



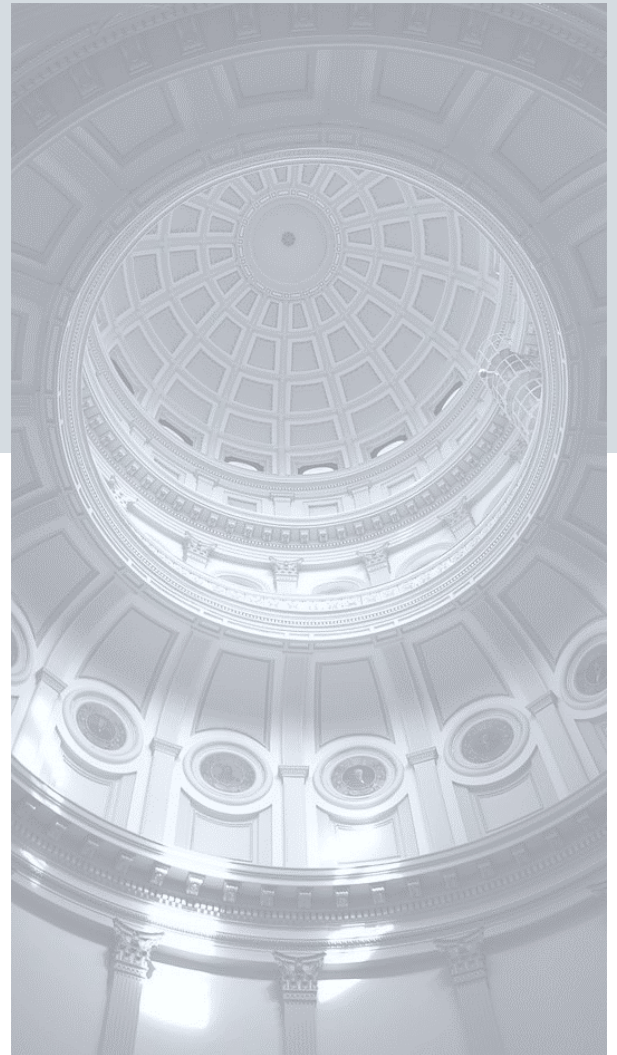
COLORADO

**Department of
Regulatory Agencies**

Colorado Office of Policy, Research &
Regulatory Reform

2020 Sunset Review

Athletic Trainer Practice Act



October 15, 2020



COLORADO

**Department of
Regulatory Agencies**

Executive Director's Office

October 15, 2020

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The Colorado General Assembly established the sunset review process in 1976 as a way to analyze and evaluate regulatory programs and determine the least restrictive regulation consistent with the public interest. Pursuant to section 24-34-104(5)(a), Colorado Revised Statutes (C.R.S.), the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) at the Department of Regulatory Agencies (DORA) undertakes a robust review process culminating in the release of multiple reports each year on October 15.

A national leader in regulatory reform, COPRRR takes the vision of their office, DORA and more broadly of our state government seriously. Specifically, COPRRR contributes to the strong economic landscape in Colorado by ensuring that we have thoughtful, efficient and inclusive regulations that reduce barriers to entry into various professions, and that open doors of opportunity for all Coloradans.

As part of this year's review, COPRRR has completed an evaluation of the Athletic Trainer Practice Act. I am pleased to submit this written report, which will be the basis for COPRRR's oral testimony before the 2021 legislative committee of reference.

The report discusses the question of whether there is a need for the regulation provided under Article 205 of Title 12, C.R.S. The report also discusses the effectiveness of the Director of the Division of Professions and Occupations, and staff, in carrying out the intent of the statutes and makes recommendations for statutory changes for the review and discussion of the General Assembly.

To learn more about the sunset review process, among COPRRR's other functions, visit coprrr.colorado.gov.

Sincerely,

A handwritten signature in black ink that reads 'Patty Salazar'.

Patty Salazar
Executive Director





Sunset Review: Athletic Trainer Practice Act

Background

What is regulated?

Athletic trainers are healthcare and wellness management professionals who work with athletes to prevent injury, recover from injury, and respond to any health-care related issue that may occur at a sporting event. Athletes are individuals in association with an educational institution, an organized community sports program or event, or a professional, amateur, or recreational organization or sports club, who participate in games, sports, recreation, or exercise requiring physical strength, flexibility, range of motion, speed, stamina, or agility.

Why is it regulated?

According to the Athletic Trainer Practice Act (Act), the General Assembly determined that the licensing of athletic trainers is in the best interest of the citizens of Colorado.

Who is regulated?

As of the end of fiscal year 18-19, there were 1,025 licensed athletic trainers in Colorado.

How is it regulated?

To become licensed in Colorado, an individual must acquire a certification from the Board of Certification for the Athletic Trainer and work under the direction of a healthcare professional.

What does it cost?

During the five-year period examined for this sunset review, the Director of the Division of Professions and Occupations expended an average of approximately \$32,000 per year to administer the Act.

What disciplinary activity is there?

During the five-year period examined for this sunset review, the Director of the Division of Professions and Occupations received 19 total complaints and found no violations of the Act.

