

Title 12 Recodification Project
Stakeholder Meeting to Discuss Common Provisions Draft Proposals
August 21, 2018
10:00 a.m.
HCR 0109

Persons present:

Christy Chase, Office of Legislative Legal Services (OLLS)

Thomas Morris, OLLS

Jessica Wigent, OLLS

Nathan Batchelder, Dept. of Regulatory Agencies (DORA), Division of Professions and Occupations (DPO)

Karen McGovern, DORA - DPO

Sharon Wilson, Engineer

Katherine Garcia, Peer Assistance Services

Dr. Reo Leslie, Jr., Colorado Mental Health Professionals

Dr. Evenlyn Leslie, Colorado Mental Health Professionals

Betsy Murray, American Physical Therapy Association, Colorado Chapter; American Dental Hygienists Association, Colorado Chapter

Joshua Ewing, Colorado Hospital Association

Adam Eichberg, Colorado Trial Lawyers Association

Audio recording of the meeting is available [here](#).

Christy Chase and Tom Morris reviewed the work of the Title 12 Recodification Project since 2016 and explained the purpose of today's meeting: To discuss and obtain feedback on OLLS' draft proposals to consolidate duplicative provisions contained in the laws in Title 12 governing professions and occupations regulated by DPO.

Prior to beginning discussion of the proposed common provisions, Tom Morris reviewed the proposed definitions section for the entirety of Title 12. After receiving feedback from various stakeholders at previous meetings, the [most recent draft proposal](#) includes definitions for "regulator" and "law", among others.

Review of Proposed Common Provisions

The general structure for each of the common provisions discussed at the meeting will be to first state the generally-applicable provision of law and then list the exceptions for the practice acts that are not governed by that provision.

Cease-and-desist Orders

Those present reviewed the draft proposal, which was modeled on the cease-and-desist language in the hearing aid providers practice act, section 12-5.5-303, with exception language added for fantasy contests and passenger tramways, as their practice acts do not contain similar provisions. Specific proposed language changes and updates were discussed and agreed to by the group.

With regard to judicial review of a final cease-and-desist order issued by a regulator – whether the director or a board or commission - Christy pointed out that about 70% of the practice acts specify that judicial review of that final order is in the court of appeals, but in the other practice acts, that review is in a district court of competent jurisdiction. The group discussed how best to address this difference without making any substantive change, and the consensus was to state the general rule that is applicable to most practice acts – appellate court review of final cease-and-desist orders – and then specifically list the particular practice acts and name of the profession where final cease-and-desist orders are reviewable in a district court. OLLS staff will update the cease-and-desist orders proposal to reflect this decision, will share via email and on the Title 12 project website, and will have available for discussion at the next meeting on September 5.

Immunity

The immunity provision is modeled on language contained in the Medical Practice Act. All but 3 practice acts contain the essentially the same immunity provision, which generally grants immunity to the regulator (i.e., the director or a board or commission, as applicable), to any member of a board or commission, to regulator staff, to witnesses or consultants to the regulator, to witnesses testifying in a proceeding, and to a person making or participating in a complaint or investigation, as long as the individual is acting in "good faith". There was some discussion about the meaning of "good faith" and the scope of immunity. Christy and Tom indicated that the scope of the recodification project does not allow us to address substantive issues with the law, so the proposal will not further clarify or define what constitutes "good faith".

The draft proposal, as presented to the group, contained language from the passenger tramway immunity provision that would have extended immunity to independent contractors engaged by a regulator to perform tasks for the regulator. The group engaged in an in-depth discussion about whether independent contractors should be added to the common provision, as they are included in the immunity provision of the passenger tramway practice act. With input from all stakeholders present, the decision was made to refrain from adding the language given that adding independent contractors would be a substantive change to the scope of the immunity provision.

Instead, passenger tramways will be listed as an exception to the immunity provision, thereby retaining the specific provision that is contained in the passenger tramway law.

