

S U N R I S E R E V I E W

CREATIVE ARTS THERAPISTS

**Submitted by
The Colorado Department of Regulatory Agencies
June 1989**

STATE OF COLORADO

DEPARTMENT OF REGULATORY AGENCIES
Office of the Executive Director
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Roy Romer
Governor

June 27, 1989


The Honorable Barbara Philips
Sunrise and Sunset Review Committee Chairperson
Room 029, State Capitol Building
Denver, Colorado 80203

Dear Representative Philips:

We have completed our evaluation of the sunrise application for licensure of creative arts therapists and are pleased to submit this written report which will be the basis for my office's oral testimony before the Sunrise and Sunset Review Committee. The report is submitted pursuant to section 24-34-104.1, Colorado Revised Statutes, 1988 Repl. Vol., (the "Sunrise Act") which provides that the Department of Regulatory Agencies shall conduct an analysis and evaluation of proposed regulation to determine whether the public needs and would benefit from the regulation.

The report discusses the question of whether there is a need for the regulation in order to protect the public from potential harm, whether regulation would serve to mitigate the potential harm and whether the public can be adequately protected by other means in a more cost effective manner.

Sincerely,


Steven V. Berson
Executive Director

SVB/pf
Attachment

1989 SUNRISE REVIEW OF CREATIVE ARTS THERAPISTS

SUMMARY OF FINDINGS AND RECOMMENDATIONS

The Department of Regulatory Agencies has evaluated the proposal for licensure of creative arts therapists. The evaluation criteria, according to C.R.S. 24-34-104(4)(b), are the following:

- (I) Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety, or welfare of the public, and whether the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;
- (II) Whether the public needs, and can reasonably be expected to benefit from, an assurance of initial and continuing professional or occupational competence; and
- (III) Whether the public can be adequately protected by other means in a more cost-effective manner.

Summary of proposal. Although there are references in the application to licensure, the applicant is proposing title protection (certification) for creative arts therapists which means that only persons trained as creative arts therapists, dance/movement therapists, and music therapists could qualify to use the title "creative arts therapists." The applicant proposes that requirements for certification include a master's degree and two years of post-graduate supervised experience. Also, it is proposed that certified creative arts therapists pass a state examination.

Defining the profession of creative arts therapy. Creative arts therapists are psychotherapists who use art, dance, or music therapy to diagnose and treat clients who might otherwise be unable to respond to other types of therapy that rely on verbal communication. Such clientele may be diverse, including mentally ill persons, children, families, and various groups. Creative arts therapists may be employed in academic settings, hospitals or other institutions, or in private practice. The applicant estimates that there are approximately 200 creative arts therapists in Colorado.

Private credentialing. Private associations exist for music, dance and art therapists separately. The National Association for Music Therapy offers the title of Registered Music Therapist (RMT) which requires an undergraduate degree in music therapy and 1,040 hours of supervised experience. The Association also offers the title of "Music Therapist-Board Certified" (MT-BC) which requires that the practitioner pass an examination.

The American Dance Therapy Association offers two levels of certification, "Dance Therapist Registered" (DTR) and membership in the "Academy of Dance Therapists Registered" (ADTR) both requiring a master's degree in dance therapy. The title of "ADTR" requires two years of supervised experience obtained after the degree.

The American Art Therapy Association certifies therapists as "Arts Therapist Registered" (ATR). The Association recognizes "Professional Quality Credits" (PQCs) which allows the applicant to submit a combination of education, experience and apprenticeship qualifications. The art therapist must document that he or she has at least 1,000 hours of paid clinical experience that was not part of an educational or training program as part of this credential.

Current state regulation. Creative arts therapists are regulated as unlicensed psychotherapists by the State Grievance Board. (C.R.S. 12-43-701 (10)) The State Grievance Board can enforce disciplinary actions against unlicensed psychotherapists through its power to investigate, hold hearings, subpoena witnesses and documents, and employ administrative law judges. (C.R.S. 12-43-703 (b)) The State Grievance Board may discipline for violation of prohibited activities including misleading advertising, abuse of health insurance, failure to meet generally accepted standards of practice, failure to refer a client to another practitioner when indicated, and financial or sexual exploitation of a client. (C.R.S. 12-43-704 et seq)

The law also requires that all unlicensed psychotherapists (including creative arts therapists) disclose mandatory information to clients. Such information includes the qualifications of the psychotherapist, a statement indicating that the practice of licensed and unlicensed psychotherapy is regulated by the Department of Regulatory Agencies and an address and telephone number for the Board, and a statement that sexual intimacy in a professional relationship is never appropriate and should be reported to the State Grievance Board. (C.R.S. 12-43-214 et seq)

Findings and Recommendations.

A 1988 sunrise report recommended against title protection of creative arts therapists. The 1988 analysis stressed the creation of the new State Grievance Board as possibly being the most cost-effective way of addressing the applicant's concerns that the public may be harmed by incompetent or unethical creative arts therapists. In the absence of demonstrated harm to the consumer, the Department concluded in testimony at the 1988 sunrise hearings, the only apparent justification for certifying creative arts therapists would be to increase competition among mental health practitioners who are recognized by the state.