Key Recommendations

- **Sunset the licensing of athletic trainers. Require athletic trainers to pass the national certification examination and allow them to work under a limited exemption to the Medical Practice Act.**

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Background

Sunset Criteria

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) within the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria¹ and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reports are guided by statutory criteria and organized so that a reader may consider these criteria while reading. While not all criteria are applicable to all sunset reviews, the various sections of a sunset report generally call attention to the relevant criteria. For example,

- In order to address the first criterion and determine whether a particular regulatory program is necessary to protect the public, it is necessary to understand the details of the profession or industry at issue. The Profile section of a sunset report typically describes the profession or industry at issue and addresses the current environment, which may include economic data, to aid in this analysis.
- To ascertain a second aspect of the first sunset criterion--whether conditions that led to initial regulation have changed--the History of Regulation section of a sunset report explores any relevant changes that have occurred over time in the regulatory environment. The remainder of the Legal Framework section addresses the third sunset criterion by summarizing the organic statute and rules of the program, as well as relevant federal, state and local laws to aid in the exploration of whether the program's operations are impeded or enhanced by existing statutes or rules.
- The Program Description section of a sunset report addresses several of the sunset criteria, including those inquiring whether the agency operates in the public interest and whether its operations are impeded or enhanced by existing statutes, rules, procedures and practices; whether the agency performs efficiently and effectively and whether the board, if applicable, represents the public interest.
- The Analysis and Recommendations section of a sunset report, while generally applying multiple criteria, is specifically designed in response to the tenth criterion, which asks whether administrative or statutory changes are necessary to improve agency operations to enhance the public interest.

¹ Criteria may be found at § 24-34-104, C.R.S.

These are but a few examples of how the various sections of a sunset report provide the information and, where appropriate, analysis required by the sunset criteria. Just as not all criteria are applicable to every sunset review, not all criteria are specifically highlighted as they are applied throughout a sunset review. While not necessarily exhaustive, the table below indicates where these criteria are applied in this sunset report.

Sunset Criteria	Where Applied
(I) Whether regulation by the agency is necessary to protect the public health, safety, and welfare; whether the conditions that led to the initial regulation have changed; and whether other conditions have arisen that would warrant more, less, or the same degree of regulation;	<ul style="list-style-type: none"> • Profile. • Legal Framework. • Recommendation 1.
(II) If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms, and whether agency rules enhance the public interest and are within the scope of legislative intent;	<ul style="list-style-type: none"> • Legal Framework • Recommendation 1.
(III) Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures, and practices and any other circumstances, including budgetary, resource, and personnel matters;	<ul style="list-style-type: none"> • Legal Framework. • Program Description and Administration.
(IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;	<ul style="list-style-type: none"> • Program Description and Administration.
(V) Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;	<ul style="list-style-type: none"> • Not Applicable.
(VI) The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;	<ul style="list-style-type: none"> • Profile. • Program Description and Administration.
(VII) Whether complaint, investigation, and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;	<ul style="list-style-type: none"> • Program Description and Administration. • Recommendation 1.
(VIII) Whether the scope of practice of the regulated occupation contributes to the optimum use of personnel and whether entry requirements encourage affirmative action;	<ul style="list-style-type: none"> • Program Description and Administration.

<p>(IX) Whether the agency through its licensing or certification process imposes any sanctions or disqualifications on applicants based on past criminal history and, if so, whether the sanctions or disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subsection (5)(a) of this section must include data on the number of licenses or certifications that the agency denied based on the applicant's criminal history, the number of conditional licenses or certifications issued based upon the applicant's criminal history, and the number of licenses or certifications revoked or suspended based on an individual's criminal conduct. For each set of data, the analysis must include the criminal offenses that led to the sanction or disqualification.</p>	<ul style="list-style-type: none"> • Program Description and Administration.
<p>(X) Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.</p>	<ul style="list-style-type: none"> • Recommendation 1.

Sunset Process

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review on COPRRR’s website at: coprrr.colorado.gov

The functions of Director of the Division of Professions and Occupations (Director and Division, respectively) as enumerated in Article 205 of Title 12, Colorado Revised Statutes (C.R.S.), shall terminate on September 1, 2021, unless continued by the General Assembly. During the year prior to this date, it is the duty of COPRRR to conduct an analysis and evaluation of the Director pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed regulation of athletic trainers should be continued and to evaluate the performance of the Director. During this review, the Director must demonstrate that the program serves the public interest. COPRRR’s findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

Methodology

As part of this review, COPRRR met with Division staff and reviewed program records; performed a literature search; interviewed officials with state and national professional associations; communicated with individual stakeholders including athletic trainers, representatives from school districts, and representatives from major Colorado Universities; and reviewed federal and Colorado statutes, program rules, and the laws of other states.

The major contacts made during this review include but are not limited to:

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- American Physical Therapy Association (Colorado)
 - Board of Certification for the Athletic Trainer
 - Children's Hospital Colorado
 - Colorado Athletic Trainers Association
 - Colorado Department of Public Health and Environment
 - Colorado High School Activities Association
 - Colorado Medical Society
 - Division of Professions and Occupations
 - National Athletic Trainers Association
 - Rocky Mountain Athletic Trainers Association

Profile of the Profession

In a sunset review, COPRRR is guided by the sunset criteria located in section 24-34-104(6)(b), C.R.S. The first criterion asks whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation.

In order to understand the need for regulation, it is first necessary to understand what the profession does, where they work, who they serve and any necessary qualifications.

Athletic trainers (ATs) are healthcare and wellness management professionals who work with athletes to prevent injury, recover from injury, and respond to any healthcare related issue that may occur at a sporting event. Colorado law defines an athlete as

a person who, in association with an educational institution, an organized community sports program or event, or a professional, amateur, or recreational organization or sports club, participates in games, sports, recreation, or exercise requiring physical strength, flexibility, range of motion, speed, stamina, or agility.²

ATs are regulated in 49 states, including Colorado, and the District of Columbia.³ Among the functions ATs perform are:⁴

- Apply protective or injury-preventive devices, such as tape, bandages, and braces;
- Recognize and evaluate injuries;

² § 12-205-104(2), C.R.S.