Christy also explained that the stricken language in subsection (1) of the proposed section, "any person who lodges a complaint pursuant to this part 1" is stricken only because that language is included in subsection (2) of the same section and was duplicative. The group agreed this change was nonsubstantive and permissible.

OLLS staff will update the immunity proposal to reflect the groups' decisions, will share via email and on the Title 12 project website, and will have available for discussion at the next meeting on September 5.

Unauthorized Practice

As indicated on the draft proposal, given the differences in the level of criminal penalties and/or the unique language in the authorized practice provision in a given practice act, OLLS staff recommended retaining the unauthorized practice statutory provisions in the 15 practice acts listed in the document.

There was some interest in adding to the next draft proposal columns listing out the different penalties (misdemeanor, felony, etc.) for unauthorized practice, to consolidate the information in one place, while still directing to the specific practice act for detailed information.

OLLS staff will update the unauthorized practice proposal to accommodate this request, to the extent possible, will share via email and on the Title 12 project website, and will have available for discussion at the next meeting on September 5.

License by Endorsement or Reciprocity

Christy and Tom provided a table detailing each practice act's provisions concerning license by endorsement or reciprocity to illustrate that there was very little commonality among the practice acts and therefore no useful or needed way to include these in a common provision. The group agreed that licensure by endorsement is not ready for consolidation into a common provision at this time. No proposal will be forthcoming on this topic.

Injunctive Relief

The proposed draft of the common proposal for injunctive relief includes a long list of exceptions. With feedback from those at the meeting, the structure of the draft proposal will be amended for clarity and removal of duplicative information.

Christy and Tom also explained the addition of the phrase, in small capital letters in subsection (1)(a), "a part or article of this title 12", which was included because some practice acts, for instance architects, are not a single article but are a part of a larger article. There was some discussion that, as the reorganization continues, those practice acts that are now are single part might be moved to their own, new article.

OLLS staff will update the injunctive relief proposal to reflect the groups' decisions, will share via email and on the Title 12 project website, and will have available for discussion at the next meeting on September 5.

Disposition of Fines

The language for nearly all of the practice acts is identical -- all fines collected are transmitted to the state treasurer, who credits them to the general fund. The proposed draft includes three exceptions, where the disposition of fines works differently. All present agreed on the draft language.

Judicial Review

There are two options for judicial review amongst all the practice acts in Title 12 – either the court of appeals has initial jurisdiction to review all final actions or the district court of competent jurisdiction has initial jurisdiction to review all final actions. The draft proposal reflects these options, and all present agreed on the draft language.

The draft proposal also contained a cross-reference to the statute that governs judicial review of cease-and-desist orders, which OLLS staff will review, based on the cease-and-desist proposal discussed earlier, to determine if the reference should be deleted or otherwise modified. OLLS staff will update the judicial review proposal as necessary, will share via email and on the Title 12 project website, and will have available for discussion at the next meeting on September 5.

Rule-making Authority

Though the draft proposal language was fairly simple and broad, Karen McGovern mentioned that there were a few provisions in certain practice acts where the rule-making is very specific and narrower than the language in the draft proposal. Tom will review the statutes and propose new draft language that indicates that the general rule-making authority is in addition to any specific provisions concerning rule-making in each practice act.

Disciplinary Authority

Because of the complicated task of creating a common provision for disciplinary authority, which include provisions concerning deferred action, subpoena powers, waiting periods after revocation, letters of admonition, confidential letters of concern, and administrative law judge appointments, as well as authority to take action against a license, all present decided to delay the discussion of the draft proposal. Christy will be sending out additional documents before the next meeting with more information, and the plan will be to review the draft proposal thoroughly at the September 5th meeting.

Next Meeting

The next meeting is scheduled for Wednesday, September 5, 2018, at 10:00 am in House Committee Room 109. The meeting will cover the proposed draft for the disciplinary common provision section and revisions to the above-described common provisions proposals based on discussions at the August 21 meeting.