

CHAPTER 218

PROFESSIONS AND OCCUPATIONS

HOUSE BILL 95-1002

BY REPRESENTATIVES Agler, George, Knox, Armstrong, Clarke, Hernandez, Prinster, and Sullivan;
also SENATORS Schroeder, Martinez, Mutzebaugh, and Rupert.

AN ACT

CONCERNING THE REGULATORY AUTHORITY OF THE BOARD OF MEDICAL EXAMINERS.

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

SECTION 1. 12-36-103 (4), (5), and (6) (b), Colorado Revised Statutes, 1991 Repl. Vol., are amended to read:

12-36-103. State board of medical examiners - immunity - subject to termination - repeal of article. (4) The board shall elect biennially from its members a president, a vice-president, and a secretary. Regular meetings of the board or either panel, established pursuant to section 12-36-118, shall be held as scheduled by the board in the state of Colorado. Special meetings of the board may be called by the president or by three members of the board at any time on three days' prior notice by mail or, in case of emergency, on twenty-four hours' notice by telephone or telegraph ~~or~~ ELECTRONIC ACCESS, any such meetings to be held at the place designated in the call therefor. Except as provided in section 12-36-118 (6), a majority of the board shall constitute a quorum for the transaction of all business. All meetings of the board shall be deemed to have been duly called and regularly held, and all decisions, resolutions, and proceedings of the board shall be deemed to have been duly authorized, unless the contrary be proved.

(5) ~~Members of the board~~ A BOARD MEMBER shall be immune from ~~suit in any CIVIL action civil or criminal, based upon any A disciplinary proceedings or other official acts performed~~ PROCEEDING OR OTHER OFFICIAL ACT THAT SUCH BOARD MEMBER PERFORMS in good faith as ~~members~~ A MEMBER of such board.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(6) (b) This article is repealed, effective ~~July 1, 1995~~ JULY 1, 2010.

SECTION 2. 12-36-106 (3.5) (d) (V), (5) (a), (5) (e), and (5) (j), Colorado Revised Statutes, 1991 Repl. Vol., are amended to read:

12-36-106. Practice of medicine defined - exemptions from licensing requirements. (3.5) (d) For purposes of this subsection (3.5), "athletic trainer scope of practice" means the performance of all or some of the following functions by a qualified athletic trainer:

(V) ~~The identification of preexisting physical conditions which may pose a risk of injury to an athlete during the physical examination and screening~~ THE ASSESSMENT, DURING A SCREENING PROCESS, OF PHYSICAL LIMITATIONS, INCLUDING THOSE PREVIOUSLY DIAGNOSED BY A PHYSICIAN, WHICH MAY POSE A RISK OF INJURY TO AN ATHLETE;

(5) (a) A person licensed under the laws of this state to practice medicine may delegate to a physician assistant certified by the board the authority to perform acts which constitute the practice of medicine to the extent and in the manner authorized by rules and regulations promulgated by the board, including the authority to prescribe ~~on a case-by-case and per-patient visit basis as approved by the supervising physician;~~ MEDICATION, INCLUDING CONTROLLED SUBSTANCES, and dispense only such drugs as designated by the board. Such acts shall be consistent with sound medical practice. Each prescription issued by a physician assistant certified by the board shall have imprinted thereon the name of his OR HER supervising physician. Nothing in this subsection (5) shall limit the ability of otherwise licensed health personnel to perform delegated acts. The dispensing of prescription medication by a physician assistant shall be subject to the provisions of section 12-22-121 (6).

(e) No person certified as a physician assistant may perform any act which constitutes the practice of medicine within a hospital or nursing care facility which is licensed pursuant to part 1 of article 3 of title 25, C.R.S., or which is required to obtain a certificate of compliance pursuant to section 25-1-107 (1) (I) (II), C.R.S., without authorization from the governing board of the hospital or nursing care facility. Such governing board shall have the authority to grant, deny, or limit such authority to its own established procedures. ~~but under no circumstances shall a physician assistant write prescriptions unless countersigned by the supervising physician.~~

(j) This subsection (5) is repealed, effective ~~July 1, 1995~~ JULY 1, 2010.

SECTION 3. 12-36-107 (2), Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-36-107. Qualifications for licensure. (2) No person shall be granted a license to practice medicine as provided by subsection (1) of this section unless ~~he~~ SUCH PERSON:

(a) Is at least twenty-one years of age;

(b) Is a graduate of an approved medical college, as defined in section 12-36-108; and

(c) Has completed EITHER an approved internship of at least one year, as defined in section 12-36-109, or ~~has completed~~ at least one year of postgraduate training approved by the board. ~~The board may grant a license subject to terms of probation or may refuse to grant a license to any such person if it has reasonable grounds to believe he has committed any of the acts or offenses defined in this article as unprofessional conduct.~~

SECTION 4. 12-36-107.6 (2), Colorado Revised Statutes, 1991 Repl. Vol., is repealed as follows:

12-36-107.6. Foreign medical school graduates. (2) ~~An applicant who has completed the academic curriculum in residence at a foreign medical school, but who did not complete an internship or social service, and who thereafter has completed a year of supervised clinical training at a hospital in the United States, which training was affiliated with a medical school offering a fifth pathway program, shall be deemed to have attained the equivalent of the degree of doctor of medicine at a United States medical school approved by the liaison committee for medical education and; for purposes of the application for licensure, such applicant shall not be considered a graduate of a foreign medical school. "Fifth pathway program" means the program which was in effect in Colorado pursuant to the provisions of section 12-36-107.5 (1), as such section existed prior to its repeal effective July 1, 1988, or a similar statutorily-based program of another state.~~

