



# Dora

Department of Regulatory Agencies

Executive Director's Office

## DORA Releases 2009 Sunset Reviews Ensuring Consumer Protection and Government Accountability

Following are short excerpts of DORA's 2009 recommendations with the complete sunset reviews available online at [www.dora.state.co.us/opr/](http://www.dora.state.co.us/opr/).

### **Forestry Advisory Board.**

- ❖ *Sunset the Forestry Advisory Board (Board).* The Board has been inactive for most of its existence. In 2008, Governor Ritter created the Colorado Forest Health Advisory Council, which has far broader stakeholder representation and more power to shape policy than the Board. Therefore, the General Assembly should sunset the Board.

### **High Technology Scholarship Program Advisory Committee.**

- ❖ *Sunset the High Technology Scholarship Advisory Committee (Committee).* The General Assembly created the Committee to help develop guidelines for the High Technology Scholarship Program (Program), which was to provide scholarships to Colorado students seeking degrees in high technology fields. The scholarships were to be funded by private donations from individuals, high technology companies, and others. According to the Department of Higher Education, no such donations were ever received, so the Program was never created. Therefore, the General Assembly should sunset the Committee.

### **Wildlife Habitat Stamp Committee until 2013.**

- ❖ During the 2009 legislative session the General Assembly passed Senate Bill 09-235, which extended the repeal date of the Wildlife Habitat Stamp Committee (Committee) for three years, until December 31, 2013. In light of this, it is reasonable to assume that the General Assembly did not intend for DORA to conduct a sunset review of the Committee this year. Based upon this assumption, DORA did not review the Committee this year, but will do so in 2012 pursuant to Senate Bill 09- 235.

### **State Board of Accountancy**

- ❖ *Continue the State Board of Accountancy (Board) and the regulation of certified public accountants and their firms for nine years, until 2019.* One of the more important roles for a licensed certified public accountant (CPA), and a role that only a licensed CPA may perform, is to act in an independent, objective manner in rendering an opinion as to the financial soundness of a particular company, or as to whether a particular company has kept its books according to generally accepted accounting principles and standards, thereby rendering them reliable. Licensed CPAs are in a unique position in that they possess skills and apply rules that very few ordinary consumers understand. As a result, the public is not in a position to determine the competency of these individuals. This is the classic justification for regulation and the continuation of the Board.
- ❖ *Clarify that any disciplinary action taken by another jurisdiction or federal agency may serve as grounds for discipline by the Board.* The Board should have the ability, but not the mandate, to take disciplinary action against a Colorado-licensed CPA or registered firm when that CPA or firm is disciplined by another jurisdiction or by a state or federal agency.

- ❖ *Expand the scope of acceptable experience required for licensure as a CPA.* If the General Assembly adopts the other recommendations of the sunset report based on the idea of mobility and the uniform licensing standards it represents, then it should also broaden the type of experience a candidate may use to qualify for licensure.
- ❖ *Increase the Board's fining authority to \$5,000 against licensed CPAs and \$10,000 against registered firms, and allow the Board to impose a fine for each violation.* The General Assembly should clarify that the Board may impose fines on both licensed CPAs and registered firms, eliminate any minimum fines, and establish maximum fines of \$5,000 per violation against a licensed CPA and \$10,000 per violation against a registered firm.

