

CHAPTER 84

PROFESSIONS AND OCCUPATIONS

SENATE BILL 99-046

BY SENATORS Epps, Andrews, Dennis, and Evans;
also REPRESENTATIVES Morrison, Alexander, and Chavez.

AN ACT

CONCERNING THE RESTRUCTURING OF THE STATE BOARD OF NURSING, AND, IN CONNECTION THEREWITH, CREATING PANELS TO INVESTIGATE, ADJUDICATE, AND PERFORM LICENSING FUNCTIONS.

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

SECTION 1. Legislative declaration. The general assembly hereby declares that the people of this state must be protected from the unauthorized, unqualified, and improper performance of services by individuals in the practice of nursing and the practice of a psychiatric technician. The general assembly further recognizes that the state board of nursing is faced with a growing number of complaints filed against nurses and psychiatric technicians that must be investigated and adjudicated. The general assembly hereby finds that restructuring the state board of nursing and dividing the board into panels will better serve the public by encouraging more efficient and effective investigation and adjudication of complaints filed against nurses and psychiatric technicians.

SECTION 2. 12-38-103, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-38-103. Definitions. As used in this article, unless the context otherwise requires:

(7.8) "PANEL" MEANS EITHER PANEL OF THE BOARD CREATED IN SECTION 12-38-116.5 (1).

SECTION 3. 12-38-104, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-38-104. State board of nursing created. (1.5) THE BOARD SHALL ELECT

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

ANNUALLY FROM ITS MEMBERS A PRESIDENT.

SECTION 4. 12-38-108 (1) (b), (1) (h), and (1.1) (a), Colorado Revised Statutes, are amended, and the said 12-38-108 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

12-38-108. Powers and duties of the board. (1) The board has the following powers and duties:

(b) (I) To examine, license, and renew licenses of qualified applicants and to grant to such applicants temporary licenses and permits to engage in the practice of practical nursing and professional nursing in this state within the limitations imposed by this article.

(II) IN ORDER TO FACILITATE THE LICENSURE OF QUALIFIED APPLICANTS, THE BOARD MAY, IN ITS DISCRETION, ASSIGN LICENSING FUNCTIONS IN ACCORDANCE WITH THIS ARTICLE TO EITHER PANEL. ANY ACTION TAKEN BY A QUORUM OF THE ASSIGNED PANEL SHALL CONSTITUTE ACTION BY THE BOARD.

(b.5) TO REVOKE, SUSPEND, WITHHOLD, LIMIT THE SCOPE OF, OR REFUSE TO RENEW ANY LICENSE, TO PLACE ON PROBATION A LICENSEE OR TEMPORARY LICENSEE, OR TO ISSUE A LETTER OF ADMONITION TO A LICENSEE IN ACCORDANCE WITH THE PROCEDURES SET FORTH IN SECTION 12-38-116.5 UPON PROOF THAT SUCH LICENSEE HAS VIOLATED GROUNDS FOR DISCIPLINE IN SECTION 12-38-117 OR 12-42-113.

(h) To INVESTIGATE AND conduct hearings upon charges for the discipline of nurses in accordance with the provisions of article 4 of title 24, C.R.S., and to impose disciplinary sanctions as provided in this article;

(1.1) (a) The board shall appoint advisory committees pursuant to section 12-38-109 of at least three psychiatric technicians to advise the board on matters pertaining to psychiatric technician testing. THE BOARD SHALL, IN ITS DISCRETION, ASSIGN MATTERS REFERRED TO THE BOARD BY THE PSYCHIATRIC TECHNICIANS ADVISORY COMMITTEE TO A PANEL FOR CONSIDERATION AND IMPLEMENTATION, IF NECESSARY.

SECTION 5. 12-38-108, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-38-108. Powers and duties of the board. (3) THE BOARD SHALL, IN ITS DISCRETION, ASSIGN MATTERS REFERRED TO THE BOARD BY THE NURSE AIDE ADVISORY COMMITTEE, CREATED PURSUANT TO SECTION 12-38.1-110, TO A PANEL FOR CONSIDERATION AND IMPLEMENTATION, IF NECESSARY.

SECTION 6. Article 38 of title 12, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

12-38-116.5. Disciplinary procedures of the board - inquiry and hearings panels. (1) (a) THE PRESIDENT OF THE BOARD SHALL DIVIDE THE OTHER TEN MEMBERS OF THE BOARD INTO TWO PANELS OF FIVE MEMBERS EACH. MEMBERS REPRESENTING THE THREE DIFFERENT CATEGORIES OF MEMBERSHIP (LICENSED

PRACTICAL NURSES, PROFESSIONAL NURSES, AND PERSONS NOT LICENSED, EMPLOYED, OR IN ANY WAY CONNECTED WITH, OR WITH ANY FINANCIAL INTEREST IN, ANY HEALTH CARE FACILITY, AGENCY, OR INSURER) SHALL BE DIVIDED BETWEEN THE TWO PANELS AS EQUALLY AS POSSIBLE.

(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 A PANEL ACTING AS AN INQUIRY PANEL TAKE ANY PART IN THE CONSIDERATION OF A FORMAL COMPLAINT INVOLVING THE SAME MATTER.

(c) ALL MATTERS REFERRED TO ONE PANEL FOR INVESTIGATION SHALL BE HEARD, IF REFERRED FOR FORMAL HEARING, BY THE OTHER PANEL OR A COMMITTEE OF SUCH PANEL. HOWEVER, IN ITS DISCRETION, EITHER INQUIRY PANEL MAY ELECT TO REFER A CASE FOR FORMAL HEARING TO A QUALIFIED ADMINISTRATIVE LAW JUDGE, IN LIEU OF A HEARINGS PANEL OF THE BOARD, FOR AN INITIAL DECISION PURSUANT TO SECTION 24-4-105, C.R.S.

(d) THE INITIAL DECISION OF 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 WITH THE HEARINGS PANEL THAT 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.