SECTION 5. 12-36-108, Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-36-108. Approved medical college. An approved medical college is a college which conforms to the minimum educational standards for medical colleges ~~or for osteopathic colleges as established respectively by the American medical association~~ LIAISON COMMITTEE ON MEDICAL EDUCATION OR ANY SUCCESSOR ORGANIZATION THAT IS THE OFFICIAL ACCREDITING BODY OF EDUCATIONAL PROGRAMS LEADING TO THE DEGREE OF DOCTOR OF MEDICINE AND RECOGNIZED FOR SUCH PURPOSE BY THE FEDERAL DEPARTMENT OF EDUCATION AND THE COUNCIL ON POSTSECONDARY ACCREDITATION, OR FOR OSTEOPATHIC COLLEGES AS ESTABLISHED ~~and~~ by the American osteopathic association, or a college which is approved by either of ~~said associations~~ SUCH ORGANIZATIONS. The board shall have the authority, upon its own investigation of the educational standards and facilities thereof, to approve any other medical college.

SECTION 6. 12-36-109, Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-36-109. Approved internship. (1) An approved internship is an internship:

(a) Of at least one year in a hospital conforming to the minimum standards for intern training established by the ~~American medical association~~ ACCREDITATION COUNCIL FOR GRADUATE MEDICAL EDUCATION OR ANY SUCCESSOR ORGANIZATION, or by the American osteopathic association; or

(b) ~~an internship~~ Approved by either of ~~said associations~~ SUCH ORGANIZATIONS.

(2) The board has the authority, upon its own investigation, to approve any other internship.

SECTION 7. 12-36-110, Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-36-110. Approved residency. (1) An approved residency is a residency:

(a) PERFORMED in a hospital conforming to the minimum standards for residency training established by the ~~American medical association~~ ACCREDITATION COUNCIL FOR GRADUATE MEDICAL EDUCATION OR ANY SUCCESSOR ORGANIZATION, or by the American osteopathic association; or

(b) ~~A residency~~ Approved by either of ~~said associations~~ SUCH ORGANIZATIONS.

(2) The board has the authority, upon its own investigation, to approve any other residency.

SECTION 8. 12-36-111 (2), Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-36-111. Applications for license. (2) (a) An applicant for a license on the basis of an examination by the board shall file ~~his~~ AN application at least ~~thirty~~ NINETY days prior to the announced date of the examination.

(b) If ~~such~~ AN applicant is not A GRADUATE OF AN APPROVED MEDICAL COLLEGE at the time of filing ~~his~~ AN application, ~~a graduate of, but is then in attendance at, an approved medical college, he~~ SUCH APPLICANT shall submit to the board, in lieu of a ~~diploma or other~~ required evidence of graduation, a written statement from the dean or other authorized representative of ~~such~~ THE approved medical college IN WHICH SUCH APPLICANT IS IN ATTENDANCE STATING that the applicant will receive ~~his~~ A diploma at the end of the then current school term; ~~but in any such case, the~~ EXCEPT THAT THE applicant shall not be permitted to take the examination until ~~he has filed with the board his diploma or other~~ acceptable evidence of graduation ~~from such approved medical college~~ HAS BEEN FILED WITH THE BOARD and THE APPLICANT has complied with the requirements of subsection (1) of this section. ~~and~~ No license shall be issued to ~~him~~ AN APPLICANT until ~~he has satisfied~~ the board IS SATISFIED that ~~he has completed~~ SUCH APPLICANT HAS COMPLETED at least one year of approved internship or approved postgraduate training and has otherwise met the requirements for the issuance of a license under this article.

SECTION 9. 12-36-112, Colorado Revised Statutes, 1991 Repl. Vol., as amended, is repealed as follows:

12-36-112. License fee. ~~An applicant for a license to practice medicine shall pay a fee to be determined and collected pursuant to section 12-36-123.5 (2) (b) or established pursuant to section 24-34-105, C.R.S.~~

SECTION 10. 12-36-113 (2), Colorado Revised Statutes, 1991 Repl. Vol., is

amended to read:

12-36-113. Examinations. (2) The board shall be responsible for determining the passing score to reflect a standard of minimum competency for the practice of medicine. If an applicant fails to meet such minimum passing score, ~~he~~ SUCH APPLICANT may be reexamined at any subsequent scheduled examination upon paying a fee to be determined and collected pursuant to section 24-34-105, C.R.S. ~~If he fails in a second examination, a further examination may be taken, but not less than one year after the date of the preceding examination, and he shall be required to file a new application and pay a fee to be determined and collected pursuant to section 24-34-105, C.R.S. The board may determine by regulation whether any second or further examination shall be on all subjects included in the scheduled examination. No fees remitted with an application shall be refunded, but, in case an applicant is prevented through no fault of his own from taking the examination applied for, he may take a subsequently scheduled examination within one year without payment of another fee or submission of a new application.~~

SECTION 11. 12-36-116, Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-36-116. Refusal of license - issuance subject to probation. (1) THE BOARD MAY REFRAIN FROM ISSUING A LICENSE OR MAY GRANT A LICENSE SUBJECT TO TERMS OF PROBATION if the board determines that an applicant for a license to practice medicine:

(a) Does not possess the qualifications required by this article; ~~or that he;~~

(b) Has ~~done any of the acts~~ ENGAGED IN UNPROFESSIONAL CONDUCT, AS defined in section 12-36-117; ~~or as unprofessional conduct, it may refrain from issuing a license and the applicant may proceed as provided in section 24-4-104 (9), C.R.S.;~~
OR

(c) HAS BEEN DISCIPLINED IN ANOTHER STATE OR FOREIGN JURISDICTION WITH RESPECT TO HIS OR HER LICENSE TO PRACTICE MEDICINE;

(d) HAS NOT ACTIVELY PRACTICED MEDICINE FOR THE TWO-YEAR PERIOD IMMEDIATELY PRECEDING THE FILING OF SUCH APPLICATION OR OTHERWISE MAINTAINED CONTINUED COMPETENCY DURING SUCH PERIOD, AS DETERMINED BY THE BOARD.