³ National Athletic Trainer Association. *Regulation of Athletic Trainers*. Retrieved May 11, 2020, from <https://www.nata.org/about/athletic-training>

⁴ US Bureau of Labor Statistics. *Occupational Outlook Handbook, Athletic Trainers, What Athletic Trainers Do*. Retrieved May 11, 2020, from <https://www.bls.gov/ooh/healthcare/athletic-trainers.htm#tab-2>

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- Provide first aid or emergency care;
 - Develop and carry out rehabilitation programs for injured athletes;
 - Plan and implement comprehensive programs to prevent injury and illness among athletes; and
 - Perform administrative tasks, such as keeping records and writing reports on injuries and treatment programs.

ATs work with athletes of all ages and aptitudes and are often the first healthcare providers available when injuries occur in sports. Injuries range from minor bumps and bruises to catastrophic injuries or organ failure. ATs work under the direction of a licensed healthcare provider and generally meet with a consulting physician. AT organizational responsibilities may include regular meetings with an athletic director, dealing with budgets, purchasing, implementing policies, and other business-related issues.⁵

To be licensed in Colorado, a candidate must acquire a certification from the Board of Certification for the Athletic Trainer (BOC). The BOC is a nonprofit credentialing agency. BOC certification requires that each certificant graduate from a Commission on Accreditation of Athletic Training Education-accredited program with a bachelor's or master's degree or be eligible for Athletic Rehabilitation Therapy Ireland, and pass the BOC examination. The BOC has a mutual recognition agreement with Ireland.⁶

The sixth sunset criterion requires COPRRR to evaluate the economic impact of regulation. One way this may be accomplished is to review the expected salary of the profession.

The U.S. Bureau of Labor Statistics maintains that in 2019 there were 32,100 AT jobs in the United States.⁷ The majority of those, 36 percent, were in educational services and another 33 percent were in healthcare facilities.⁸ Those two settings accounted for 70 percent of all ATs employed in the United States. The median annual wage for ATs nationally in 2019 was \$48,440.⁹ Employment is projected to grow 16 percent from 2019 to 2029, much faster than the average for all occupations.¹⁰

⁵ Ibid.

⁶ Board of Certification of the Athletic Trainer. *BOC Certification Exam Candidate Handbook*, p.5. Retrieved May 11, 2020, from <https://online.flowpaper.com/7f6907b2/202021BOCCertificationExamCandidateHandbook/docs/202021BOCCertificationExamCandidateHandbook.pdf?reload=1583524459736>

⁷ US Bureau of Labor Statistics. *Occupational Outlook Handbook, Athletic Trainers, Work Environment*. Retrieved September 24, 2020, from <https://www.bls.gov/ooh/healthcare/athletic-trainers.htm#tab-1>

⁸ US Bureau of Labor Statistics. *Occupational Outlook Handbook, Athletic Trainers, Work Environment*. Retrieved September 24, 2020, from <https://www.bls.gov/ooh/healthcare/athletic-trainers.htm#tab-3>

⁹ US Bureau of Labor Statistics. *Occupational Outlook Handbook, Athletic Trainers, Work Environment*. Retrieved September 24, 2020, from <https://www.bls.gov/ooh/healthcare/athletic-trainers.htm#tab-1>

¹⁰ US Bureau of Labor Statistics. *Occupational Outlook Handbook, Athletic Trainers, Job Outlook*. Retrieved September 24, 2020, from <https://www.bls.gov/ooh/healthcare/athletic-trainers.htm#tab-6>

Legal Framework

History of Regulation

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by the sunset criteria located in section 24-34-104(6)(b), Colorado Revised Statutes (C.R.S.). The first sunset criterion questions whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen that would warrant more, less or the same degree of regulation.

One way that COPRRR addresses this is by examining why the program was established and how it has evolved over time.

COPRRR performed sunrise reviews of athletic trainers (ATs) in 1995 and 2005 in which it recommended that no licensure be adopted. COPRRR also declined to perform another sunrise review in 2007, citing no new information in the application to modify its previous recommendation.

In 2009, the General Assembly created a registration program for ATs. Prior to that, ATs operated under an exemption to the Medical Practice Act (MPA). Under the exemption, ATs who practiced athletic training in Colorado were not required to be licensed physicians as long as they met certain educational and supervision requirements.

A 2014 sunset review determined that registration was not necessary to protect consumer health, safety, and welfare and recommended that AT regulation return to an exemption under the MPA. However, the sunset bill, Senate Bill 15-113, was postponed indefinitely and the program went into windup.

However, in 2016, the General Assembly chose to register ATs again. Senate Bill 16-161, became the AT Practice Act (Act) and it required that all ATs register with the Director of the Division of Professions and Occupations (Director and Division, respectively) prior to practicing in Colorado.

During the 2019 legislative session, House Bill 19-1083 changed the registration of professional ATs to licensing and provided that on August 2, 2019, every registered athletic trainer automatically became a licensed athletic trainer.¹¹ There were no substantive regulatory changes made in the bill.

Also during the 2019 legislative session, the General Assembly recodified Title 12, C.R.S. At that time, Article 29.7 was repealed and reenacted as Article 205. Though there were changes in the manner in which the law reads and many provisions of law were

¹¹ § 12-205-107(2), C.R.S.

combined with common elements of other laws, none of those changes affected the implementation or enforcement of the Act.

Legal Summary

The second and third sunset criteria question:

Whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms, and whether agency rules enhance the public interest and are within the scope of legislative intent; and

Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters.