Present sunrise application contains no new evidence of harm to the public. The applicants have provided no new documentation that would show that the creation of an additional regulatory board is required to protect the public. Also, the State Grievance Board has not received any complaints of incompetence or unethical conduct by creative arts therapists practicing as unlicensed psychotherapists so it does not appear that the public is being harmed by creative arts therapists at the present time.

Creative Arts Therapists should be able to be licensed by the State Board of Professional Counselors. Section 12-43-601 of the Colorado Mental Health Licensing Statute provides statutory authority for the existence and operation of the State Board of Licensed Professional Counselor Examiners (Board). The language of the statutory definition shows that creative arts therapists were intended to be included in the professional counselor's scope of practice

assuming the applicant passes the examination. The critical issue in this situation appears to be course content since creative arts therapists usually meet the prerequisite requirement of holding a master's or doctoral degree. Although the degree is not in "Professional Counseling" per se, section 12-43-603(c) states that the education may be obtained from an "equivalent program as determined by the Board."

The General Assembly was unambiguous, in fact, in asserting the scope of the Mental Health Licensing Statute. Section 12-43-213 states:

It is the intent of the general assembly that the definition relating to full-time courses of study and institutions of higher education for graduation of persons who are thereby qualified to take examinations for licensure under this article be liberally construed by each board under its rule-making powers (emphasis added) to ensure the right to take such examinations. It is not the intent that technical barriers be used to deny the ability to take such examination.

There are no creative arts therapists licensed as professional counselors in Colorado at this time. The Board of Licensed Professional Counselors has received three applications for licensure from creative arts therapists. One of the applicants was approved by the Board to take the examination. This approval was granted at the June 23, 1989 meeting of the Board after several creative arts therapists had made a presentation to the Board and answered questions in an effort to demonstrate to the Board that creative arts therapists should be allowed to take the licensure examination.

The Board has promulgated emergency rules including 14 pages of rules concerning criteria for licensure by examination. Contact with individuals who participated in the drafting of those rules revealed that it was felt that creative arts therapists are qualified to be licensed as professional counselors and would be able to meet the criteria adopted by the Board. Creative arts therapists, however, feel that the criteria are exclusionary because their training is often equivalent to other counselor's training but is not understood by those who are unfamiliar with the creative arts curricula. For this reason, state the Colorado Coalition of Creative Arts Therapists, most creative arts therapists are somewhat skeptical of the Board. Also, the \$190 non-refundable application fee may dissuade some practitioners from applying to the Board.

The problem is exacerbated by a situation involving an applicant who is a creative arts therapist and who is licensed in another state as a professional counselor. This individual's license was not endorsed by the Board because no test was given in the other state. Since the applicant's license is active, she intends to travel to the state where the license is held, take the examination, and then re-apply for endorsement of the license in Colorado.

Other professional counselors are not applying for licensure. To be sure, creative arts therapists are not the only occupational group to resist licensing by the Board. The Board distributed over 2,000 applications to psychotherapists that were determined by the Board to be potentially eligible for licensure as professional counselors. Less than 60 applications have been returned to the Board. It should be noted that the application process

includes a worksheet which allows the applicant to determine if he or she meets the coursework requirements concerning the education that the Board will accept to allow the applicant to take the examination. Therefore, it is possible that many applicants conclude they are not qualified and do not submit the application. An individual may continue to practice unlicensed but his or her competence and conduct are subject to review by the State Grievance Board, as previously explained. Further, the unlicensed psychotherapist must be supervised by a licensed practitioner which usually entails payment by the unlicensed therapist for the supervision.

Conclusion

The applicants have not demonstrated that actual harm to the public has occurred as a result of the unlicensed practice of creative arts therapists or that there is a potential for harm that is clear. Therefore, the Department does not recommend that title protection be granted as the applicants have proposed.

The Department is convinced that creative arts therapists should be licensed as professional counselors although the experience of the creative arts therapists in obtaining licensure has not been encouraging. The language of the statute and interviews with individuals who participated in drafting the Board's rules have demonstrated that the training received by creative arts therapists and the duties they perform as psychotherapists were evaluated as substantially equivalent to the general criteria established for licensed professional counselors.

Creative arts therapists who do not wish to or do not qualify for licensure as professional counselors have the option of practicing as unlicensed psychotherapists. In those cases, the State Grievance Board provides an adequate avenue of redress for client complaints.

As was previously stated, one creative arts therapist has been approved to take the licensed professional counselor examination. The Board, at the same meeting, decided to relax some of the rules that may be restricting many psychotherapists, creative arts therapists included, from obtaining a license. It remains to be seen what effect, if any, the rule changes will have on the number of licensed professional counselors in Colorado.

Therefore, it is the finding of the Department that the existing regulatory scheme (Board of Professional Counselors and the State Grievance Board) offer the most cost-effective protection of the public. It is apparent, though, that those mechanisms are not working in the manner the General Assembly anticipated when the Colorado Mental Health Licensing Statute was enacted. It would be reasonable to assume that the on-going communication between the Board and the creative arts therapists coupled with the Board's continuing refinement of its rules will result in a less-restrictive regulatory environment for professional counselors. The Department foresees the operation of the State Grievance Board providing protection to the public as that process develops and anticipates the sunset review of the Board of Licensed Professional Counselors (the Board is scheduled to terminate July 1, 1992) will provide the General Assembly with an analysis of the success of that process.