(2) FOR PURPOSES OF THIS SECTION, "DISCIPLINE" MEANS ANY MATTER WHICH MUST BE REPORTED PURSUANT TO 45 CFR SEC. 60.8 AND IS SUBSTANTIALLY SIMILAR TO UNPROFESSIONAL CONDUCT AS DEFINED IN SECTION 12-36-117.

(3) AN APPLICANT WHOSE APPLICATION IS DENIED OR WHOSE LICENSE IS GRANTED SUBJECT TO TERMS OF PROBATION MAY SEEK REVIEW PURSUANT TO SECTION 24-4-104 (9), C.R.S.; EXCEPT THAT, IF AN APPLICANT ACCEPTS A LICENSE THAT IS SUBJECT TO TERMS OF PROBATION, SUCH ACCEPTANCE SHALL BE IN LIEU OF AND NOT IN ADDITION TO THE REMEDIES SET FORTH IN SECTION 24-4-104 (9), C.R.S.

SECTION 12. 12-36-117 (1) (a), (1) (f), (1) (h), (1) (p), (1) (r), (1) (aa), (1) (ee),

and (2), Colorado Revised Statutes, 1991 Repl. Vol., are amended, and the said 12-36-117 (1), as amended, is further amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

12-36-117. Unprofessional conduct. (1) "Unprofessional conduct" as used in this article means:

(a) Resorting to fraud, misrepresentation, or deception in applying for, securing, renewing, or seeking reinstatement of a license TO PRACTICE MEDICINE IN THIS STATE OR ANY OTHER STATE, IN APPLYING FOR PROFESSIONAL LIABILITY COVERAGE, REQUIRED PURSUANT TO SECTION 13-64-301, C.R.S., OR PRIVILEGES AT A HOSPITAL, or in taking the examination provided for in this article;

(f) ANY conviction of AN OFFENSE OF MORAL TURPITUDE, a felony, ~~or pleading guilty or nolo contendere to a felony~~ OR A CRIME THAT WOULD CONSTITUTE A VIOLATION OF THIS ARTICLE. FOR PURPOSES OF THIS PARAGRAPH (f), "CONVICTION" INCLUDES THE ENTRY OF A PLEA OF GUILTY OR NOLO CONTENDERE OR THE IMPOSITION OF A DEFERRED SENTENCE.

(h) ANY conviction of violation of any federal or state law regulating the possession, distribution, or use of any controlled substance, as defined in section 12-22-303 (7), and, in determining if a license should be denied, revoked, or suspended, or if the licensee should be placed on probation, the board shall be governed by ~~the provisions of section 24-5-101, C.R.S.~~ FOR PURPOSES OF THIS PARAGRAPH (h), "CONVICTION" INCLUDES THE ENTRY OF A PLEA OF GUILTY OR NOLO CONTENDERE OR THE IMPOSITION OF A DEFERRED SENTENCE.

(p) ~~An act or omission constituting grossly negligent medical practice or two or more acts or omissions which fail~~ ANY ACT OR OMISSION WHICH FAILS to meet generally accepted standards of medical practice; ~~whether the two or more acts or omissions occur during a single treatment of one patient, during the course of treatment of one patient, or during the treatment of more than one patient;~~

(r) Engaging in a sexual act with a patient during the course of patient care OR WITHIN SIX MONTHS IMMEDIATELY FOLLOWING THE TERMINATION OF THE PHYSICIAN'S PROFESSIONAL RELATIONSHIP WITH THE PATIENT. "Sexual act", as used in this paragraph (r), means sexual contact, sexual intrusion, or sexual penetration as defined in section 18-3-401, C.R.S.

(aa) Failing to accurately answer the questionnaire accompanying the renewal form as required pursuant to section ~~12-36-123 (2) (b)~~ 12-36-123 (1) (b);

(ee) ~~Violating the provisions of section 8-42-101 (3.6), C.R.S.~~ FAILING TO ESTABLISH AND CONTINUOUSLY MAINTAIN FINANCIAL RESPONSIBILITY, AS REQUIRED IN SECTION 13-64-301, C.R.S.;

(gg) FAILING TO RESPOND IN A TIMELY MANNER TO A COMPLAINT ISSUED PURSUANT TO SECTION 12-36-118 (4);

(hh) ADVERTISING IN A MANNER THAT IS MISLEADING, DECEPTIVE, OR FALSE.

~~(2) A revocation or suspension of a license to practice medicine in any other state, territory, or country for disciplinary reasons shall be deemed to be prima facie evidence of unprofessional conduct. This subsection (2) shall apply only to revocations or suspensions based upon acts or omissions in such other state, territory, or country substantially as defined as unprofessional conduct pursuant to subsection (1) of this section.~~ THE DISCIPLINE OF A LICENSE TO PRACTICE MEDICINE IN ANOTHER STATE, TERRITORY, OR COUNTRY SHALL BE DEEMED TO BE UNPROFESSIONAL CONDUCT. FOR PURPOSES OF THIS SUBSECTION (2), "DISCIPLINE" INCLUDES ANY SANCTION REQUIRED TO BE REPORTED PURSUANT TO 45 CFR SEC. 60.8. THIS SUBSECTION (2) SHALL APPLY ONLY TO DISCIPLINE THAT IS BASED UPON AN ACT OR OMISSION IN SUCH OTHER STATE, TERRITORY, OR COUNTRY THAT IS DEFINED SUBSTANTIALLY THE SAME AS UNPROFESSIONAL CONDUCT PURSUANT TO SUBSECTION (1) OF THIS SECTION.