(2) INVESTIGATIONS SHALL BE UNDER THE SUPERVISION OF THE PANEL TO WHICH THEY ARE ASSIGNED. THE PERSONS MAKING SUCH INVESTIGATION SHALL REPORT THE RESULTS THEREOF TO THE ASSIGNING PANEL FOR APPROPRIATE ACTION.

(3) (a) (I) FOR THE PURPOSES OF THIS SECTION:

(A) "GROUNDS FOR DISCIPLINE" INCLUDES GROUNDS UNDER SECTIONS 12-38-117 AND 12-42-113.

(B) "LICENSE" INCLUDES LICENSURE FOR A PRACTICAL NURSE OR PROFESSIONAL NURSE AND LICENSURE FOR A PSYCHIATRIC TECHNICIAN.

(C) "NURSE", "LICENSEE", OR "RESPONDENT" INCLUDES A PRACTICAL NURSE, A PROFESSIONAL NURSE, AND A PSYCHIATRIC TECHNICIAN AS DESCRIBED IN SECTION 12-42-102 (4).

(D) "PRACTICE OF NURSING" INCLUDES THE PRACTICE OF PRACTICAL NURSING, THE PRACTICE OF PROFESSIONAL NURSING, AND THE PRACTICE AS A PSYCHIATRIC TECHNICIAN.

(II) WRITTEN COMPLAINTS RELATING TO THE CONDUCT OF A NURSE LICENSED OR AUTHORIZED TO PRACTICE NURSING 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 NURSE COMPLAINED OF SHALL BE GIVEN NOTICE, UNLESS THE BOARD DETERMINES THE COMPLAINT TO BE WITHOUT MERIT OF INVESTIGATION, BY FIRST-CLASS MAIL, AND THE

NOTICE SHALL STATE THE NATURE OF THE COMPLAINT AND SHALL STATE THAT THE FAILURE TO RESPOND IN A MATERIALLY FACTUAL AND TIMELY MANNER CONSTITUTES GROUNDS FOR DISCIPLINE. THE NURSE COMPLAINED OF SHALL BE GIVEN THIRTY DAYS TO ANSWER OR EXPLAIN IN WRITING THE MATTERS DESCRIBED IN SUCH COMPLAINT. UPON RECEIPT OF THE NURSE'S ANSWER OR AT THE CONCLUSION OF THIRTY DAYS, WHICHEVER OCCURS FIRST, THE INQUIRY PANEL MAY TAKE FURTHER ACTION AS SET FORTH IN SUBPARAGRAPH (III) OF THIS PARAGRAPH (a).

(III) UPON RECEIPT OF THE NURSE'S ANSWER OR THE CONCLUSION OF THIRTY DAYS, THE INQUIRY PANEL MAY CONDUCT A FURTHER INVESTIGATION THAT MAY BE MADE BY ONE OR MORE MEMBERS OF THE INQUIRY PANEL, ONE OR MORE NURSES WHO ARE NOT MEMBERS OF THE BOARD, A MEMBER OF THE STAFF OF THE BOARD, A PROFESSIONAL INVESTIGATOR, OR ANY OTHER PERSON OR ORGANIZATION AS THE INQUIRY PANEL DIRECTS. ANY SUCH INVESTIGATION SHALL BE ENTIRELY INFORMAL.

(b) THE BOARD SHALL CAUSE AN INVESTIGATION TO BE MADE WHEN THE BOARD IS INFORMED OF:

(I) DISCIPLINARY ACTION TAKEN BY AN EMPLOYER OF A NURSE AGAINST THE NURSE OR RESIGNATION IN LIEU OF A DISCIPLINARY ACTION FOR CONDUCT THAT CONSTITUTES GROUNDS FOR DISCIPLINE UNDER SECTION 12-38-117 OR 12-42-113. SUCH EMPLOYER SHALL REPORT SUCH DISCIPLINARY ACTION OR RESIGNATION TO THE BOARD.

(II) AN INSTANCE OF A MALPRACTICE SETTLEMENT OR JUDGMENT AGAINST A NURSE.

(III) A NURSE WHO HAS NOT TIMELY RENEWED HIS OR HER LICENSE AND THE NURSE IS ACTIVELY ENGAGED IN THE PRACTICE OF NURSING.

(c) ON COMPLETION OF AN INVESTIGATION, THE INQUIRY PANEL SHALL MAKE A FINDING THAT:

(I) THE COMPLAINT IS WITHOUT MERIT AND NO FURTHER ACTION NEED BE TAKEN;

(II) THERE IS NO REASONABLE CAUSE TO WARRANT FURTHER ACTION ON THE COMPLAINT;

(III) AN INSTANCE OF CONDUCT OCCURRED THAT DOES NOT WARRANT FORMAL ACTION BY THE BOARD AND THAT SHOULD BE DISMISSED, BUT THAT INDICATIONS OF POSSIBLE CONDUCT BY THE NURSE WERE NOTED THAT COULD LEAD TO SERIOUS CONSEQUENCES IF NOT CORRECTED. IN SUCH A CASE, A CONFIDENTIAL LETTER OF CONCERN SHALL BE SENT TO THE NURSE AGAINST WHOM THE COMPLAINT WAS MADE.