A summary of the current statutes and rules is necessary to understand whether regulation is set at the appropriate level and whether the current laws are impeding or enhancing the agency's ability to operate in the public interest.

Sports Medicine Licensure Clarity Act

The federal Sports Medicine Licensure Clarity Act (SMLCA) extends the liability coverage of a state-licensed medical professional to another state when he or she provides medical services to an athlete, athletic team, or team staff member.¹² The SMLCA also implies that licensing duties and obligations from the licensing state travel with the licensee to wherever the medical professional provides services. It defines license as, "... registration or certification, or any other form of special recognition, of an individual as such a professional, as applicable."¹³

AT Practice Act

The Act can be found in Article 205 of Title 12, C.R.S. The Director is the designated licensing authority in the Act and is empowered to make rules to implement its provisions.¹⁴

The Act defines an athlete as someone who takes part, "in games, sports, recreation, or exercise requiring physical strength, flexibility, range of motion, speed, stamina, or agility" and who is associated with an organization or an event.¹⁵ The Act also stipulates

¹² Congress.gov. *S.808 - Sports Medicine Licensure Clarity Act of 2017*. Retrieved May 12, 2020, from S.808 - Sports Medicine Licensure Clarity Act of 2017

¹³ 15 USC § 8601(c)(7)

¹⁴ §§ 12-205-107(1)(a) and 116, C.R.S.

¹⁵ § 12-205-104(2), C.R.S.

that athletic training includes providing services suitable for the “prevention, recognition, assessment, management, treatment, rehabilitation, and reconditioning of injuries and illnesses sustained by an athlete.”¹⁶

To practice athletic training in Colorado, one must obtain a license and practice under the direction of a lawfully practicing physician, dentist, or healthcare professional.¹⁷ It provides title protection for those who are licensed and prohibits those not licensed from using the titles:¹⁸

- Athletic trainer;
- Licensed athletic trainer;
- A.T.;
- A.T.C.; and
- Any other generally accepted terms, letters, or figures that indicate that the person is an athletic trainer.

The Act prohibits a licensed AT from practicing medicine or any other regulated form of healing that is not athletic training.¹⁹

In addition to athletes, the Act allows a licensee to provide athletic training services in a clinical setting to a person who is not an athlete if the athletic trainer works under the direction and supervision of a Colorado-licensed or otherwise lawfully practicing physician, dentist, or healthcare professional who treats sports or musculoskeletal injuries. The phrase “direction and supervision” in this case means issuing written or oral directives concerning the athletic training services delivered.²⁰ This is slightly different from the “direction” required in the non-clinical setting, which is:

[The] planning of services with a physician, dentist, or healthcare professional; the development and approval by the physician, dentist, or healthcare professional of procedures and protocols to be followed in the event of an injury or illness; the mutual review of the protocols on a periodic basis; and the appropriate consultation and referral between the physician, dentist, or healthcare professional and the athletic trainer.²¹

LICENSING

Any person who practices, offers, or attempts to practice without an active license commits a Class 2 misdemeanor for the first offense and a Class 1 misdemeanor for any subsequent offense.²²

¹⁶ § 12-205-104(4)(a), C.R.S.

¹⁷ § 12-205-107(1), C.R.S.

¹⁸ § 12-205-105, C.R.S.

¹⁹ § 12-205-106, C.R.S.

²⁰ § 12-205-110(5), C.R.S.

²¹ § 12-205-104(5), C.R.S.

²² § 12-205-115, C.R.S.

To obtain an AT license, an applicant must have a baccalaureate degree, complete an accredited AT education program, pass an examination approved by the Director, pay a fee, and fulfill any other requirements the Director orders to protect public health and safety.²³ The Director adopted rules that stipulate any applicant who has passed the Board of Certification for the Athletic Trainer (BOC) examination and is BOC certified has met the educational and examination requirements.²⁴

License renewal requires a fee, an application, and any information requested by the Director, including a current, valid certification from the national certifying agency.²⁵

To acquire a license by endorsement, an applicant must hold a current, valid credential in a jurisdiction where qualifications are substantially equivalent to Colorado's. The applicant must also verify the time he or she has practiced or maintained continued competency. Once the Director receives all information, he or she will determine whether to issue a license.²⁶

The Act excludes several acts from licensure; some are very broad and others are more nuanced. For example, among the broader exclusions are:

- Athletic training by students enrolled in an accredited athletic training education program, practicing under the direction and immediate supervision of a licensee;²⁷ and
- Athletic training by a certified athletic trainer working for the federal government.²⁸

Among the more nuanced exclusions are:

- A public or private elementary, middle, junior high, or high school coach, athletic director, employee, or a person under contract when participating in or holding activities in the course of his or her regularly scheduled duties, including:
 - Planning, administering, or modifying methods for prevention and risk management of injuries and illnesses;
 - Administering routine assistance for first aid to an injured athlete;
 - Directing conditioning exercises;
 - Educating or counseling athletes concerning the prevention of injuries and illnesses; or
 - Referring an athlete to a licensed healthcare professional;
- A patient performing athletic training for himself or herself; and

²³ § 12-205-108(1), C.R.S.

²⁴ 4 CCR 735-1 §§ 1.1 and 1.2.

²⁵ § 12-205-109, C.R.S.

²⁶ § 12-205-108(3), C.R.S.

²⁷ § 12-205-110(1)(a), C.R.S.

²⁸ § 12-205-110(1)(b), C.R.S.

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- A friend or family member providing free athletic training and not representing himself or herself as an athletic trainer.

