
COLORADO PSYCHIATRIC TECHNICIANS ACT

COLORADO REVISED STATUTES

Title 12 Professions and Occupations

Article 42 Psychiatric Technicians

Effective July 1, 2006

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Table of Contents

12-42-101. Legislative declaration. 1
12-42-102. Definitions. 1
12-42-103. State board of nursing - repeal of article - review of licensing and regulation functions. 1
12-42-104. Application for license. 1
12-42-105. License by examination. 1
12-42-106. Examinations. 2
12-42-107. Issuance of license after examination. 2
12-42-108. License by waiver and examination. (Repealed) 2
12-42-109. License by endorsement. 2
12-42-110. Disposition of fees. 2
12-42-111. Accredited psychiatric technician educational program. 2
12-42-112. Renewal of license. 3
12-42-113. Grounds for discipline. 3
12-42-114. Withholding or denial of license - hearing. 4
12-42-115. Mental or physical examination of licensees - review of medical records. (Repealed) 5
12-42-115.3. Disciplinary proceedings. 5
12-42-115.5. Immunity in professional review. 5
12-42-115.7. Surrender of license. 5
12-42-115.9. Judicial review. 5
12-42-116. Exclusions. 6
12-42-117. Religious exclusions. 6
12-42-118. Unauthorized practice. 6
12-42-119. Unauthorized practice - penalties. 6
12-42-120. Professional nursing and the practice of a psychiatric technician. 6
12-42-121. Other groups. 7

FROM ARTICLE 38, COLORADO NURSE PRACTICE ACT
12-38-116.5. Disciplinary procedures of the board - inquiry and hearings panels. 7

12-42-101. Legislative declaration.

It is declared to be the policy of the state of Colorado that, in order to safeguard life, health, property, and the public welfare of the people of the state of Colorado, and in order to protect the people of the state of Colorado against unauthorized, unqualified, and improper application of interpersonal psychiatric nursing relationships, it is necessary that a proper regulatory authority be established, and adequately provided for. Any person who practices as a psychiatric technician without qualifying for proper registration, and without submitting to the regulations provided in this article, endangers the public health thereby.

12-42-102. Definitions.

As used in this article, unless the context otherwise requires:

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

(2) "Board" means the state board of nursing.

(3) "Person" includes an individual, firm, partnership, association, or corporation.

(4) The practice as a "psychiatric technician" means the performance for compensation of selected acts requiring interpersonal and technical skills and includes the administering of selected treatments and selected medications prescribed by a licensed physician or dentist, in the care of and in the observation and recognition of symptoms and reactions of a patient with a mental illness or developmental disability under the direction of a licensed physician and the supervision of a registered professional nurse. The selected acts in the care of a patient with a mental illness or developmental disability shall not require the substantial specialized skill, judgment, and knowledge required in professional nursing.

12-42-103. State board of nursing - repeal of article - review of licensing and regulation functions.

(1) The licensing and regulation of psychiatric technicians shall be under the control of the board.

(2) (a) This article is repealed, effective July 1, 2009.

(b) Prior to such repeal, the licensure and regulation functions of the state board of nursing shall be reviewed as provided in section 24-34-104, C.R.S.

12-42-104. Application for license.

(1) Every applicant for license as a psychiatric technician shall file a written application on forms provided by the board.

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

(3) Every person licensed under this article shall be known as a licensed psychiatric technician and may place the letters "L.P.T." after his name. Said term or said abbreviation shall not be used to identify anyone not licensed under this article. The terms "psychiatric technician", "psychiatric aide", "trained psychiatric technician", or "graduate psychiatric technician" shall for the purposes of this article be deemed synonymous with the term "psychiatric technician", and none of said terms shall be used to identify anyone not licensed under this article.

12-42-105. License by examination.

(1) Every applicant for license by examination shall submit written evidence, verified by oath, and satisfactory to the board that said applicant:

(a) Has not committed an act which would be grounds for disciplinary action against a licensee under this article;

(b) Has completed a four-year high school course or the equivalent thereof; and

(c) Has completed the required accredited psychiatric technician educational program and holds a diploma from a state accredited program.

12-42-106. Examinations.

(1) All applicants, unless licensed by endorsement, shall be required to pass a written examination.

(2) Examinations shall be held within the state, at least once a year, at such times and places as the board shall determine.

12-42-107. Issuance of license after examination.

The board shall issue a license to each applicant who passes the examination and who is not otherwise disqualified to receive a license under the provisions of this article.

12-42-108. License by waiver and examination. (Repealed)

12-42-109. License by endorsement.