(IV) AN INSTANCE OF GROUNDS FOR DISCIPLINE OCCURRED THAT, IN THE OPINION OF THE INQUIRY PANEL, DOES NOT WARRANT FORMAL ACTION BY THE BOARD BUT THAT SHOULD NOT BE DISMISSED AS BEING WITHOUT MERIT. IN SUCH CASE, A CERTIFIED LETTER OF ADMONITION, RETURN RECEIPT REQUESTED, SHALL BE SENT TO THE NURSE AGAINST WHOM A COMPLAINT WAS MADE AND A COPY THEREOF TO THE PERSON MAKING THE COMPLAINT. WHEN A LETTER OF ADMONITION IS SENT BY THE INQUIRY PANEL TO A NURSE COMPLAINED AGAINST, SUCH NURSE SHALL BE ADVISED THAT THE NURSE HAS THE RIGHT TO REQUEST IN WRITING, WITHIN TWENTY DAYS

AFTER RECEIPT OF THE LETTER, THAT FORMAL DISCIPLINARY PROCEEDINGS BE INITIATED AGAINST THE NURSE TO ADJUDICATE THE PROPRIETY OF THE CONDUCT UPON WHICH THE LETTER OF ADMONITION IS BASED. IF SUCH REQUEST IS TIMELY MADE, THE LETTER OF ADMONITION SHALL BE DEEMED VACATED, AND THE MATTER SHALL BE PROCESSED BY MEANS OF FORMAL DISCIPLINARY PROCEEDINGS.

(V) FACTS WERE DISCLOSED THAT WARRANT FURTHER PROCEEDINGS BY FORMAL COMPLAINT, AS PROVIDED IN SUBSECTION (4) OF THIS SECTION, AND THAT THE COMPLAINT SHOULD BE REFERRED TO THE ATTORNEY GENERAL FOR PREPARATION AND FILING OF A FORMAL COMPLAINT.

(4) (a) ALL FORMAL COMPLAINTS SHALL BE HEARD AND DETERMINED IN ACCORDANCE WITH PARAGRAPH (b) OF THIS SUBSECTION (4) 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 NURSE MAY BE PRESENT IN PERSON OR REPRESENTED BY COUNSEL, OR BOTH, IF SO DESIRED, TO OFFER EVIDENCE AND BE HEARD IN THE NURSE'S OWN DEFENSE. AT FORMAL HEARINGS, THE WITNESSES SHALL BE SWORN AND A COMPLETE RECORD SHALL BE MADE OF ALL PROCEEDINGS AND TESTIMONY.

(b) EXCEPT AS PROVIDED IN SUBSECTION (1) OF THIS SECTION, AN ADMINISTRATIVE LAW JUDGE SHALL PRESIDE AT THE HEARING AND SHALL ADVISE THE HEARINGS PANEL ON ALL SUCH LEGAL MATTERS IN CONNECTION WITH THE HEARING AS THE PANEL MAY REQUEST. THE ADMINISTRATIVE LAW JUDGE SHALL PROVIDE SUCH ADVICE OR ASSISTANCE AS THE HEARINGS PANEL MAY REQUEST IN CONNECTION WITH THE PREPARATION OF ITS FINDINGS AND RECOMMENDATIONS OR CONCLUSIONS. SUCH ADMINISTRATIVE LAW JUDGE SHALL HAVE THE AUTHORITY TO ADMINISTER OATHS AND AFFIRMATIONS, SIGN AND ISSUE SUBPOENAS, AND PERFORM SUCH OTHER DUTIES AS THE HEARINGS PANEL MAY AUTHORIZE THE ADMINISTRATIVE LAW JUDGE TO PERFORM. SUCH ADMINISTRATIVE LAW JUDGE SHALL HAVE THE QUALIFICATIONS PROVIDED IN SECTION 24-30-1003 (2), C.R.S.

(c) (I) TO WARRANT A FINDING OF GROUNDS FOR DISCIPLINE, THE CHARGES SHALL BE ESTABLISHED AS SPECIFIED IN SECTION 24-4-105 (7), C.R.S. EXCEPT AS PROVIDED IN SUBSECTION (1) OF THIS SECTION, THE HEARINGS PANEL SHALL MAKE A REPORT OF ITS FINDINGS AND CONCLUSIONS THAT, WHEN APPROVED BY A MAJORITY OF THOSE MEMBERS OF THE HEARINGS PANEL WHO HAVE CONDUCTED THE HEARING PURSUANT TO PARAGRAPHS (a) AND (b) OF THIS SUBSECTION (4), SHALL BE THE ACTION OF THE BOARD.

(II) IF IT IS FOUND THAT THE CHARGES ARE 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.

(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 MAY BE IN THE FORM OF A LETTER OF ADMONITION REGARDING A LICENSE OR SUSPENSION FOR A DEFINITE OR INDEFINITE PERIOD, REVOCATION, OR NONRENEWAL OF A LICENSE TO PRACTICE. 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 SHALL IT CONSIDER AND ORDER REQUIREMENTS DESIGNED TO REHABILITATE THE NURSE. IF DISCIPLINE OTHER THAN REVOCATION OF A LICENSE TO PRACTICE IS IMPOSED, THE HEARINGS PANEL MAY ALSO ORDER THAT THE NURSE 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 THAT ALLOWS THE NURSE TO CONTINUE TO PRACTICE SUCH CONDITIONS AS THE PANEL MAY DEEM APPROPRIATE TO ASSURE THAT THE NURSE IS PHYSICALLY, MENTALLY, AND OTHERWISE QUALIFIED TO PRACTICE NURSING IN ACCORDANCE WITH GENERALLY ACCEPTED STANDARDS OF PRACTICE, INCLUDING ANY OF THE FOLLOWING:

(A) SUBMISSION BY THE RESPONDENT TO SUCH EXAMINATIONS AS THE HEARINGS PANEL MAY ORDER TO DETERMINE THE RESPONDENT'S PHYSICAL OR MENTAL CONDITION OR THE RESPONDENT'S PROFESSIONAL QUALIFICATIONS;

(B) THE TAKING BY THE RESPONDENT OF SUCH THERAPY OR COURSES OF TRAINING OR EDUCATION AS MAY BE NEEDED TO CORRECT DEFICIENCIES FOUND EITHER IN THE HEARING OR BY SUCH EXAMINATIONS;

(C) THE REVIEW OR SUPERVISION OF THE RESPONDENT'S PRACTICE OF NURSING AS MAY BE NECESSARY TO DETERMINE THE QUALITY OF THE RESPONDENT'S PRACTICE OF NURSING AND TO CORRECT DEFICIENCIES THEREIN; OR

(D) THE IMPOSITION OF RESTRICTIONS UPON THE NATURE OF THE RESPONDENT'S PRACTICE TO ASSURE THAT THE RESPONDENT DOES NOT PRACTICE BEYOND THE LIMITS OF THE RESPONDENT'S CAPABILITIES.

