections 11 through 20 of this act take effect only if House Bill 19-1172 becomes law, in which case sections 11 through 20 take effect on October 1, 2019.

SECTION 22. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 13, 2019