SECTION 13. 12-36-118 (1), (4) (a), (4) (b) (II), (4) (c) (II.5), (5) (a), (5) (b), (5) (c), (5) (d), (5) (e), (5) (g) (II), the introductory portion to 12-36-118 (5) (g) (III), and 12-36-118 (9) (a), (9) (b), and (12), Colorado Revised Statutes, 1991 Repl. Vol., are amended to read:

12-36-118. Disciplinary action by board - immunity. (1) (a) The president of the board shall divide those members of the board other than ~~himself~~ THE PRESIDENT into two panels of five members each, four of whom shall be physician members.

(b) Each panel shall act as both an inquiry and a hearings panel. Members of the board may be assigned from one panel to the other by the president. The president may be a member of both panels, but in no event shall the president or any other member who has considered a complaint as a member of ~~one~~ A panel acting as an inquiry panel take any part ~~whatever~~ in the consideration of a formal complaint involving the same matter. ~~other than with regard to the appointment of an advisor to an administrative law judge.~~

(c) All matters referred to one panel for investigation shall be heard, if referred for formal hearing, by the other panel or a committee ~~thereof~~ OF SUCH PANEL. However, in its discretion, either inquiry panel ~~of the board~~ may elect to refer a case for formal hearing to a qualified administrative law judge ~~with or without an assigned advisor from the hearings panel~~; in lieu of a hearings panel of the board, for ~~his~~ AN initial decision pursuant to the provisions of section 24-4-105, C.R.S. ~~Should the inquiry panel elect to have an advisor assist with the administrative law judge, the advisor would be assigned to the hearing by the president of the board. The advisor would assist the administrative law judge in obtaining and interpreting medical data pertinent to the hearing. The advisor would be excluded from the hearings panel review of the decision of the administrative law judge.~~

(d) The initial decision of ~~the~~ AN administrative law judge may be reviewed pursuant to section 24-4-105 (14) and (15), C.R.S., by the filing of exceptions to the initial decision ~~by the respondent or the board's counsel~~ with the hearings panel which would have heard the case if it had not been referred to an administrative law judge or by review upon the motion of such hearings panel. THE RESPONDENT OR THE BOARD'S COUNSEL SHALL FILE SUCH EXCEPTIONS.

(4) (a) (I) WRITTEN complaints ~~in writing~~ relating to the conduct of ~~any~~ A

physician licensed or authorized to practice medicine in this state may be made by any person or may be initiated by AN INQUIRY PANEL OF the board on its own motion. The physician complained of shall be given notice by certified mail of the nature of ~~all matters complained of~~ THE COMPLAINT and shall be given ~~twenty~~ THIRTY days to ~~make explanation or explain answer thereto~~ ANSWER OR EXPLAIN IN WRITING THE MATTERS DESCRIBED IN SUCH COMPLAINT. Upon receipt of the physician's answer or at the conclusion of ~~twenty~~ THIRTY days, WHICHEVER OCCURS FIRST, ~~if no answer has been received, the matter shall be referred to one panel acting as an inquiry panel for that particular case, referred to in this subsection (4) as the "inquiry panel", for investigation. The investigation~~ THE INQUIRY PANEL MAY TAKE FURTHER ACTION AS SET FORTH IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (a).

(II) THE INQUIRY PANEL MAY THEN CONDUCT A FURTHER INVESTIGATION, WHICH may be made by one or more members of the inquiry panel, ~~by~~ one or more physicians who are not members of the board, ~~by~~ a member of the staff of the board, ~~or by~~ a professional investigator, OR ANY OTHER PERSON OR ORGANIZATION as the inquiry panel directs. ~~and it~~ ANY SUCH INVESTIGATION shall be entirely informal.

(b) The board shall cause an investigation to be made when the board is informed of:

(II) Disciplinary actions taken as a result of a professional review proceeding pursuant to part 1 of article 36.5 of this title against a physician. SUCH DISCIPLINARY ACTIONS SHALL BE PROMPTLY REPORTED TO THE BOARD.

(c) On completion of an investigation the inquiry panel shall make a finding that:

(II.5) The investigation discloses an instance of conduct which ~~in the opinion of the inquiry panel~~, does not warrant formal action by the board and should be dismissed but in which the inquiry panel has noticed indications of possible errant conduct by the licensee that could lead to serious consequences if not corrected. In ~~which~~ SUCH A case, a confidential letter of concern shall be sent to the physician against whom a THE complaint was made. ~~If the board learns of second or subsequent actions of the same or similar nature by the licensee, the board shall send a letter of admonition to the physician, and such letter need not remain confidential.~~

(5) (a) ~~All formal complaints seeking disciplinary action against a physician shall be filed with the board. A formal complaint shall set forth the charges with sufficient particularity as to inform the physician clearly and specifically of the acts of unprofessional conduct with which he is charged.~~

(b) ~~Upon the filing of a formal complaint, the board shall issue a citation, together with a copy of the complaint attached thereto. The citation shall require said physician to file with the board, within twenty days after service thereof, a written answer to the complaint. Such citation and complaint may be served by certified mail, return receipt requested, addressed to the physician at his last registered or known post-office address. The return receipt signed by the physician complained of shall be proof of service thereof. In the event that the physician refuses to accept such certified mail and sign the receipt therefor, the citation and a copy of the complaint may be served upon him as other process and proof thereof are made, all as provided in rule 4 of the Colorado rules of civil procedure. The time to answer shall~~

commence from the date of service.