The board may issue a license without examination to an applicant who is licensed or otherwise registered as a psychiatric technician by another state or a territory of the United States if the requirements for license or registration in such state or territory are substantially equal to the requirements in this article; but in no event shall an applicant be required to meet qualifications higher than those in force in this state at the time of his application for license in this state. Every applicant under this section shall state under oath that he has not committed an act which would be grounds for disciplinary action under this article and that he has completed a four-year high school course of study or the equivalent thereof.

12-42-110. Disposition of fees.

All fees collected by the board under the provisions of this article shall be transmitted to the state treasurer, who shall credit the same pursuant to section 24-34-105, C.R.S.

12-42-111. Accredited psychiatric technician educational program.

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

(b) Content in a psychiatric technician educational program shall include but shall not be limited to:

(I) Fundamental nursing principles and skills;

(II) Growth and developmental and other physical and behavioral skills;

(III) Mental retardation theory and rehabilitation nursing principles and skills if the technician is to be licensed to care for clients with developmental disabilities; and

(IV) Psychopathology and psychiatric nursing principles and skills if the technician is to be licensed to care for clients with mental illness.

(2) A survey of the institution and its entire psychiatric technician educational program shall be made by the executive secretary or other authorized board employee. Such survey may be conducted in conjunction with an authorized consultant appointed by the board. The persons making such survey shall submit a written report of the survey to the board. One or more board members may participate in any such survey.

(3) If the requirements of this article for an accredited psychiatric technician educational program are met, the institution shall be accredited as a psychiatric technician educational program for psychiatric technicians for work with patients with mental illness or developmental disabilities, for so long as such institution meets the requirements of this article.

(4) The board shall examine, from time to time, the accredited psychiatric technician educational programs of all institutions in the state having such programs. Such examinations shall be made by the executive secretary or other authorized representative of the board, and the results thereof shall be submitted to the board in the form of written reports. If the board determines that an institution having an accredited psychiatric technician educational program is not maintaining the standards required by this article, notice thereof in writing specifying the defect shall be served on such institution by certified mail, postage prepaid, return receipt requested. If the institution receiving such notice fails within one year after mailing of such notice to correct the conditions complained of therein, its authority to conduct an accredited psychiatric technician educational program shall be revoked by the board. An institution shall have the right, at any time before the expiration of one year from the date it receives such notice, to demand and be granted a hearing before the board. In case of such demand, no action shall be taken by the board until after the hearing.

12-42-112. Renewal of license.

(1) To renew a license issued pursuant to this article, a licensee shall submit an application for renewal pursuant to a schedule established by the director of the division of registrations within the department of regulatory agencies, and the license shall be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director of the division of registrations may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license pursuant to the schedule established by the director of the division of registrations, such license shall expire. Any person whose license has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

(2) (Deleted by amendment, L. 2004, p. 1848, § 99, effective August 4, 2004.)

(3) A person who is not engaged as a psychiatric technician in the state shall not be required to pay a renewal fee for so long as he does not so practice, but shall notify the board of his inactive status in writing. Prior to resumption of the practice as a psychiatric technician such person shall be required to notify the board and remit a renewal fee for the current annual period. After a five-year period in an inactive status, such license may be renewed only by complying with the provisions in this article relating to the issuance of an original license.

12-42-113. Grounds for discipline.

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

(a) Has procured or attempted to procure a license by fraud, deceit, misrepresentation, misleading omission, or material misstatement of fact;

(b) (I) Has been convicted of a felony or any crime that would constitute a violation of this article.

(II) (A) For purposes of this paragraph (b), a conviction includes a plea of guilty or nolo contendere or the imposition of a sentence that is deferred prior to final sentencing or dismissal with prejudice.

(B) A certified copy of the judgment of a court of competent jurisdiction of such conviction or plea shall be prima facie evidence of such conviction.

(III) Repealed.

(c) Has willfully or negligently acted in a manner inconsistent with the health or safety of persons under his care;

(d) Has had a license to practice as a psychiatric technician or any other health care occupation suspended or revoked in any jurisdiction. A certified copy of the order of suspension or revocation shall be prima facie evidence of such suspension or revocation.