DISCIPLINE

The Director has broad authority under the Act. He or she is empowered to hold hearings, and gather evidence to implement the Act.²⁹ He or she may issue a cease and desist order, deny, refuse to renew, revoke, or suspend a license for violations of the Act.³⁰ Violations fall into several categories such as falsifying information in an application,³¹ issues surrounding fitness to practice, and administrative standards. The violations regarding the fitness of a person to practice can involve whether a person has reported to the Director if he or she has a substance abuse, mental, or physical condition that would require a practice modification.³² Administrative issues constitute the majority of violations in the Act and encompass a variety of matters, including:

- Practicing without a license;³³
- Representing oneself as an athletic trainer after a license has expired, been suspended, or been revoked;³⁴
- Committing a sexual act with a person receiving therapeutic services or within six months following the end of a therapeutic relationship;³⁵
- Failing to practice under the direction of a physician, dentist, or healthcare professional;³⁶
- Practicing in a manner that does not meet generally accepted standards;³⁷
- Failing to notify the Director of a disciplinary action taken in any other jurisdiction;³⁸ and
- Having a registration or license suspended or revoked for actions that are also violations of the Act or an applicable provision of Articles 20 or 30, of Title 12, C.R.S. These are general provisions applicable to most licensure programs.

The Director may begin a disciplinary proceeding when he or she believes a violation has occurred. A disciplinary action taken against a licensee in another jurisdiction may be used as evidence, if that violation is also a violation of the Act.³⁹ All disciplinary proceedings must follow the Administrative Procedure Act and section 12-20-403, C.R.S.⁴⁰ The Director may seek an injunction to stop a person from violating the Act.⁴¹

²⁹ § 12-205-111(6)(b), C.R.S.

³⁰ §§ 12-205-111(2), and 12-20-404, C.R.S.

³¹ § 12-205-111(2)(b), C.R.S.

³² §§12-205-111(2)(c), 111(2)(d), and 111(2)(i), C.R.S.

³³ § 12-205-111(2)(g), C.R.S.

³⁴ § 12-205-111(1), C.R.S.

³⁵ § 12-205-111(2)(a), C.R.S.

³⁶ § 12-205-111(2)(j), C.R.S.

³⁷ § 12-205-111(2)(k), C.R.S.

³⁸ § 12-205-111(2)(h), C.R.S.

³⁹ § 12-205-111(4), C.R.S.

⁴⁰ § 12-205-111(5), C.R.S.

⁴¹ § 12-205-111(6), C.R.S.

A final action of the Director is subject to judicial review. Additionally, the Director may begin a judicial proceeding to enforce an order of the Director.⁴²

⁴² § 12-205-111(7), C.R.S.

Program Description and Administration

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by sunset criteria located in section 24-34-104(6)(b), Colorado Revised Statutes (C.R.S.). The third, fourth and fifth sunset criteria question:

Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures practices and any other circumstances, including budgetary, resource and personnel matters;

Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively; and

Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;

In part, COPRRR utilizes this section of the report to evaluate the agency according to these criteria. However, the fifth criterion does not apply in this circumstance because there is no regulatory board or commission.

The Director of the Division of Professions and Occupations (Director and Division, respectively) is empowered by the Athletic Trainer Practice Act (Act) to license athletic trainers (ATs) in Colorado.⁴³ During 2019, the General Assembly amended the Act which changed AT regulation from registration to licensing. There were no other changes made; House Bill 19-1083 merely changed the name of the AT credential from “registration” to “license,” so there was no tangible effect on program implementation. Given how recent that change occurred, all of the data in this report reflects operations during the registration period. Where applicable, this report utilizes the term licensure when speaking generically about the credential conferred by the Director and either registration or license when the specific instance requires.

⁴³ §§ 12-205-101 and 107(1)(a), C.R.S.

Table 1 shows the resources expended by the Division to implement the provisions of the Act.

Table 1
Program Expenditures
Fiscal years 14-15 through 18-19

Fiscal Year	Total Program Expenditures	FTE
14-15	\$ 38,915.49	0.20
15-16	\$ 29,089.31	0.20
16-17	\$ 28,164.95	0.15
17-18	\$ 30,324.06	0.15
18-19	\$ 34,258.47	0.15

Table 1 illustrates the program spends an average of approximately \$32,000 annually to implement the Act and the total expenditures do not vary more than a few thousand dollars.

Likewise, there is very little variation in the personnel allotted to the program. During the time examined for this sunset review, the Division devoted one-fifth of a full-time equivalent (FTE) employee or less to administer the program. Total Expenditures include additional costs associated with employees in the centralized offices of the Division, which provide management, licensing, administrative, technical, and investigative support. However, the centralized personnel are not included in the FTE allotment. For fiscal year 19-20, only 0.21 FTE were allotted to program administration. The FTE were split among two positions:

- Program Management I, 0.20 FTE - This position is the first-level of program organization and also handles overall management of the program, personnel management, complaint resolution, stakeholder engagement, outreach, and education.
- Program Management II, 0.01 FTE - This position is the senior authority and handles overall management of the program, personnel management, complaint resolution, stakeholder engagement, outreach, and education.

Licensing

Currently, to practice athletic training or represent oneself as an AT in Colorado, a person must acquire a license.⁴⁴

Acquiring a license necessitates that an applicant have a baccalaureate degree from an accredited college or university, pass an accredited athletic training education program,

⁴⁴ § 12-205-107(1)

and pass an examination.⁴⁵ Rather than establishing its own licensing regime, the Division verifies these prerequisites by requiring that the Board of Certification for the Athletic Trainer (BOC) certify each applicant. The BOC is a nonprofit credentialing agency. BOC certification requires completing an education program accredited by the Commission on Accreditation of Athletic Training Education and passing the BOC certification examination.⁴⁶

Table 2 shows the number of individuals registered by the Director during the period examined for this sunset review.