(c) ~~It is the duty of the physician so served with such citation to file with the board his answer to the complaint in which he shall admit or deny the material allegations thereof and shall set forth any affirmative defenses he may have. He may include in his answer any request for a more particular statement of the alleged acts of unprofessional conduct or may raise any other objections, including a plea that the complaint does not charge unprofessional conduct warranting the imposition of discipline.~~

(d) ~~If the physician so charged fails to answer the complaint as provided in paragraph (c) of this subsection (5) or fails to appear at the hearing after receiving due notice of the time and place thereof, the panel to which the hearings function has been assigned in that particular case, referred to in this subsection (5) as the "hearings panel", may proceed to hear the complaint and make its findings and recommendations as provided in this subsection (5).~~

(e) ~~ALL FORMAL COMPLAINTS SHALL BE HEARD AND DETERMINED IN ACCORDANCE WITH PARAGRAPH (f) OF THIS SUBSECTION (5) AND SECTION 24-4-105, C.R.S. Except as provided in subsection (1) of this section, all formal hearings shall be conducted by the hearings panel. The physician may be present in person and by counsel, if he so desires DESIRED, to offer evidence and be heard in his OR HER OWN defense. At formal hearings, the witnesses shall be sworn and a complete record shall be made of all proceedings had and testimony. taken. Hearings on formal complaints shall be conducted in accordance with paragraph (f) of this subsection (5) and the applicable provisions of section 24-4-105, C.R.S.~~

(g) (II) ~~If it is found that the charges are unfounded and unproven, the hearings panel, or an administrative law judge sitting in lieu of the hearings panel pursuant to subsection (1) of this section, shall enter an order dismissing the complaint. whereupon, the matter shall be terminated. but any person who has filed a complaint in the proceedings who desires to have the matter of dismissal of the complaint reviewed may seek such review pursuant to the provisions of section 12-36-119.~~

(III) ~~If the hearings panel finds the charges proven and orders that discipline be imposed it shall also determine the extent of such discipline, WHICH SHALL BE in the form of a letter of admonition, private censure, public censure, suspension for a definite or indefinite period, or revocation of license to practice. In any IN DETERMINING APPROPRIATE DISCIPLINARY ACTION, THE HEARINGS PANEL SHALL FIRST CONSIDER SANCTIONS THAT ARE NECESSARY TO PROTECT THE PUBLIC. ONLY AFTER THE PANEL HAS CONSIDERED SUCH SANCTIONS MAY IT CONSIDER AND ORDER REQUIREMENTS DESIGNED TO REHABILITATE THE LICENSEE OR APPLICANT. If discipline other than revocation of a license to practice IS IMPOSED, the hearings panel may also order that the physician be granted probation and allowed to continue to practice during the period of such probation. The hearings panel may also include in any disciplinary order which allows the physician to continue to practice such conditions as said THE panel may deem appropriate to assure that the physician is physically, mentally, morally, and otherwise qualified to practice medicine in accordance with generally accepted professional standards of practice, including any or all of the following:~~

(9) (a) If the board has reasonable cause to believe that a person licensed to practice medicine in this state is unable to practice medicine OR THAT A PERSON CERTIFIED TO PRACTICE AS A PHYSICIAN ASSISTANT IN THIS STATE IS UNABLE TO PRACTICE with reasonable skill and safety to patients because of a condition described in section 12-36-117 (1) (i) or (1) (o) it may require such licensee OR PHYSICIAN ASSISTANT to submit to mental or physical examinations by physicians designated by the board. ~~Upon the failure of such~~ If A licensee OR PHYSICIAN ASSISTANT FAILS to submit to such mental or physical examinations, ~~unless due to circumstances beyond his control,~~ the board may suspend such licensee's license to practice medicine in this state THE LICENSE OR CERTIFICATE until such time as he submits to the required examinations ARE CONDUCTED.

(b) Every person licensed to practice medicine OR CERTIFIED TO PRACTICE AS A PHYSICIAN ASSISTANT in this state shall be deemed, by so practicing or by applying for annual registration of his SUCH PERSON'S license to practice medicine in this state, OR CERTIFICATE, to have ~~given his consent~~ CONSENTED to submit to mental or physical examinations when directed in writing by the board. ~~and,~~ Further, SUCH PERSON SHALL BE DEEMED to have waived all objections to the admissibility of the examining physician's testimony or examination reports on the ground of privileged communication. SUBJECT TO APPLICABLE FEDERAL LAW, SUCH PHYSICIAN OR PHYSICIAN ASSISTANT SHALL BE DEEMED TO HAVE WAIVED ALL OBJECTIONS TO THE PRODUCTION OF MEDICAL RECORDS TO THE BOARD FROM HEALTH CARE PROVIDERS WHICH MAY BE NECESSARY FOR THE EVALUATIONS DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (9).

(12) (a) ~~The executive director of the department of regulatory agencies may direct the board to conduct an investigation of a person licensed to practice medicine about whom the executive director has received complaints:~~

(b) ~~The board, within sixty days, shall accept or reject the directive of the executive director under paragraph (a) of this subsection (12), and the board shall notify the executive director of its decision. If the board rejects the investigation or if, upon review, the executive director and the attorney general find that the board has not proceeded with a thorough investigation, the executive director may then cause an investigation to be made of the complaints presented to him; but no new investigation shall be made by the executive director for the sole reason of disagreement with the findings and conclusions of the board. In any investigation conducted by the executive director pursuant to this paragraph (b), the executive director may utilize the staff, records, and moneys of the board. After an investigation and, if necessary, a hearing, the executive director shall submit to the board the findings of fact and conclusions of law for further action.~~

(c) ~~Except as specifically provided in this subsection (12), actions taken by the executive director are subject to the limitations imposed by section 24-1-105 (1), C.R.S., relating to the powers, duties, and functions of the board under a type 1 transfer.~~

SECTION 14. 12-36-119, Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-36-119. Appeal of final board actions. (1)(a) ~~The board, on its own motion~~

or upon application, at any time after the refusal to grant a license, the imposition of any discipline as provided in section 12-36-118, or the ordering of probation, as provided in section 12-36-118 (5) (g) (H), may reconsider its prior action and grant, reinstate, or restore such license or terminate probation, or reduce the severity of its prior disciplinary action. The taking of any such further action, or the holding of a hearing with respect thereto, shall rest in the sole discretion of the board.