(e) Has violated any provision of this article or has aided or knowingly permitted any person to violate any provision of this article;

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

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

(h) Has falsified or in a negligent manner made incorrect entries or failed to make essential entries on patient records;

(i) Is addicted to or dependent on alcohol or habit-forming drugs, is a habitual user of controlled substances, as defined in section 12-22-303 (7), or other drugs having similar effects, or is diverting controlled substances, as defined in section 12-22-303 (7), or other drugs having similar effects from the licensee's place of employment; except that the board has the discretion not to discipline the licensee if such licensee is participating in good faith in a program approved by the board designed to end such addiction or dependency;

(j) Has a physical or mental disability which renders him unable to practice as a psychiatric technician with reasonable skill and safety to the patients and which may endanger the health or safety of persons under his care;

(k) Has violated the confidentiality of information or knowledge as prescribed by law concerning any patient;

(l) Has engaged in any conduct which would constitute a crime as defined in title 18, C.R.S., and which conduct relates to such person's employment as a psychiatric technician;

(m) Willfully fails to respond in a materially factual and timely manner to a complaint issued pursuant to section 12-38-116.5 (3);

(n) Fraudulently obtains, sells, transfers, or furnishes any psychiatric technician diploma, license, renewal of license, or record, or aids or abets another in such activity;

(o) Advertises, represents, or holds himself or herself out in any manner as a psychiatric technician or practices as a psychiatric technician without having a license to practice as a psychiatric technician issued under this article;

(p) Uses in connection with his or her name any designation tending to imply that he or she is a licensed psychiatric technician without having a license issued under this article; or

(q) Practices as a psychiatric technician during the time his or her license is suspended or revoked.

(2) to (6) Repealed.

12-42-114. Withholding or denial of license - hearing.

(1) The board is empowered to determine summarily whether an applicant for a license to practice as a psychiatric technician possesses the qualifications required by this article or whether there is probable cause to believe that an applicant has done any of the acts set forth in section 12-42-113 as grounds for discipline. As used in this section, "applicant" does not include a renewal applicant.

(2) If the board determines that an applicant does not possess the qualifications required by this article or that probable cause exists to believe that an applicant has done any of the acts set forth in section 12-42-113, the board may withhold or deny the applicant a license. In such instance, the provisions of section

24-4-104 (9), C.R.S., shall apply, and the board shall provide such applicant with a statement in writing setting forth the basis of the board's determination that the applicant does not possess the qualifications required by this article or the factual basis for probable cause that the applicant has done any of the acts set forth in section 12-42-113.

(3) If the applicant requests a hearing pursuant to the provisions of section 24-4-104 (9), C.R.S., and fails to appear without good cause at such hearing, the board may affirm its prior action of withholding or denial without conducting a hearing.

(4) Following a hearing, the board shall affirm, modify, or reverse its prior action in accordance with its findings at such hearing.

(5) No action shall lie against the board for the withholding or denial of a license without a hearing in accordance with the provisions of this section if the board acted reasonably and in good faith.

(6) At such hearing, the applicant shall have the burden of proof to show that he possesses the qualifications required for licensure under this article. The board shall have the burden of proof to show commission of acts set forth in section 12-42-113.

12-42-115. Mental or physical examination of licensees - review of medical records. (Repealed)

12-42-115.3. Disciplinary proceedings.

Disciplinary proceedings under this article shall be conducted pursuant to section 12-38-116.5.

12-42-115.5. Immunity in professional review.

(1) If a professional review committee is established pursuant to section 12-38-109 to investigate the quality of care being given by a person licensed pursuant to this article, it shall include in its membership at least three persons licensed in the same category as the licensee under review, but such committee may be authorized to act only by the board.

(2) Any member of the board or of a professional review committee, any member of the board's or committee's staff, any person acting as a witness or consultant to the board or committee, any witness testifying in a proceeding authorized under this article, and any person who lodges a complaint pursuant to this article shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as board or committee member, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this article shall be immune from any civil or criminal liability that may result from such participation.

12-42-115.7. Surrender of license.

(1) Prior to the initiation of an investigation or hearing, any licensee may surrender his license to practice as a psychiatric technician.

(2) Following the initiation of an investigation or hearing and upon a finding that to do so would be in the public interest, the board may allow a licensee to surrender his license to practice.

(3) The board shall not issue a license to a former licensee whose license has been surrendered unless the licensee meets all of the requirements of this article for a new applicant, including the passing of an examination.

(4) The surrender of a license in accordance with this section removes all rights and privileges to practice as a psychiatric technician, including renewal of a license.

12-42-115.9. Judicial review.

The court of appeals shall have initial jurisdiction to review all final actions and orders that are subject to judicial review of the board. Such proceedings shall be conducted in accordance with section 24-4-106 (11), C.R.S.

12-42-116. Exclusions.