Table 2
Athletic Trainer Licensure
Fiscal Years 14-15 through 18-19

Fiscal Year	Original Registration	Renewal	Reinstatement	Active on June 30
14-15	39	0	8	710
15-16	119	630	3	836
16-17	131	213	6	816
17-18	105	808	25	869
18-19	86	0	13	1,025

During the time cohort examined for this sunset review, total licensure increased considerably, 44.4 percent. In interviews with Division staff, the Division was unaware of any direct reason for the increase in athletic trainer licensure.

All AT licenses expire on October 31 of odd-numbered years and must be renewed to continue practicing. The fee charged for original licensure is \$100; the fee to reinstate licensure is \$59, and the fee to renew licensure, during the last renewal cycle, was \$44.

ATs may also obtain a license through endorsement. To be licensed by endorsement, an applicant must file an application and pay a fee, and hold a current, valid license or registration in a jurisdiction with substantially equivalent requirements as Colorado.⁴⁷ The BOC certification examination is recognized as meeting examination requirements by all states that regulate ATs. As of the writing of this report, every state but California regulates ATs at some level.⁴⁸

Table 3 shows the licensure by endorsement numbers during the period covered by this sunset review. These figures are included in the “Active on June 30” column in Table 2.

⁴⁵ §§ 12-205-108(1)(a), (1)(b), and (1)(c), C.R.S.

⁴⁶ Board of Certification for the Athletic Trainer. *Determine Eligibility*. Retrieved March 18, 2020, from <https://www.bocatc.org/candidates> (Determine Eligibility)

⁴⁷ § 12-205-108(3)(a), C.R.S.

⁴⁸ Board of Certification for the Athletic Trainer. *State Regulation Search*. Retrieved March 18, 2020, from <https://www.bocatc.org/state-regulation>

Table 3
Licensure by Endorsement
Fiscal Years 14-15 through 18-19

Fiscal Year	Licensure by Endorsement
14-15	52
15-16	65
16-17	75
17-18	66
18-19	57

Licensure through endorsement averaged 63 during the time examined for this sunset review.

Examinations

The eighth sunset criterion questions whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action.

In part, COPRRR utilizes this section of the report to evaluate the program according to this criterion.

The Director does not develop or administer a licensure examination and only the BOC certification examination is authorized. The BOC examination consists of 175 questions covering material within the following areas:⁴⁹

- Injury/Illness Prevention and Wellness Protection,
- Clinical Evaluation and Diagnosis,
- Immediate and Emergency Care,
- Treatment and Rehabilitation, and
- Organization and Professional Health and Wellbeing.

The examination is computer-based, and a candidate must finish within four hours. The BOC scores examinations in a range of 200 to 800. Passing requires a minimum score of 500.⁵⁰

The BOC reports that nationwide, from April 2019 to February 2020, 3,913 individuals took the examination for the first time and 77.6 percent of those passed. The BOC

⁴⁹ Kent State University. *Athletic Training, BOC Athletic Training Exam: The Test Structure*. Retrieved July 29, 2020, from <https://www.kent.edu/ehhs/hs/attr/blog/boc-exam>

⁵⁰ Ibid.

administers the examination five times a year.⁵¹ The examination fee is \$330 for candidates testing in the United States or Canada.⁵²

Complaint and Disciplinary Activity

The seventh sunset criterion requires COPRRR to examine whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession.

In part, COPRRR utilizes this section of the report to evaluate the program according to this criterion.

Any person can make a complaint to the Division concerning a licensed individual or a person claiming to be an AT who does not hold a license. When a complaint comes into the Division, it is reviewed to determine if there is jurisdiction over the issue. If, indeed, the Director has jurisdiction over the complaint, an investigation ensues to determine if a violation occurred. If a more robust investigation is required, the complaint is forwarded to the Division’s Office of Investigations (OI) before the Director renders a decision.

Table 4 shows the number of complaints the Division received concerning ATs, the number of cases sent to OI, and the number of violations substantiated during the period under review.

Table 4
Complaint Information
Fiscal Years 14-15 through 18-19

Fiscal Year	Complaints	Investigations	Violations
14-15	3	0	0
15-16	1	0	0
16-17	4	1	0
17-18	5	0	0
18-19	6	3	0

The numbers indicate that complaints are rare, they averaged less than five per year during the review period. This is especially salient given that the average number of regulated ATs during the period under review was 851. Investigations revealed that only

⁵¹ Board of Certification for the Athletic Trainer. *What is an Athletic Trainer, Exam Reports*. Retrieved July 29, 2020, from <https://bocatc.org/about-us#reports>

⁵² Board of Certification for the Athletic Trainer. *Register for Exam*. Retrieved September 24, 2020, from <https://bocatc.org/candidates> (Register for Exam)

two of the complaints received during the time cohort fell under the jurisdiction of the Director and that no violations were committed in those instances.

One possibility as to why there are so few violations is that all ATs must practice under the direction of a Colorado-licensed or otherwise lawfully practicing physician, dentist, or healthcare professional. The Act defines direction as

[The] planning of services with a physician, dentist, or healthcare professional; the development and approval by the physician, dentist, or healthcare professional of procedures and protocols to be followed in the event of an injury or illness; the mutual review of the protocols on a periodic basis; and the appropriate consultation and referral between the physician, dentist, or healthcare professional and the athletic trainer.⁵³

According to Division staff, this definition clarifies that the physician, dentist, or healthcare professional is accountable for the actions of ATs under his or her direction.