#### **Office of Boxing, including the Colorado State Boxing Commission**

- ❖ *Continue the Colorado Boxing Commission and the Office of Boxing for seven years, until 2017.* The regulation of professional boxing, kickboxing and MMA serves two main purposes: it allows the State of Colorado to maintain its autonomy in terms of regulating the aforementioned professional sports as well as protecting the safety of fighters. The federal Professional Boxing Safety Act requires states that do not have an established boxing commission to secure the services of a boxing commission of another state to regulate events. Also, there are a variety of safeguards in place to ensure the safety of fighters, both physically and monetarily.
- ❖ *Include Mixed Martial Arts (MMA) as a regulated profession in the Act, and require the Commission to promulgate rules related to MMA.* The Act does not specifically address the Commission's authority to regulate MMA in Colorado. MMA bouts should be regulated in Colorado because these bouts contain the same risks associated with boxing and kickboxing. Also, MMA is the fastest growing discipline among the three (boxing, kickboxing and MMA) sports and therefore, it is reasonable to conclude that the number of licensed MMA fighters will continue to grow. The Commission should also promulgate rules for the regulation of MMA, so uniform standards for the appropriate regulation of MMA are in place for the protection of the fighters.
- ❖ *Direct that all money collected through fines be credited to the state's General Fund.* Typically, when a state agency is granted fining authority, funds generated by fines are credited to the state's General Fund. This is done so that a state agency has no incentive to impose fines other than taking legitimate, disciplinary action. When fines are credited to a state agency's cash fund, there can be a perceived conflict of interest that the state agency is imposing fines in an attempt to increase its revenue. Although there is no reason to believe that the Commission or the Office of Boxing staff has acted improperly, this recommendation is important as a policy matter to prevent any such allegation that may arise concerning the imposition of fines. For cash funded agencies, any increase in revenue can require them to reduce fees. Civil penalties are meant to be used for discipline, not to raise revenue. As a result, the General Assembly should require fines collected for violations of the Act to be credited to the state's General Fund. Doing so will serve to remove any appearance of impropriety concerning the collection of fines by the Office of Boxing.

#### **Colorado Commission for the Deaf and Hard of Hearing**

- ❖ *Continue the Commission for the Deaf and Hard of Hearing for five years, until 2015.* The general consensus among stakeholders interviewed for this report is that the Commission, through its administration of the Telecommunications Equipment Distribution Program and Legal Auxiliary Services programs, and its outreach, policymaking, and advocacy activities, contributes to the health, safety, and welfare of deaf and hard of hearing people in Colorado. Therefore, the Commission should be continued.
- ❖ *The Department of Human Services should coordinate with the Department of Personnel and Administration and other state agencies to train state employees.* The deaf and hard of hearing community would benefit from the Commission raising its profile in the state. Anecdotal evidence gathered over the course of this review indicates that many state workers are not familiar with the Commission, yet all state workers bear responsibility for fulfilling the requirements of the Americans with Disabilities Act. State workers should be familiar with the rights of deaf and hard of hearing people, and should know that the Commission exists as a resource for them and for their customers.

## **Electrical Board**

- ❖ *Continue the Electrical Practice Act for nine years, until 2019.* Because of the extreme danger to the public from unqualified installers and faulty electrical installations, continuation of the Electrical Practice Act (Act) is vital. Deregulation of the electrical profession could result in a proliferation of electricity-related fires, injuries, and deaths. The Board, and the Board staff ensures that licensees are aware of and follow the most current code thereby protecting consumers' health, safety, and welfare.
- ❖ *Confer enforcement authority to the Board concerning regional compliance with state electrical code updates.* The ultimate authority for regulating the electrical industry in Colorado lies with the Board. The Board licenses and disciplines licensees and is mandated by the Act to adopt minimum standards for performing electric related work using the National Electrical Code as its guide. While the Board is the clear oversight authority in these matters, the Act does not confer enforcement power to the Board over noncompliant, regional, permit and inspection jurisdictions. Therefore, no action can be taken when regional jurisdictions choose to ignore the mandates in the Act, disregard the will of the General Assembly, and provide less protection to the public it is obligated to protect. The General Assembly should give the Board power to act and protect the public.
- ❖ *Repeal section 12-23-117(2), C.R.S., tying local inspection and permit fees to state fees.* Section 12-23-117(2), C.R.S., states that regional programs may not charge more than 15 percent above the fees the state program charges. Local permitting and inspection fees have little to do with state fees and this provision is burdensome to local governments. This section forces a local jurisdiction to wait to establish its fees until after state fees are set, as well as live with a decision which may not be compatible with the local budget. This section should be repealed by the General Assembly to allow a regional jurisdiction to set fees based on its own expenses and be accountable to the local citizenry and construction professionals it serves.
- ❖ *Grant the Board more discretion in determining disciplinary action against a contractor's designated master electrician.* The Act demands that every contractor name a full-time supervising master electrician to supervise and be responsible for all work performed by the contractor. The qualifying master licensee must notify the Board within 15 days of termination as the qualifying master for the contractor. Under section 12-23-106(5)(d), C.R.S., the only options the Board has in cases when the master does not comply with the notification requirement are to do nothing, or suspend or revoke the master's license. The Board has a plethora of other disciplinary tools available to discipline licensees that are less severe than taking away a person's livelihood. The Board also looks at every case that comes before it for discipline individually. Therefore, it should be able to examine circumstances surrounding the incident and use a punishment if that is deemed appropriate on an incident by incident basis.