(b) Upon the receipt of such application, it may be forwarded to the attorney general for such investigation as may be deemed necessary. A copy of the application and the report of investigation shall be forwarded to the hearings panel which shall consider the same and report its findings and conclusions. The proceedings shall be governed by the applicable provisions governing formal hearings in disciplinary proceedings. The attorney general may present evidence bearing upon the matters in issue, and the burden shall be upon the applicant seeking reinstatement to establish the averments of his application as specified in section 24-4-105 (7), C.R.S. No application for reinstatement or for modification of a prior order shall be accepted unless the applicant deposits with the board all amounts unpaid under any prior order of the board.

(2) The action of the board in refusing to grant a license, in taking any disciplinary action as provided in section 12-36-118, or in placing a physician on probation may be reviewed by the court of appeals by appropriate proceedings under section 24-4-106 (11), C.R.S. WHEN THE BOARD REFUSES TO GRANT A LICENSE, IMPOSES DISCIPLINARY ACTION PURSUANT TO SECTION 12-36-118, OR PLACES A PHYSICIAN ON PROBATION, SUCH ACTION MAY BE REVIEWED BY THE COURT OF APPEALS PURSUANT TO SECTION 24-4-106 (11), C.R.S., UNLESS THE PHYSICIAN HAS ACCEPTED A LICENSE SUBJECT TO TERMS OF PROBATION AS SET FORTH IN SECTION 12-36-116 (3).

SECTION 15. 12-36-122, Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-36-122. Internship - residency - registration. Any person serving an approved internship or an approved residency, as defined by this article, in a hospital in the state of Colorado THIS STATE may do so for an aggregate period of not to exceed UP TO six years without a license to practice medicine or the payment of any fee. Such person must register with the board in such manner and form as the board shall prescribe. Licensed physicians responsible for THE supervision of interns or residents in graduate training programs are required to SHALL PROMPTLY report to the board anything concerning an individual in such graduate medical education programs which would constitute a violation of this article. Such physicians shall also report to the board any individual who has not progressed satisfactorily in the program or who has been dismissed from the program for inadequate performance or ethical reasons.

SECTION 16. 12-36-123 (1) (a), (1) (b), (2) (a), (2) (b), and (3), Colorado Revised Statutes, 1991 Repl. Vol., are amended to read:

12-36-123. Procedure - registration - fees. (1) (a) The board shall establish procedures for the maintenance of licensee lists and the establishment of renewal fees and schedules, which fees and schedules shall be established subject to the provisions of section 24-34-102 (8), C.R.S. Every licensee AND EVERY CERTIFIED PHYSICIAN

ASSISTANT shall pay the ~~secretary~~ BOARD a registration fee to be determined and collected pursuant to section 24-34-105, C.R.S., and shall obtain a registration certificate for the current ~~calendar year~~ RENEWAL PERIOD.

~~(b) A licensee desiring to obtain an annual registration certificate shall submit the information necessary to show that he has fulfilled the board's continuing medical education requirements pursuant to paragraph (c) of this subsection (1). Any licensee aggrieved by a decision relating to such continuing education requirements may ask the executive director of the department of regulatory agencies to review such requirements in accordance with the procedures established by section 24-34-102 (11), C.R.S. THE BOARD SHALL DESIGN A QUESTIONNAIRE TO ACCOMPANY THE RENEWAL FORM FOR THE PURPOSE OF DETERMINING WHETHER A LICENSEE HAS ACTED IN VIOLATION OF THIS ARTICLE OR BEEN DISCIPLINED FOR ANY ACTION THAT MIGHT BE CONSIDERED A VIOLATION OF THIS ARTICLE OR MIGHT MAKE THE LICENSEE UNFIT TO PRACTICE MEDICINE WITH REASONABLE CARE AND SAFETY. IF AN APPLICANT FAILS TO ANSWER THE QUESTIONNAIRE ACCURATELY, SUCH FAILURE SHALL CONSTITUTE UNPROFESSIONAL CONDUCT UNDER SECTION 12-36-117 (1) (aa).~~

~~(2) (a) The secretary shall mail to each such licensee at his last address as shown by the records of the board, during December of each year, notice of the foregoing provisions together with such form of application for registration as may be prescribed by the board. Failure of any licensee~~ THE BOARD SHALL MAIL NOTICE OF THE PROVISIONS OF THIS SECTION, WITH THE APPLICATION FOR REGISTRATION PRESCRIBED BY THE BOARD, TO EACH LICENSEE AT THE LAST ADDRESS SHOWN ON THE BOARD'S RECORDS. SUCH MAILING SHALL BE MADE IN ACCORDANCE WITH THE RENEWAL SCHEDULE ESTABLISHED PURSUANT TO SECTION 24-34-102 (8), C.R.S. IF A LICENSEE OR CERTIFIED PHYSICIAN ASSISTANT FAILS to pay the registration fee prescribed by subsection (1) of this section, ~~means that the license has lapsed, and the name of any lapsed licensee~~ OR CERTIFICATE OF SUCH LICENSEE OR CERTIFICATE HOLDER SHALL LAPSE AND THE NAME OF THE LICENSEE OR CERTIFICATE HOLDER shall be omitted from such list.