(IV) UPON THE FAILURE OF THE RESPONDENT TO COMPLY WITH ANY CONDITIONS IMPOSED BY THE HEARINGS PANEL PURSUANT TO SUBPARAGRAPH (III) OF THIS PARAGRAPH (c), THE HEARINGS PANEL MAY ORDER REVOCATION OR SUSPENSION OF THE RESPONDENT'S LICENSE TO PRACTICE IN THIS STATE UNTIL SUCH TIME AS THE RESPONDENT COMPLIES WITH SUCH CONDITIONS.

(V) IN MAKING ANY OF THE ORDERS PROVIDED IN SUBPARAGRAPHS (III) AND (IV) OF THIS PARAGRAPH (c), THE HEARINGS PANEL MAY TAKE INTO CONSIDERATION THE RESPONDENT'S PRIOR DISCIPLINARY RECORD. IF THE HEARINGS PANEL DOES TAKE INTO CONSIDERATION ANY PRIOR DISCIPLINE OF THE RESPONDENT, ITS FINDINGS AND RECOMMENDATIONS SHALL SO INDICATE.

(VI) IN ALL CASES OF REVOCATION, SUSPENSION, PROBATION, OR NONRENEWAL, THE BOARD SHALL ENTER IN ITS RECORDS THE FACTS OF SUCH REVOCATION, SUSPENSION, PROBATION, OR NONRENEWAL AND OF ANY SUBSEQUENT ACTION OF THE BOARD WITH RESPECT THERETO.

(d) THE ATTORNEY GENERAL SHALL PROSECUTE THOSE CHARGES THAT HAVE BEEN REFERRED TO THE OFFICE OF THE ATTORNEY GENERAL BY THE INQUIRY PANEL PURSUANT TO SUBPARAGRAPH (V) OF PARAGRAPH (c) OF SUBSECTION (3) OF THIS SECTION. THE BOARD MAY DIRECT THE ATTORNEY GENERAL TO PERFECT AN APPEAL.

(5) A MAJORITY OF THE MEMBERS OF THE BOARD, THREE MEMBERS OF THE INQUIRY PANEL, OR THREE MEMBERS OF THE HEARINGS PANEL SHALL CONSTITUTE A QUORUM.

THE ACTION OF A MAJORITY OF THOSE PRESENT COMPRISING SUCH QUORUM SHALL BE THE ACTION OF THE BOARD, THE INQUIRY PANEL, OR THE HEARINGS PANEL.

(6) UPON THE EXPIRATION OF ANY TERM OF SUSPENSION, THE LICENSE SHALL BE REINSTATED BY THE BOARD IF THE BOARD IS FURNISHED WITH EVIDENCE THAT THE NURSE HAS COMPLIED WITH ALL TERMS OF THE SUSPENSION. IF SUCH EVIDENCE SHOWS THE NURSE HAS NOT COMPLIED WITH ALL TERMS OF THE SUSPENSION, THE BOARD MAY REVOKE OR CONTINUE THE SUSPENSION OF THE LICENSE AT A HEARING, NOTICE OF WHICH AND THE PROCEDURE AT WHICH SHALL BE AS PROVIDED IN THIS SECTION.

(7) IN CASE ANY NURSE IS DETERMINED TO BE MENTALLY INCOMPETENT OR INSANE BY A COURT OF COMPETENT JURISDICTION AND A COURT ENTERS, PURSUANT TO PART 3 OR PART 4 OF ARTICLE 14 OF TITLE 15 OR SECTION 27-10-109 (4) OR 27-10-125, C.R.S., AN ORDER SPECIFICALLY FINDING THAT THE MENTAL INCOMPETENCY OR INSANITY IS OF SUCH A DEGREE THAT THE NURSE IS INCAPABLE OF CONTINUING THE PRACTICE OF NURSING, THE NURSE'S LICENSE SHALL AUTOMATICALLY BE SUSPENDED BY THE BOARD, AND, NOTWITHSTANDING ANY PROVISION OF THIS ARTICLE TO THE CONTRARY, SUCH SUSPENSION SHALL CONTINUE UNTIL THE NURSE IS FOUND BY SUCH COURT TO BE COMPETENT TO CONTINUE THE PRACTICE OF NURSING.

(8) (a) IF THE BOARD HAS REASONABLE CAUSE TO BELIEVE THAT A NURSE IS UNABLE TO PRACTICE NURSING WITH REASONABLE SKILL AND SAFETY TO PATIENTS BECAUSE OF A CONDITION DESCRIBED IN SECTION 12-38-117 (1) (i) OR (1) (j) OR SECTION 12-42-113 (1) (i) OR (1) (j), IT MAY REQUIRE SUCH NURSE TO SUBMIT TO MENTAL OR PHYSICAL EXAMINATIONS BY A PHYSICIAN OR OTHER LICENSED HEALTH CARE PROFESSIONAL DESIGNATED BY THE BOARD. IF A NURSE FAILS TO SUBMIT TO SUCH MENTAL OR PHYSICAL EXAMINATIONS, THE BOARD MAY SUSPEND THE NURSE'S LICENSE UNTIL THE REQUIRED EXAMINATIONS ARE CONDUCTED.