## **Board of Medical Examiners**

- ❖ *Continue the Board of Medical Examiners (Board) and the Medical Practice Act for nine years, until 2019.* To expect the average consumer to research the credentials of an individual physician to determine competency is both inefficient and unrealistic. The depth of knowledge and level of skill required to practice as a competent physician is more efficiently determined by the state, through the Board.
- ❖ *Transfer all regulatory authority pertaining to emergency medical technicians to the Colorado Department of Public Health and Environment (CDPHE), effective January 1, 2011, create the State Board of Emergency Medical and Trauma Services, and schedule the new board and regulation to sunset in 2015.* Under the current, bi-furcated regulatory system, the CDPHE certifies individual emergency medical technicians (EMTs), but the Board, by rule, determines the protocols EMTs may implement in the field. A more efficient system, and one that is utilized across the nation, is to centralize all regulatory authority at CDPHE.
- ❖ *Restate the definition of unprofessional conduct such that failing to properly address the practitioner's own physical or mental condition is unprofessional conduct, and authorize the Board to enter into confidential agreements with practitioners to address their respective conditions.* Current law allows the Board to discipline practitioners for suffering from physical or mental disabilities. Since having such a condition is not unprofessional, but rather failing to limit one's practice to accommodate such a condition is unprofessional, the definition of unprofessional conduct should be revised accordingly.

- ❖ *Create a pro bono license type, to be provided at a reduced fee, for those physicians who provide healthcare for free, or who work for organizations that provide healthcare to patients for free.* A new license type should be created for physicians who do not charge for services, or who are fully licensed in another state but who work for organizations that do not charge Colorado patients for their services. The pro bono license should be provided at a reduced fee. Physicians with a pro bono license should still be required to have the same qualifications and be subject to the same regulatory oversight as any fully licensed physician. All physicians should be required to maintain liability insurance, whether or not they are charging for medical care.
- ❖ *Increase the minimum level of professional liability insurance to \$1 million per incident and \$3 million annual aggregate per year.* Professional liability insurance is vital to protecting Colorado consumers. In many instances, it is the only avenue by which an injured consumer can seek redress in an attempt to be made whole. Establishing the appropriate minimums for coverage, then, is equally important. Minimums that are too low will fail to accomplish the desired goal. Minimums that are too high may result in excessive premiums, forcing physicians to leave practice, leave Colorado or run the risk of practicing without insurance.
- ❖ *Require physicians and physician assistants to make arrangements for the safekeeping of the medical records in their custody in the event they are not able to do so themselves.* The General Assembly should require physicians and physician assistants to make arrangements for the safekeeping of their medical records, give the Board clear authority to discipline any practitioner who fails to do so, require practitioners to attest that they have made such arrangements, and require practitioners to inform patients, in writing, of the arrangements.
- ❖ *Amend the physician assistant to physician ratio to allow physicians to supervise up to three physician assistants.* Increasing the physician assistant ratio to three would help increase access to healthcare and should not negatively impact the interests of the public.

#### **Obesity Treatment Pilot Program**

- ❖ *Sunset the Obesity Treatment Pilot Program (Program).* The intent behind the creation of the Program was certainly worthy, and the Program might have offered a significant public benefit. However, it was never implemented. By law, the sole funding source for the Program is grants, gifts, and donations, and no such gifts, grants or donations were ever received. Because it was never funded or established, the provisions relating to the Program should be repealed.

#### **Podiatry Board**

- ❖ *Continue the Colorado Podiatry Board for nine years, until 2019.* Podiatric treatment performed by an unqualified practitioner could result in serious harm to a patient including deformity, chronic pain, amputation of the foot, and death. Considering the potential for harm, regulation of the profession is necessary.
- ❖ *Amend the definition of the practice of podiatry to clarify that podiatrists may treat the soft tissues below the mid-calf.* While podiatrists clearly have the statutory and regulatory authority to treat non-healing wounds of the foot and ankle, it is not clear that podiatrists have the authority to treat non-healing wounds of the lower leg. Since podiatrists are trained and qualified to treat non-healing wounds on the lower leg, the definition of podiatry should be clarified to include treatment of the soft tissue below the mid-calf.
- ❖ *For podiatrists who have completed a three-year residency program in foot and ankle surgery, repeal the requirement to be board certified in order to perform ankle surgery.* Currently statute requires a podiatrist to be certified by the American Board of Podiatric Surgery (ABPS) in order to perform surgical procedures on the ankle, or be supervised by a podiatrist or orthopedic surgeon who is certified. Podiatrists who participate in a three-year residency receive considerable training in ankle surgery and upon completing the residency are qualified to perform ankle surgery. The requirement to be certified by the ABPS in order to perform ankle surgery should be repealed for those podiatrists who have completed a three-year residency program.