~~(b) The board shall establish a questionnaire to accompany the renewal form. Said questionnaire shall be designed to determine if the licensee has acted in violation of or has been disciplined for actions that might be construed as violations of this article or that might make the licensee unfit to practice medicine with reasonable care and safety. Failure of the applicant to answer the questionnaire accurately shall be considered unprofessional conduct as specified in section 12-36-117. WHEN A LICENSEE'S LICENSE LAPSES, THE LICENSEE MAY FILE A BOARD-APPROVED APPLICATION FOR REINSTATEMENT WITH THE BOARD, AND THE LICENSE SHALL BE REINSTATED SUBJECT TO PAYMENT TO THE BOARD OF THE RENEWAL FEE AND A REINSTATEMENT FEE DETERMINED BY THE BOARD PURSUANT TO SECTION 24-34-105, C.R.S. IF CHARGES ARE MADE AGAINST THE LICENSEE PURSUANT TO SECTION 12-36-118, THE BOARD SHALL DEFER ACTION ON THE PENDING APPLICATION FOR REINSTATEMENT AND PROCEED WITH A HEARING ON SUCH CHARGES IN ACCORDANCE WITH SECTION 12-36-118. AFTER SUCH HEARING, THE BOARD SHALL REINSTATE, FURTHER SUSPEND, OR REVOKE SUCH LICENSE. THE BOARD SHALL NOT REINSTATE ANY LICENSE TO PRACTICE MEDICINE WHICH HAS LAPSED FOR MORE THAN TWO YEARS UNLESS THE APPLICANT DEMONSTRATES CONTINUED PROFESSIONAL COMPETENCE IN THE MANNER PRESCRIBED BY THE BOARD.~~

~~(3) Upon application made to the board by any such licensee on a form prescribed by the board, his license shall be reinstated, subject to the payment to the board of the current renewal fee and a reinstatement fee determined by the board pursuant to section 24-34-105, C.R.S. If, before or after such application for reinstatement has been made, charges are preferred against the licensee by the board or by any person, as provided by section 12-36-118, the board shall defer action on the pending application for reinstatement, if any, and proceed with a hearing on such charges in accordance with section 12-36-118 and thereupon shall reinstate, further suspend, or revoke such license. No license to practice medicine which has lapsed for more than two years shall be reinstated unless the applicant demonstrates to the board his continued professional competence in such manner as prescribed by the board.~~

SECTION 17. 12-36-123.5 (3.5), (4), and (5), Colorado Revised Statutes, 1991 Repl. Vol., as amended, are amended to read:

12-36-123.5. Physicians' and physician assistants' peer health assistance fund.

~~(3.5) (a) No later than June 30, 1994, the board shall transfer the balance in the fund, if any, to the administering entity chosen by the board pursuant to paragraphs (d) and (e) of this subsection (3.5).~~

(b) Effective July 1, 1994, as a condition of licensure in this state, AND EFFECTIVE JULY 1, 1995, AS A CONDITION OF PHYSICIAN ASSISTANT CERTIFICATION, every RENEWAL applicant shall pay to the administering entity that has been selected by the board pursuant to the provisions of paragraphs (d) and (e) of this subsection (3.5) an amount set by the board not to exceed twenty-eight dollars per year, which amount shall be used to support designated providers that have been selected by the board to provide assistance to physicians AND PHYSICIAN ASSISTANTS needing help in dealing with physical, emotional, or psychological problems which may be detrimental to their ability to practice medicine.

(c) The board shall select one or more peer health assistance programs as designated providers. To be eligible for designation by the board a peer health assistance program shall:

(I) Provide for the education of physicians AND PHYSICIAN ASSISTANTS with respect to the recognition and prevention of physical, emotional, and psychological problems and provide for intervention when necessary or under circumstances which may be established by rules promulgated by the board;

(II) Offer assistance to a physician OR PHYSICIAN ASSISTANT in identifying physical, emotional, or psychological problems;

(III) Evaluate the extent of physical, emotional, or psychological problems and refer the physician OR PHYSICIAN ASSISTANT for appropriate treatment;

(IV) Monitor the status of a physician OR PHYSICIAN ASSISTANT who has been referred for treatment;

(V) Provide counseling and support for the physician OR PHYSICIAN ASSISTANT and for the family of any physician OR PHYSICIAN ASSISTANT referred for treatment;

(VI) Agree to receive referrals from the board;

(VII) Agree to make their services available to all licensed Colorado physicians AND CERTIFIED COLORADO PHYSICIAN ASSISTANTS.

(d) The administering entity shall be a qualified, nonprofit private foundation that is qualified under section 501 (c) (3) of the federal "Internal Revenue Code of 1986", as amended, and shall be dedicated to providing support for charitable, benevolent, educational, and scientific purposes that are related to medicine, medical education, medical research and science, and other medical charitable purposes.

(e) The responsibilities of the administering entity shall be:

(I) To collect the required annual payments;

(II) To verify to the board, in a manner acceptable to the board, the names of all physician AND PHYSICIAN ASSISTANT applicants who have paid the fee set by the board;

(III) To distribute the moneys collected, less expenses, to the approved designated provider, as directed by the board;

(IV) To provide an annual accounting to the board of all amounts collected, expenses incurred, and amounts disbursed; and

(V) To post a surety performance bond in an amount specified by the board to secure performance under the requirements of this section. The administering entity may recover the actual administrative costs incurred in performing its duties under this section in an amount not to exceed ten percent of the total amount collected.