(b) EVERY NURSE SHALL BE DEEMED, BY SO PRACTICING OR BY APPLYING FOR RENEWAL REGISTRATION OF SUCH NURSE'S LICENSE, TO HAVE CONSENTED TO SUBMIT TO MENTAL OR PHYSICAL EXAMINATIONS WHEN DIRECTED IN WRITING BY THE BOARD. FURTHER, SUCH NURSE SHALL BE DEEMED TO HAVE WAIVED ALL OBJECTIONS TO THE ADMISSIBILITY OF THE EXAMINING PHYSICIAN'S OR OTHER LICENSED HEALTH CARE PROFESSIONAL'S TESTIMONY OR EXAMINATION REPORTS ON THE GROUND OF PRIVILEGED COMMUNICATION. SUBJECT TO APPLICABLE FEDERAL LAW, SUCH NURSE SHALL BE DEEMED TO HAVE WAIVED ALL OBJECTIONS TO THE PRODUCTION OF MEDICAL RECORDS TO THE BOARD FROM HEALTH CARE PROVIDERS THAT MAY BE NECESSARY FOR THE EVALUATIONS DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (8). NOTHING IN THIS SECTION SHALL PREVENT THE NURSE FROM SUBMITTING TO THE BOARD TESTIMONY OR EXAMINATION REPORTS OF A PHYSICIAN OR OTHER LICENSED HEALTH CARE PROFESSIONAL DESIGNATED BY THE NURSE TO A CONDITION DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (8) THAT MAY BE CONSIDERED BY THE BOARD IN CONJUNCTION WITH, BUT NOT IN LIEU OF, TESTIMONY AND EXAMINATION REPORTS OF THE PHYSICIAN OR LICENSED HEALTH CARE PROFESSIONAL DESIGNATED BY THE BOARD.

(c) THE RESULTS OF ANY MENTAL OR PHYSICAL EXAMINATION ORDERED BY THE BOARD SHALL NOT BE USED AS EVIDENCE IN ANY PROCEEDING OTHER THAN BEFORE THE BOARD AND SHALL NOT BE DEEMED A PUBLIC RECORD NOR MADE AVAILABLE TO

THE PUBLIC.

(d) THE BOARD MAY REQUIRE THAT A NURSE SUBMIT MEDICAL RECORDS FOR REVIEW IN CONJUNCTION WITH AN INVESTIGATION MADE PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (8); EXCEPT THAT SUCH RECORDS SHALL REMAIN CONFIDENTIAL AND SHALL BE REVIEWED BY THE BOARD ONLY TO THE EXTENT NECESSARY TO CONDUCT AN INVESTIGATION.

(9) EXCEPT WHEN A DECISION TO PROCEED WITH A DISCIPLINARY ACTION HAS BEEN AGREED UPON BY A MAJORITY OF AN INQUIRY PANEL AND A NOTICE OF FORMAL COMPLAINT IS DRAFTED AND SERVED ON THE LICENSEE BY FIRST-CLASS MAIL, INVESTIGATIONS, EXAMINATIONS, HEARINGS, MEETINGS, OR ANY OTHER PROCEEDINGS OF THE BOARD CONDUCTED PURSUANT TO THE PROVISIONS OF THIS SECTION SHALL BE EXEMPT FROM THE PROVISIONS OF THE OPEN RECORDS LAW, ARTICLE 72 OF TITLE 24, C.R.S., REQUIRING THAT PROCEEDINGS OF THE BOARD BE CONDUCTED PUBLICLY OR THAT THE MINUTES OR RECORDS OF THE BOARD WITH RESPECT TO ACTION OF THE BOARD TAKEN PURSUANT TO THE PROVISIONS OF THIS SECTION BE OPEN TO PUBLIC INSPECTION.

(10) A PHYSICIAN OR OTHER LICENSED HEALTH CARE PROFESSIONAL WHO, AT THE REQUEST OF THE BOARD, EXAMINES A NURSE SHALL BE IMMUNE FROM SUIT FOR DAMAGES BY THE NURSE EXAMINED IF THE EXAMINING PHYSICIAN OR EXAMINING LICENSED HEALTH CARE PROFESSIONAL CONDUCTED THE EXAMINATION AND MADE FINDINGS OR A DIAGNOSIS IN GOOD FAITH.

(11) ALL INVESTIGATIONS COMPLETED OR IN PROGRESS PURSUANT TO SECTION 12-38-117 OR 12-42-113, AS SAID SECTIONS EXISTED ON JUNE 30, 1999, INCLUDING THOSE CASES THAT HAVE BEEN REFERRED TO HEARING, ARE BEFORE AN ADMINISTRATIVE LAW JUDGE, OR ARE AWAITING FINAL DISPOSITION BY THE BOARD, SHALL BE REFERRED TO A PANEL OF THE BOARD BY THE DIRECTOR OF THE DIVISION OF REGISTRATIONS FOR FINAL ADJUDICATION. ALL ACTIONS TAKEN AND DECISIONS RENDERED BY THE BOARD PRIOR TO JULY 1, 1999, ARE HEREBY RATIFIED.

(12) FINAL BOARD ACTION MAY BE JUDICIALLY REVIEWED IN THE COURT OF APPEALS, AND JUDICIAL PROCEEDINGS FOR THE ENFORCEMENT OF A BOARD ORDER MAY BE INSTITUTED IN ACCORDANCE WITH SECTION 24-4-106, C.R.S.