Collateral Consequences - Criminal Convictions

The ninth sunset criterion requires COPRRR to examine whether the agency under review, through its licensing processes, imposes any sanctions or disqualifications based on past criminal history, and if so, whether the disqualifications serve public safety or commercial or consumer protection interests.

In part, COPRRR utilizes this section of the report to evaluate the program according to this criterion.

The Act states that it is grounds for discipline for a person to be convicted of, or plead guilty or nolo contendere to a felony or any crime in the Colorado Criminal Code. The Director has discretion on whether to administer discipline to the offender.⁵⁴ The Director has administered no discipline or denied licensure in this regard.

⁵³ § 12-205-104(5), C.R.S.

⁵⁴ § 12-205-111(2)(f), C.R.S.

Analysis and Recommendations

The final sunset criterion questions whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest. The recommendations that follow are offered in consideration of this criterion, in general, and any criteria specifically referenced in those recommendations.

Recommendation 1 - Sunset the licensing of athletic trainers. Require athletic trainers to pass the national certification examination and allow them to work under a limited exemption to the Medical Practice Act.

The first and second sunset criteria that the General Assembly must consider during a sunset review state that analysis must determine:

- Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;

Athletic trainers (ATs) are healthcare professionals who work with athletes to prevent injury, recover from injury, and respond to any healthcare related issue that may occur at sporting events. ATs work with athletes of all ages and aptitudes and are often the first healthcare providers on the scene to treat an injury. ATs are required work under the direction of a licensed healthcare provider.

In 1991, the General Assembly enacted House Bill 91-1127 (HB 1127). The bill authorized athletic trainers (ATs) to practice in Colorado under an exemption to the Colorado Medical Practice Act (MPA). HB 1127 specified that Colorado ATs needed no license as long as they completed education requirements in an accredited program and worked under the direction of a medical professional.⁵⁵

A 2005 sunrise review reiterated that ATs should be qualified to practice in order to practice under an exemption to the MPA. Central components of the qualification were education and training under a Board of Certification for the Athletic Trainer (BOC) certified AT and, once trained, working under the direction of a physician or dentist.

⁵⁵ DORA. 2014 Sunset Review, *Athletic Trainers*. p.8. Retrieved May 12, 2020, from <https://drive.google.com/file/d/0B8bNvcf083ydZG1vUHV2F6dWM/view>

That sunrise review found that ATs had not harmed the public and recommended against regulation. In fact, it recommended loosening the definition of an athlete.⁵⁶

The General Assembly adopted a registration program in 2009. Senate Bill 09-026 created the Athletic Trainer Practice Act (Act) and added passing an examination to the qualifications necessary to become registered. Subsequently, a 2014 sunset review pointed out that no Colorado consumers were being harmed by ATs. The General Assembly allowed the registration program to sunset and, once again, qualified ATs practiced under the direction of a licensed healthcare professional with an exemption to the MPA.

In 2016, Senate Bill 16-161 substantially reinstated the Act as it had existed prior to sunset.

In 2019, the General Assembly amended the Act such that the registration of ATs became the licensing of ATs. No changes were made to the required qualifications. Again, only a nominal change calling those ATs who were registered, “Licensed.”

This chronology explicitly points to regulatory creep. Three decades ago, in 1991, qualified ATs operated under an exemption to the MPA as long as they satisfied education and oversight requirements. Though no research has ever pointed to harm as the reason it was necessary to increase the regulation of ATs to licensure, a higher more restrictive level of regulation, regulation increased over time.

ATs are now mandated under Colorado law to acquire a license. The requirements to obtain that license illustrate very few differences from the regulation of 30 years ago. The fundamentals of AT regulation, then and now, are: a candidate must be certified by a national certifying organization and work under the direction of a licensed healthcare professional.

When a regulated healthcare professional acts outside of his or her scope of practice or practices in an unsafe manner, he or she could be disciplined or even prohibited from practicing. There have been no such instances reported concerning ATs in this sunset review. Moreover, there was a dearth of discipline and demonstrable harm in the previous sunset review and sunrise reviews conducted on this profession.

Medical first-responders, such as ATs, should have some training and at least minimal competency. However, any need for regulation beyond minimal qualifications is dubious because ATs must work under the direction of a healthcare professional. The Act defines that direction as:

the planning of [AT] services with a physician, dentist, or healthcare professional; the development and approval by the physician, dentist, or healthcare professional of procedures and protocols to be followed in the event of an injury or illness; the mutual review of the protocols on a

⁵⁶ DORA. 2005 Sunrise Review, *Athletic Trainers*. pp. 11-12. Retrieved May 12, 2020, from <https://drive.google.com/file/d/0B8bNvcf083ydbXR5VXIIFV2VWNGs/view>

periodic basis; and the appropriate consultation and referral between the physician, dentist, or healthcare professional and the athletic trainer.⁵⁷

Given that, an AT is required to work under the direction of a licensed professional and that person is professionally accountable for actions taken by the AT. If the AT acts in an unsafe manner, the healthcare professional could be disciplined as a Colorado licensee. Consider this provision in combination with the complaint and disciplinary data in this sunset review that illustrate ATs seldom act in a manner that merits either a complaint or disciplinary action. This has been the case historically, regardless of how restrictive or lenient regulation has been.

At the end of fiscal year 18-19, there were 1,025 regulated ATs in Colorado and not a single violation was recorded during the five-year period examined for this sunset review. This is consistent with the 2014 sunset review which also found there was one cease and desist order issued. These two sunset reviews cover approximately the last decade of AT regulation with no reported incidents of consumer harm.