- ❖ *Prohibit the public member of the Board from being a licensed healthcare professional and being employed in or benefiting financially from the healthcare industry.* Currently the Act does not prohibit the public member of the Board from being a licensed healthcare provider. A member of the public benefits the Board by ensuring the Board protects the interests of the public and not the interests of the profession. Consequently, the public member of the Board should not be a licensed healthcare professional, employed in or benefit financially from the healthcare industry.
- ❖ *Add language to the Act authorizing the Board to impose a fine on a licensee.* Currently the Board does not have the authority to impose a fine on a licensee. Allowing the Board to impose fines would improve the Board's ability to regulate the profession of podiatry by adding another instrument that it may use when other means of discipline including suspension, revocation, or probation are not appropriate. A violation that is administrative rather than below the standard of care would be an appropriate use for a fine. In order to effectively and efficiently regulate the practice of podiatry, the Board should be authorized to impose a fine on a licensee for a violation of the Act. A fine should be no more than \$5,000 per violation, and all collected fines should be transferred to the state treasurer and credited to the General Fund.
- ❖ *Require licensees to report within 30 days any adverse action taken against the licensee.* In section 12-32-107(3)(bb), C.R.S., licensees are required to report to the Board any adverse action taken by another licensing agency in another state, territory, or country, any peer review body, any health care institution, any professional or medical society or association, any governmental agency, any law enforcement agency, or any court for acts of conduct that would constitute grounds for action as described in the Act. However, the Act is silent as to the timing of this report to the Board. A 30-day reporting requirement would help protect public health and safety by allowing the Board to act sooner to suspend or revoke a license when a licensee is unsafe to practice.
- ❖ *For a podiatrist who performs surgical procedures, increase the minimum level of professional liability insurance to \$1 million per incident and \$3 million annual aggregate per year.* Professional liability insurance is vital to protecting Colorado consumers. In many instances, it is the only avenue by which an injured consumer can seek redress in an attempt to be made whole. Establishing the appropriate minimums for coverage, then, is equally important. Minimums that are too low will fail to accomplish the desired goal. Minimums that are too high may result in excessive premiums, forcing podiatrists to leave practice, leave Colorado or run the risk of practicing without insurance.
- ❖ *Increase the time podiatrists have to respond to complaints from 20 days to 30 days.* Podiatrists are currently provided 20 days to respond to a complaint. While podiatrists endeavor to meet this deadline, it may not be a reasonable amount of time to gather all the necessary records, consult with an attorney, and draft an explanation of the alleged violations. Considering other healthcare professions, such as nurses, physicians and mental health providers, are granted 10 additional days, the Act should be changed to harmonize with requirements of other healthcare providers. Allowing podiatrists the same amount of time to respond to a Board complaint as other healthcare professions should not negatively impact the interests of the public.

**The Functions of the Division of Insurance Related To the Regulation of Property and Casualty, Automobile and Any Other Entity or Function That Does Not Offer Health or Life Insurance**

- ❖ *Continue the functions of the Division of Insurance (DOI) related to the regulation of property and casualty, automobile, and any other entity or function that does not offer health, life, property, casualty or automobile insurance for seven years, until 2017.* Regulatory oversight of the insurance industry by the DOI serves to insulate consumers from harm, while maintaining a regulatory model that provides an attractive environment for insurers to conduct business in Colorado. Each year, DOI staff receives thousands of insurance-related consumer complaints in several categories. Responding to consumer complaints; taking appropriate regulatory action to mitigate issues, when necessary; allowing for a formal protest process for Coloradans to challenge changes to their policies; and conducting financial and market conduct examinations create a quality insurance marketplace in Colorado.

- ❖ *Require the Commissioner to perform an examination of books, records and accounts of each licensed preneed funeral contract seller at least once every five years, and authorize the Commissioner to perform such examinations as necessary to ensure compliance with the law.* Conducting examinations of contract sellers would enhance consumer protection.