(13) IN ORDER TO AID THE BOARD IN ANY HEARING OR INVESTIGATION INSTITUTED PURSUANT TO THIS SECTION, WHETHER THE INVESTIGATION IS BEFORE OR AFTER A FORMAL COMPLAINT IS FILED PURSUANT TO THIS SECTION, THE BOARD, THROUGH ANY MEMBER OR EXECUTIVE OFFICER THEREOF, SHALL HAVE THE POWER TO ISSUE SUBPOENAS COMMANDING PRODUCTION OF COPIES OF ANY RECORDS CONTAINING INFORMATION RELEVANT TO THE PRACTICE OF NURSING RENDERED BY ANY LICENSEE, INCLUDING, BUT NOT LIMITED TO, HOSPITAL AND PHYSICIAN RECORDS. UPON CERTIFICATION OF THE CUSTODIAN THAT THE COPIES ARE TRUE AND COMPLETE EXCEPT FOR THE PATIENT'S NAME, THE COPIES SHALL BE DEEMED AUTHENTIC, SUBJECT TO THE RIGHT TO INSPECT THE ORIGINALS FOR THE LIMITED PURPOSE OF ASCERTAINING THE ACCURACY OF THE COPIES. NO PRIVILEGE OF CONFIDENTIALITY SHALL EXIST WITH RESPECT TO SUCH COPIES, AND NO LIABILITY SHALL LIE AGAINST THE BOARD OR THE CUSTODIAN OR THE CUSTODIAN'S AUTHORIZED EMPLOYEE FOR FURNISHING OR USING SUCH COPIES IN ACCORDANCE WITH THIS SUBSECTION (13).

(14) ANY PERSON PARTICIPATING IN GOOD FAITH IN THE MAKING OF A COMPLAINT OR REPORT OR PARTICIPATING IN ANY INVESTIGATIVE OR ADMINISTRATIVE PROCEEDING PURSUANT TO THIS ARTICLE SHALL BE IMMUNE FROM ANY LIABILITY, CIVIL OR CRIMINAL, THAT OTHERWISE MIGHT RESULT BY REASON OF SUCH ACTION.

SECTION 7. The introductory portion to 12-38-117 (1), Colorado Revised Statutes, is amended, and the said 12-38-117 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

12-38-117. Grounds for discipline. (1) ~~The board has the power to revoke, suspend, withhold, limit the scope of, or refuse to renew any license, to place on probation a licensee or temporary license holder, or to issue a letter of admonition to a licensee in accordance with the procedures set forth in subsection (3) of this section, upon proof that such person:~~ "GROUNDS FOR DISCIPLINE", AS USED IN THIS ARTICLE, MEANS ANY ACTION BY ANY PERSON WHO:

(u) WILLFULLY FAILS TO RESPOND IN A MATERIALLY FACTUAL AND TIMELY MANNER TO A COMPLAINT ISSUED PURSUANT TO SECTION 12-38-116.5 (3).

SECTION 8. Repeal. 12-38-117 (1) (b) (III), (2), (3), (4), and (5), Colorado Revised Statutes, are repealed as follows:

12-38-117. Grounds for discipline. (1) (b) (III) ~~In considering the possible revocation, suspension, limiting, or nonrenewal of a license or a temporary license, the board shall be governed by the provisions of section 24-5-101, C.R.S.~~

(2) ~~Except as specifically provided in subsection (1) of this section, the board need not find that the actions which are grounds for discipline were willful, but it may consider the same in determining the nature of disciplinary sanctions imposed.~~

(3) ~~When a complaint or an investigation discloses an instance of misconduct which, in the opinion of the board, does not warrant formal action by the board but which should not be dismissed as being without merit, a letter of admonition may be sent by certified mail to the nurse against whom a complaint was made and a copy thereof to the person making the complaint, but, when a letter of admonition is sent by certified mail by the board to a nurse complained against, such nurse shall be advised that he has the right to request in writing, within twenty days after proven receipt of the letter, that formal disciplinary proceedings be initiated against him to adjudicate the propriety of the conduct upon which the letter of admonition is based. If such request is timely made, the letter of admonition shall be deemed vacated, and the matter shall be processed by means of formal disciplinary proceedings.~~

(4) ~~Any license issued by the board shall be summarily suspended by operation of law for failure of the licensee to timely renew his license pursuant to the rules and regulations established by the board, including the payment of all required fees. Upon compliance with the applicable rules and regulations regarding renewal and payment of fees, the suspended license shall be reinstated.~~

(5) ~~If the board finds the charges proven and orders that discipline be imposed, it may also require the licensee to take such therapy or courses of training or education as a requirement for reinstatement as may be needed to correct any deficiency found~~

~~in the hearing.~~

SECTION 9. The introductory portion to 12-42-113 (1), Colorado Revised Statutes, is amended, and the said 12-42-113 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

12-42-113. Grounds for discipline. (1) ~~The board has the power to revoke, suspend, withhold, limit the scope of, or refuse to renew any license to practice as a psychiatric technician, to place on probation a licensee, or to issue a letter of admonition to a licensee in accordance with the procedures set forth in subsection (3) of this section, upon proof that such person "GROUNDS FOR DISCIPLINE", AS USED IN THIS ARTICLE, MEANS ANY ACTION BY ANY PERSON WHO:~~

(m) WILLFULLY FAILS TO RESPOND IN A MATERIALLY FACTUAL AND TIMELY MANNER TO A COMPLAINT ISSUED PURSUANT TO SECTION 12-38-116.5 (3).

SECTION 10. Repeal. 12-38-119, Colorado Revised Statutes, is repealed as follows:

12-38-119. Mental and physical examination of licensees. (1) ~~If any licensee or temporary license holder is determined to be mentally incompetent or insane by a court of competent jurisdiction, his license shall automatically be suspended by the board, and such suspension shall continue until the licensee is determined by such court to be restored to reason or until such person is duly discharged as restored to reason in any other manner provided by law.~~

(2) (a) ~~If the board has reasonable cause to believe that a licensee or temporary license holder is unable to practice with reasonable skill and safety to patients because of a condition described in section 12-38-117 (1) (i) or (1) (j), it may require such person to submit to a mental or physical examination by a qualified professional it designates. Upon the failure of such person to submit to such mental or physical examination, unless due to circumstances beyond such person's control, the board may suspend such person's license until such time as such person submits to the required examinations.~~

(b) ~~Every licensee or temporary license holder, by engaging in the practice of practical nursing or in the practice of professional nursing in this state or by applying for the renewal of his license or temporary license therefor, shall be deemed to have given consent to submit to a mental or physical examination when so directed in writing by the board. The direction to submit to such an examination shall contain the basis of the board's reasonable cause to believe that the licensee is unable to practice with reasonable skill and safety to patients because of a condition described in section 12-38-117 (1) (i) or (1) (j). The licensee 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.~~