The primary purpose of professional licensure in Colorado is to protect Colorado consumers by ensuring minimal competency and preventing unsafe practitioners from practicing. Given that a licensed healthcare professional is responsible for any violations of professional standards and there is no evidence reported to the Director that there have been such violations, this is a strong case for sunset.

To reiterate, qualifications for regulation have changed very little in the three decades since regulation began, reports of offenses and offenders are virtually absent, and yet regulation has steadily increased over that time.

The Colorado Office of Policy, Research, and Regulatory Reform (COPRRR) received many opinions from licensees and other stakeholders as to why regulation of ATs is necessary. The example below voiced an opinion shared by others:

If we do not provide licensure requirements for this profession, it will only be a matter of time before the AT profession will become a group of ill-trained and renegade providers who will be adhering to the dogma of industry and the latest treatment craze. We need to have oversight in these individuals to ensure that they are maintaining the highest standard of scientific education. Again, our athletes deserve this requirement.

Recall from the Program Description of this report, the BOC must certify each AT prior to practicing in Colorado. Qualification similar to this has been a staple of AT practice in Colorado for three decades. The BOC develops the professional standards that must be upheld by licensees. The Director of the Division of Professions and Occupations (Director and Division, respectively) currently supplements those professional standards with customary license practice violations such as falsifying information in an application⁵⁸ or a substance abuse, mental, or physical condition that would require a

⁵⁷ § 12-205-104(5), C.R.S.

⁵⁸ § 12-205-111(2)(b), C.R.S.

practice modification.⁵⁹ Most grounds for discipline in the Act encompass administrative matters, including:

- Practicing without a license;⁶⁰
- Representing oneself as an athletic trainer after a license has expired, been suspended, or been revoked;⁶¹
- Committing a sexual act with a person receiving therapeutic services or within six months following the end of a therapeutic relationship;⁶²
- Failing to practice under the direction of a physician, dentist, or healthcare professional;⁶³ and
- Failing to notify the director of a disciplinary action taken in any other jurisdiction.⁶⁴

It is the BOC standards that demand training and continuity of treatment. The BOC requires practitioners to comply with its *Practice Standards and a Code of Professional Responsibility*. Those standards are in place regardless of any regulatory framework the state institutes. The BOC accepts complaints against practitioners who allegedly violate either. From 2017 through 2019 the BOC processed 22 cases across the United States, it censured 11 ATs and suspended 1.

Considering all of the grounds for discipline in the Act and corresponding rules, there have been no violations of any type during the time examined for this report and the narrative has not changed over the last 30 years. Therefore, the argument that without licensing there are no standards lacks merit.

Another argument offered in favor of regulation is that section 105 of the Act provides title protection for the titles:

- Athletic trainer;
- Licensed athletic trainer;
- A.T. or A.T.C.; or
- Any other generally accepted terms, letters, or figures that indicate that the person is an athletic trainer.

This is a weak but slightly valid point. Because the title “ATC” is trademarked by the BOC, there is already a measure of title protection.

However, because ATs must work under the direction of a licensed healthcare professional and cannot offer services directly to the public, title protection has little or no value to Colorado’s general public.

Title protection could be a slightly valid reason to regulate, because there are several types of “trainers” and “coaches” that do not have the training necessary to act as an AT. Title protection helps a consumer differentiate an AT from a personal trainer,

⁵⁹ §§12-205-111(2)(c), 111(2)(d), and 111(2)(i), C.R.S.

⁶⁰ § 12-205-111(2)(g), C.R.S.

⁶¹ § 12-205-111(1), C.R.S.

⁶² § 12-205-111(2)(a), C.R.S.

⁶³ § 12-205-111(2)(j), C.R.S.

⁶⁴ § 12-205-111(2)(h), C.R.S.

fitness trainer, or physical trainer. Notwithstanding, as stated above, ATs do not offer services directly to the public.

Another premise offered in favor of regulation is based in the federal Sports Medicine Licensure Clarity Act (SMLCA). It states that a healthcare professional who travels with a sports team does not need to be licensed in the state where the team has traveled as long as he or she is licensed in the home state. This protects consumers, athletes, because it ensures some continuity of care. It protects an athlete from treatment by a person who may not have any familiarity with his or her case or issues.

However, the SMLCA states that the term license or licensure “may include the registration or certification, or any other form of special recognition, of an individual as such a professional, as applicable.”⁶⁵ [Emphasis Added] This definition submits that a BOC certification and special exemption to the MPA that Colorado ATs traditionally worked under qualifies them to travel under the SMLA. Therefore, a state-issued license is over regulation and not justified based on the desire to prevent harm due to a lack of continuity of care.

Based on the following premises enumerated in detail above, it is clear that the licensing of ATs is too high a degree of regulation:

- There have been no cases of consumer harm reported over the last decade.
- ATs must practice under the direction of a physician, dentist, or healthcare professional who is professionally responsible for all of the AT’s professional actions.
- The BOC develops professional practice qualifications and standards for ATs and has the ability to enforce them if it is necessary.
- The BOC grants title protection to the profession but title protection has limited utility since ATs cannot offer services directly to the public.
- The federal SMLCA covers BOC certified ATs who practice under an exemption to the MPA when they travel to another state with a sports team.

Therefore, licensing is not necessary to protect the public health, safety, and welfare. The regulatory protocols as they existed without incident for many years are minimally restrictive, appropriate, and will protect the public in Colorado.

Therefore, the General Assembly should sunset the licensing of ATs and require ATs to pass the national certification examination to work under a limited exemption to the MPA.

⁶⁵ 15 USC § 8601(c)(7)