### **Licensing of River Outfitters**

- ❖ *Continue the River Outfitter License program for nine years, until 2019 as a necessary health, safety, and welfare protection for consumers.*
- ❖ *Establish a separate Drift-Float Guide category and qualification guidelines.* The guide qualifications section of the Act does not distinguish between fishing guides and whitewater rafting guides, yet, the two activities are very different. Adopting a new separate guide category and qualifications for fishing guides will protect consumers, by making sure the guides are qualified, and will eliminate an unnecessary regulatory burden for fishing guides.
- ❖ *Require all guides, trip leaders, and guide instructors be trained in cardiopulmonary resuscitation.* Expands the CPR requirement to ensure that at least one person on every trip is trained in CPR.
- ❖ *Repeal the guide qualification exemption for higher education faculty members.* Institutions of higher education sometimes offer classes in water sports, including river rafting. If the school advertises the class and students pay a fee for the class, then the school is obligated, under the Act, to obtain a river outfitter license. However, the class instructor is exempt from the guide qualification section of the Act. Research found no reason for the higher education exemption. Moreover, if a guide lacks the requisite experience deemed appropriate by the General Assembly, then the passengers in the vessel are in greater danger than they need be. Exempting, higher education instructors from the qualifications means there may not be a person on the vessel, or the entire trip, who has ever guided a trip or taken a first-aid class. Therefore, the guide qualification exemption for faculty members of institutions of higher education should be repealed.

### **Sex Offender Management Board**

- ❖ *Continue the Sex Offender Management Board for five years, until 2015.* The Sex Offender Management Board (Board) was created in 1992 to provide consistent statewide standards for court-ordered treatment and management of convicted sex offenders for the protection of public safety. This sunset review recommends that the Board be continued by the General Assembly.
- ❖ *The Board should report to the General Assembly regarding the effectiveness of sex offender treatment and Board policies by December 1, 2011.* The Board has created an elaborate set of treatment standards over its 17 year history. The Board should conduct an in-depth study of the effectiveness of the treatment standards on sex offender recidivism.
- ❖ *The Division of Criminal Justice should promulgate treatment standards, Lifetime Supervision criteria, and the requirements to be listed as an approved provider by rule in order to give the public a greater opportunity for input and to increase transparency.*
- ❖ *Complaints, investigations and discipline of treatment providers should be investigated by the Department of Regulatory Agencies to improve the investigative process.*
- ❖ *The Sex Offender Treatment and Monitoring Program in the Department of Corrections should be scheduled for sunset review in 2012 to provide analysis of the effectiveness of Colorado's prison-based sex offender treatment program.* The findings of the proposed sunset review will aid in evaluating the effectiveness of the Board's treatment standards.
- ❖ *The Board should produce and present an annual report to the General Assembly beginning December 1, 2012 in order to provide evidence-based analysis and recommendations regarding existing laws, pending legislation, and legislation that may be needed to effectively treat offenders and protect the community.*

### **Telemedicine Pilot Program**

- ❖ *Sunset the Telemedicine Pilot Program (Program).* On August 16, 2009, funding for the Program terminated pursuant to Executive Order D 017 09. Accordingly, DORA recommends that the General Assembly repeal the statutory provisions creating the Program.

### **Workers' Compensation Classification Appeals Board**

- ❖ *Continue the Workers' Compensation Classification Appeals Board (Board) for 11 years, until 2021.* The Board serves to protect employers by providing an avenue to appeal workers' compensation insurance disputes regarding an employer's classification code or experience modification factor. If an employer does not concur with an insurance company's classification of the business or employee(s) within the business or the calculation of the experience modification factor, the employer may file an appeal with the Board only after the employer has exhausted all appeal procedures offered by the insurance company. The Board provides a regulatory framework that offers protection by enabling employers to appeal their classification codes as well as their experience modification factors.

Any interested party may provide input on reviews by contacting OPRRR directly at 303-894-2992 or online at [http://www.dora.state.co.us/pls/real/OPR\\_Review\\_Comments.Main](http://www.dora.state.co.us/pls/real/OPR_Review_Comments.Main).



*DORA is dedicated to preserving the integrity of the marketplace and is committed to promoting a fair and competitive business environment in Colorado. Consumer protection is our mission.*