(1) This article shall not be construed to affect or apply to the gratuitous care of a person with a mental illness by friends or members of the family or to any person taking care of a person with a mental illness for hire who does not represent himself or herself or hold himself or herself out to the public as a trained or licensed psychiatric technician; but no one for hire shall hold himself or herself out as or perform the full duties of a psychiatric technician who is not a psychiatric technician licensed under the provisions of this article.

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

(3) Furthermore, this article shall not be construed to prohibit:

(a) Practical nursing; subsidiary workers in hospitals or similarly related institutions from assisting in the nursing care of patients where adequate medical and nursing supervision is provided;

(b) Subsidiary workers in the offices of persons licensed to practice medicine or dentistry in this state from assisting in the care of patients under the personal and responsible supervision and direction of such persons; or

(c) The practice of any legally qualified psychiatric technician of this state or another state who is employed by the United States government or any bureau, division, or agency thereof while in the discharge of his official duties.

12-42-117. Religious exclusions.

No provision of this article shall be construed as applying to any sanitarium, nursing home, or rest home conducted in accordance with the practice of the tenets of any religious denomination in which persons of good faith rely solely upon spiritual means or prayer in the free exercise of religion to prevent or cure disease.

12-42-118. Unauthorized practice.

The practice as a psychiatric technician by any person who has not been issued a license under the provisions of this article, or whose license has been suspended or revoked, or has expired, is hereby declared to be inimical to the general public welfare and to constitute a public nuisance.

12-42-119. Unauthorized practice - penalties.

(1) Repealed.

(2) Any person who practices or offers or attempts to practice as a psychiatric technician without an active license issued under this article commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first offense, and for the second or any subsequent offense, the person commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(3) (Deleted by amendment, L. 2006, p. 93, § 48, effective August 7, 2006.)

12-42-120. Professional nursing and the practice of a psychiatric technician.

Nothing in this article shall be construed as conferring any authority to practice medicine or professional nursing or to undertake the treatment or care of disease, pain, injury, deformity, or physical or mental condition in violation of the law of this state.

12-42-121. Other groups.

Nothing in this article shall be construed to enlarge or detract from the rights, powers, and duties of any other licensed business, occupation, or profession.

FROM ARTICLE 38, COLORADO NURSE PRACTICE ACT

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

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

(C) If the request for adjudication is timely made, the letter of admonition shall be deemed vacated and the matter shall be processed by means of formal disciplinary proceedings.

(V) (A) 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.

(B) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(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) (a) The board or an administrative law judge shall have the power to administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board. The board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the board 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).

(b) Upon failure of any witness to comply with such subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board or director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the board or director; to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(14) Any member of the board or the board's staff, any person acting as a witness or consultant to the board, any witness testifying in a proceeding authorized under this article, and any person who lodges a complaint pursuant to this article shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as board member, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. 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 participation.

(15) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a licensee or registrant is acting in a manner that is an imminent threat to the health and safety of the public, or a person is acting or has acted without the required license or registration, the board may issue an order to cease and desist such activity. The order shall set forth the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or unlicensed or unregistered practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (15), the respondent may request a hearing on the question of whether acts or practices in violation of this part 1 have occurred. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(16) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this part 1, then, in addition to any specific powers granted pursuant to this part 1, the board may issue to such person an order to show cause as to why the board should not issue a final order directing such person to cease and desist from the unlawful act or unlicensed or unregistered practice.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (16) shall be promptly notified by the board of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the board for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order is issued. Personal service or mailing of an order or document pursuant to this subsection (16) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the board as provided in paragraph (b) of this subsection (16). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (16) does not appear at the hearing, the board may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (16) and such other evidence related to the matter as the board deems appropriate. The board shall issue the order within ten days after the board's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the board reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required license or registration, or has or is about to engage in acts or practices constituting violations of this part 1, a final cease and desist order may be issued, directing such person to cease and desist from further unlawful acts or unlicensed or unregistered practices.

(IV) The board shall provide notice, in the manner set forth in paragraph (b) of this subsection (16), of the final cease and desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom such order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

(17) If it appears to the board, based upon credible evidence presented to the board, that a person has engaged in or is about to engage in any unlicensed or unregistered act or practice, any act or practice constituting a violation of this part 1, any rule promulgated pursuant to this part 1, any order issued pursuant to this part 1, or any act or practice constituting grounds for administrative sanction pursuant to this part 1, the board may enter into a stipulation with such person.

(18) If any person fails to comply with a final cease and desist order or a stipulation, the board may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring, and if so requested such attorney shall bring, suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

(19) A person aggrieved by the final cease and desist order may seek judicial review of the board's determination or of the board's final order as provided in subsection (12) of this section.