(f) NO LATER THAN JUNE 30, 1994, THE BOARD SHALL TRANSFER THE BALANCE IN THE FUND, IF ANY, TO THE ADMINISTERING ENTITY CHOSEN BY THE BOARD PURSUANT TO PARAGRAPHS (d) AND (e) OF THIS SUBSECTION (3.5).

~~(4) No grant shall be made by the board pursuant to subsection (3) of this section until sufficient moneys have been credited to the physicians' peer health assistance fund in accordance with subsection (2) of this section.~~

(5) Nothing in this section shall be construed to create any liability on the board or the state of Colorado for the actions of the board in making grants to peer assistance programs, and no civil action may be brought or maintained against the board or the state for an injury alleged to have been the result of the activities of any state-funded peer assistance program or the result of an act or omission of a physician OR PHYSICIAN ASSISTANT participating in or referred by a state-funded peer assistance program.

SECTION 18. 12-36-125 (3), Colorado Revised Statutes, 1991 Repl. Vol., is repealed as follows:

12-36-125. Division of fees - independent advertising or marketing agent. ~~(3) The board shall not have the authority to regulate, directly or indirectly,~~

~~advertising or marketing activities of independent advertising or marketing agents except as provided in this section. The board may, in the name of the people of the state of Colorado, apply for an injunction in the district court to enjoin any independent advertising or marketing agent from the use of advertising or marketing which the court finds on the basis of the evidence presented by the board to be misleading, deceptive, or false or otherwise in violation of section 12-36-128.5; except that a licensee shall not be subject to discipline by the board, injunction, or prosecution in the court under this article or any other law for advertising or marketing by an independent advertising or marketing agent if the factual information which the licensee provides to the advertising or marketing agent is accurate and not misleading, deceptive, or false. and the licensee has otherwise complied with the provisions of section 12-36-128.5.~~

SECTION 19. 12-36-129 (5) (a), Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-36-129. Violation - penalties. (5) (a) No specialty society, ~~or~~ association of physicians, ~~whether through by-laws, rules, regulations, or otherwise, and no~~ OR licensed physician may discriminate against any ~~other~~ person licensed to practice medicine if such physician is ~~otherwise~~ qualified for membership ~~and,~~ IN THE SPECIALTY SOCIETY OR ASSOCIATION. If board certification or ~~board~~ eligibility IN A SPECIALTY IS a membership requirement, ~~such board~~ certification or ~~board~~ eligibility ~~in a specialty must be granted by either the American board of medical specialists SPECIALTIES or the American osteopathic association based upon his~~ THE APPLICANT'S training ~~either as a doctor of medicine or as a doctor of osteopathy, with respect to any aspect of membership in such specialty society or association of physicians IS SUFFICIENT.~~ Notwithstanding any other remedies provided under this article, ~~any~~ A licensed physician ~~so~~ WHO IS discriminated against IN VIOLATION OF THIS SECTION shall have a private right of action ~~for damages against any such~~ THE licensed physician ~~and against the~~ OR specialty society or association ~~of physicians~~ THAT SO DISCRIMINATES.

SECTION 20. 12-36.5-104 (4) (f), Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-36.5-104. Establishment of professional review committees - function. (4) Any professional review committee established by any of the following organizations, entities, or professional societies shall be an approved professional review committee under this article if it operates pursuant to written bylaws, policies, or procedures which are in compliance with this article and which have been approved by its governing board:

(f) A ~~Colorado~~ corporation authorized to insure physicians pursuant to article 3 of title 10, C.R.S., or any other corporation authorized to insure such physicians in this state when designated by the board of medical examiners under subsection (5) of this section;

SECTION 21. 12-36.5-104 (7), Colorado Revised Statutes, 1991 Repl. Vol., is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

12-36.5-104. Establishment of professional review committees - function.

(7) The written bylaws, policies, or procedures of any professional review committee shall provide for at least the following:

(f) A COPY OF ANY RECOMMENDATIONS MADE PURSUANT TO PARAGRAPH (d) OF THIS SUBSECTION (7) SHALL BE PROMPTLY FORWARDED TO THE BOARD OF MEDICAL EXAMINERS.

SECTION 22. 24-34-104 (24) (b), Colorado Revised Statutes, 1988 Repl. Vol., is repealed as follows:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (24) The following boards in the division of registrations shall terminate on July 1, 1995:

(b) ~~The Colorado state board of medical examiners, created by article 36 of title 12, C.R.S.;~~

SECTION 23. 24-34-104, Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (41) THE FOLLOWING AGENCIES, FUNCTIONS, OR BOTH, SHALL TERMINATE ON JULY 1, 2010:

(a) THE FOLLOWING BOARD IN THE DIVISION OF REGISTRATIONS IN THE DEPARTMENT OF REGULATORY AGENCIES:

(I) THE COLORADO STATE BOARD OF MEDICAL EXAMINERS, CREATED BY ARTICLE 36 OF TITLE 12, C.R.S.

SECTION 24. 13-4-102 (2) (f), Colorado Revised Statutes, 1987 Repl. Vol., is amended to read:

13-4-102. Jurisdiction. (2) The court of appeals shall have initial jurisdiction to:

(f) Review actions of the state board of medical examiners in refusing to grant or in revoking or suspending a license or in placing the holder thereof on probation, as provided in section ~~12-36-119 (2), C.R.S.~~ 12-36-119, C.R.S.;

SECTION 25. Repeal. 12-36-128.5, Colorado Revised Statutes, 1991 Repl. Vol., is repealed.

SECTION 26. Effective date - applicability. This act shall take effect July 1, 1995, and shall apply to acts occurring on or after said date.

SECTION 27. 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 31, 1995