(c) ~~Nothing in this section shall prevent the licensee from submitting to the board testimony or examination reports of a physician designated by the licensee pertaining to a condition described in section 12-38-117 (1) (i) or (1) (j) which may be considered by the board in conjunction with, but not in lieu of, testimony and examination reports of the physician designated by the board.~~

~~(d) The results of any mental or physical examination ordered by the board shall not be used as evidence in any proceeding other than one before the board and shall not be deemed public records nor made available to the public.~~

~~(e) The board may require that a licensee submit medical records for review in conjunction with an investigation made pursuant to paragraph (a) of this subsection (2); except that such records shall remain confidential and shall be reviewed by the board only to the extent necessary to conduct an investigation.~~

SECTION 11. Repeal. 12-38-120, Colorado Revised Statutes, is repealed as follows:

12-38-120. Disciplinary proceedings - administrative law judges - judicial review. ~~(1) The board, through the department of regulatory agencies, may employ administrative law judges, on a full-time or part-time basis, to conduct hearings as provided by this article or on any matter within the board's jurisdiction upon such conditions and terms as the board may determine.~~

~~(2) A proceeding for discipline of a licensee or a temporary license holder may be commenced when the board has reasonable grounds to believe that a licensee under the board's jurisdiction has committed acts which may violate section 12-38-117.~~

~~(3) The attendance of witnesses and the production of books, patient records, papers, and other pertinent documents at the hearing may be summoned by subpoenas issued by the board, which shall be served in the manner provided by the Colorado rules of civil procedure for service of subpoenas.~~

~~(4) (a) Disciplinary proceedings shall be conducted in the manner prescribed by article 4 of title 24, C.R.S., and the hearing and opportunity for review shall be conducted pursuant to said article by the board or an administrative law judge at the board's discretion.~~

~~(b) Before determining what disciplinary action should be imposed against a licensee, the board shall determine what sanctions, if any, are necessary to protect or compensate the public. After any such protection is in place or compensation made, or both, the board may consider and impose requirements or forms of relief designed to rehabilitate or relieve the licensee. Protection of the public shall be the primary concern in a disciplinary proceeding.~~

~~(5) No previously issued license to engage in the practice of nursing shall be revoked or suspended until after a hearing conducted pursuant to section 24-4-105, C.R.S., except as provided for emergency situations by section 24-4-104, C.R.S. The denial of an application to renew an existing license shall be treated in all respects as a revocation. If an application for a new license is denied, the applicant, within sixty days after the giving of notice of such action, may request a hearing as provided in section 24-4-105, C.R.S.~~

~~(6) Final board action may be judicially reviewed in the court of appeals, and judicial proceedings for the enforcement of a board order may be instituted in accordance with section 24-4-106, C.R.S.~~

~~(7) In order to aid the board in any hearing or investigation instituted pursuant to this section, the board, through any member or executive officer thereof, shall have the power to issue subpoenas commanding production of copies of any records containing information relevant to the practice of practical or professional nursing rendered by any licensee, including, but not limited to, hospital and physician records. Upon certification of the custodian that the copies are true and complete except for the patient's name, they shall be deemed authentic, subject to the right to inspect the originals for the limited purpose of ascertaining the accuracy of the copies. No privilege of confidentiality shall exist with respect to such copies, and no liability shall lie against the board or the custodian or the custodian's authorized employee for furnishing or using such copies in accordance with this subsection (7).~~

~~(8) Any person participating in good faith in the making of a complaint or report or participating in any investigative or administrative proceeding pursuant to this article shall be immune from any liability, civil or criminal, that otherwise might result by reason of such action.~~

~~(9) An employer of a nurse shall report to the board any disciplinary action taken against the nurse or resignation in lieu of a disciplinary action for conduct which constitutes a violation of this article.~~

~~(10) Except when a decision to proceed with a disciplinary action has been agreed upon by a majority of the board, investigations, examinations, hearings, meetings, or any other proceedings of the board conducted pursuant to the provisions of this section shall be exempt from the provisions of any law requiring that proceedings of the board be conducted publicly or that the minutes or records of the board with respect to action of the board taken pursuant to the provisions of this section be open to public inspection.~~

SECTION 12. Repeal. 12-42-113 (1) (b) (III), (2), (3), (4), (5), and (6), Colorado Revised Statutes, are repealed as follows:

12-42-113. Grounds for discipline. (1) (b) (III) ~~In considering the possible revocation, suspension, limiting, or nonrenewal of a license or temporary license, the board shall be governed by the provisions of section 24-5-101, C.R.S.~~

~~(2) Except as specifically provided in subsection (1) of this section, the board need not find that the actions which are grounds for discipline were willful, but it may consider the same in determining the nature of disciplinary sanctions imposed.~~

~~(3) When a complaint or an investigation discloses an instance of misconduct which, in the opinion of the board, does not warrant formal action by the board but which should not be dismissed as being without merit, a letter of admonition may be sent by certified mail to the psychiatric technician against whom a complaint was made and a copy thereof to the person making the complaint, but, when a letter of admonition is sent by certified mail by the board to a psychiatric technician complained against, such psychiatric technician nurse shall be advised that he has the right to request in writing, within twenty days after proven receipt of the letter, that formal disciplinary proceedings be initiated against him to adjudicate the propriety of the conduct upon which the letter of admonition is based. If such request is timely made, the letter of admonition shall be deemed vacated, and the matter shall be~~

processed by means of formal disciplinary proceedings.

(4) Any license issued by the board shall be summarily suspended by operation of law for failure of the licensee to timely renew his license pursuant to the rules and regulations established by the board, including the payment of all required fees. Upon compliance with the applicable rules and regulations regarding renewal and payment of fees, the suspended license shall be reinstated.

(5) If the board finds the charges proven and orders that discipline be imposed, it may also require the licensee to take such therapy or courses of training or education as a requirement for reinstatement as may be needed to correct any deficiency found in the hearing.

(6) The board shall not discipline a licensee by limiting the scope of such licensee's license based upon a licensee's violation of paragraph (i) of subsection (1) of this section until the licensee has completed a program approved by the board designed to end addiction to or dependency on alcohol, habit-forming drugs, controlled substances, as defined in section 12-22-303 (7), or other drugs having similar effects. Until such time as the licensee completes an approved program, the board may impose any of the other forms of discipline set forth in subsection (1) of this section.

SECTION 13. Repeal. 12-42-115, Colorado Revised Statutes, is repealed as follows:

12-42-115. Mental or physical examination of licensees - review of medical records. (1) If any licensee is determined to be mentally incompetent or insane by a court of competent jurisdiction, his license shall automatically be suspended by the board, and such suspension shall continue until the licensee is determined by such court to be restored to reason or until such person is duly discharged as restored to reason in any other manner provided by law.

(2) (a) If the board has reasonable cause to believe that a licensee is unable to practice with reasonable skill and safety to patients because of a condition described in section 12-42-113 (1) (i) or (1) (j), it may require such person to submit to a mental or physical examination by a physician, psychologist, or other qualified professional. Upon the failure of such person to submit to such mental or physical examination, unless due to circumstances beyond such person's control, the board may suspend such person's license until such time as such person submits to the required examination.

(b) Every licensee, by engaging in the practice of a psychiatric technician in this state or by applying for the renewal of his license therefor, shall be deemed to have given consent to submit to a mental or physical examination when so directed in writing by the board. The direction to submit to such an examination shall contain the basis of the board's reasonable cause to believe that the licensee is unable to practice with reasonable skill and safety to patients because of a condition described in section 12-42-113 (1) (i) or (1) (j). The licensee 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.

(c) Nothing in this section shall prevent the licensee from submitting to the board

~~testimony or examination reports of a physician designated by the licensee pertaining to a condition described in section 12-42-113 (1) (i) or (1) (j) which may be considered by the board in conjunction with, but not in lieu of, testimony and examination reports of the physician designated by the board.~~

~~(d) The results of any mental or physical examination ordered by the board shall not be used as evidence in any proceeding other than one before the board and shall not be deemed public records nor made available to the public.~~

~~(e) The board may require that a licensee submit medical records for review in conjunction with an investigation made pursuant to paragraph (a) of this subsection (2); except that such records shall remain confidential and shall be reviewed by the board.~~

SECTION 14. 12-42-115.3, Colorado Revised Statutes, is amended to read:

12-42-115.3. Disciplinary proceedings. ~~(1) The board, through the department of regulatory agencies, may employ administrative law judges, on a full-time or part-time basis, to conduct hearings as provided by this article or on any matter within the board's jurisdiction upon such conditions and terms as the board may determine.~~ DISCIPLINARY PROCEEDINGS UNDER THIS ARTICLE SHALL BE CONDUCTED PURSUANT TO SECTION 12-38-116.5.

~~(2) A proceeding for discipline of a licensee may be commenced when the board has reasonable grounds to believe that a licensee under the board's jurisdiction has committed acts which may violate section 12-42-113.~~

~~(3) The attendance of witnesses and the production of books, patient records, papers, and other pertinent documents at the hearing may be summoned by subpoenas issued by the board, which shall be served in the manner provided by the Colorado rules of civil procedure for service of subpoenas.~~

~~(4) Disciplinary proceedings shall be conducted in the manner prescribed by article 4 of title 24, C.R.S., and the hearing and opportunity for review shall be conducted pursuant to said article by the board or an administrative law judge at the board's discretion.~~

~~(5) No previously issued license to engage in practice as a psychiatric technician shall be revoked or suspended until after a hearing conducted pursuant to section 24-4-105, C.R.S., except as provided for emergency situations by section 24-4-104, C.R.S. The denial of an application to renew an existing license shall be treated in all respects as a revocation. If an application for a new license is denied, the applicant, within sixty days after the giving of notice of such action, may request a hearing as provided in section 24-4-105, C.R.S.~~

~~(6) In order to aid the board in any hearing or investigation instituted pursuant to this section, the board, through any member or executive officer thereof, shall have the power to issue subpoenas commanding production of copies of any records containing information relevant to practice as a psychiatric technician rendered by any licensee, including, but not limited to, hospital and physician records. Upon certification of the custodian that the copies are true and complete except for the~~

~~patient's name, they shall be deemed authentic, subject to the right to inspect the originals for the limited purpose of ascertaining the accuracy of the copies. No privilege of confidentiality shall exist with respect to such copies, and no liability shall lie against the board or the custodian or the custodian's authorized employee for furnishing or using such copies in accordance with this subsection (6).~~

~~(7) Any person participating in good faith in the making of a complaint or report or participating in any investigative or administrative proceeding pursuant to this article shall be immune from any liability, civil or criminal, that otherwise might result by reason of such action.~~

~~(8) An employer of a psychiatric technician shall report to the board any disciplinary action taken against the psychiatric technician or resignation in lieu of a disciplinary action for conduct which constitutes a violation of this article.~~

~~(9) Except when a decision to proceed with a disciplinary action has been agreed upon by a majority of the board, investigations, examinations, hearings, meetings, or any other proceedings of the board conducted pursuant to the provisions of this section shall be exempt from the provisions of any law requiring that proceedings of the board be conducted publicly or that the minutes or records of the board with respect to action of the board taken pursuant to the provisions of this section be open to public inspection.~~

SECTION 15. Effective date - applicability. This act shall take effect July 1, 1999, and shall apply to all investigations, complaints, and hearings on or after said date.

SECTION 16. 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: April 8, 1999