

First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 13-0146.01 Christy Chase x2008

SENATE BILL 13-151

SENATE SPONSORSHIP

Nicholson,

HOUSE SPONSORSHIP

Primavera,

Senate Committees
Health & Human Services

House Committees

A BILL FOR AN ACT

101 CONCERNING THE CONTINUATION OF THE REGULATION OF MASSAGE
102 THERAPISTS, AND, IN CONNECTION THEREWITH, REQUIRING
103 LICENSURE OF MASSAGE THERAPISTS AND IMPLEMENTING
104 OTHER RECOMMENDATIONS CONTAINED IN THE SUNSET REPORT
105 PREPARED BY THE DEPARTMENT OF REGULATORY AGENCIES.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Sunset Process - Senate Health and Human Services

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

Committee. The bill implements the recommendations contained in the sunset review and report on the "Massage Therapy Practice Act" (MTPA) as follows:

Sections 1 and 2 of the bill continue the regulation of massage therapists by the director of the division of professions and occupations (director) for 9 years, until 2022.

Current law requires massage therapists to be registered with the director. **Sections 3 to 11, 13 to 15, and 17** replace the registration requirement with a requirement that massage therapists obtain a license.

Section 10 adds the following as grounds for disciplining a massage therapist:

- ! Failure to report the surrender of a massage therapy license, certification, or registration to, or an adverse action taken against a license, certification, or registration by, a licensing agency in another state, territory, or country, a governmental agency, a law enforcement agency, or a court for acts that constitute grounds for discipline under the MTPA;
- ! Commission of an act that does not meet, or failure to perform an act necessary to meet, generally accepted standards of massage therapy care; and
- ! Commission of a crime when the underlying act was related to the practice of massage therapy or was perpetrated against a massage therapy client during the therapeutic relationship.

Section 11 authorizes the director to issue letters of admonition and confidential letters of concern to a massage therapist against whom the director determines action against the license is not warranted but a statement from the director about the conduct is appropriate.

In order to register as a massage therapist under current law, an applicant must have obtained a degree or diploma from an approved massage therapy school, which is defined as a massage therapy educational school approved by the division of private and occupational schools; a massage therapy educational program certified by the Colorado community college system; or a massage therapy educational program accredited by a nationally recognized accrediting agency. **Section 4** permits an applicant to obtain a degree or diploma from a massage therapy program at a school located outside Colorado that is approved by the director based on standards adopted by the director by rule.

Section 12 requires a massage therapist who has had his or her license revoked or has surrendered his or her license in lieu of discipline to wait at least 2 years before applying for a new license.

Under current law, a massage therapist is subject to discipline if he or she has a mental or physical condition or disability that renders him or her unable to provide massage therapy with reasonable skill and safety or

that may endanger the health or safety of clients. **Section 10** imposes discipline on a massage therapist who has such a condition or illness only if the massage therapist:

- ! Fails to notify the director of the condition or illness;
- ! Fails to act within the limitations created by the condition or illness; or
- ! Fails to comply with the limitations agreed to under a confidential agreement entered into with the director.

Section 16 authorizes the director to enter into a confidential agreement with a massage therapist who suffers from a mental or physical condition or illness under which the massage therapist agrees to limit his or her practice to ensure client safety and also agrees to monitoring and reevaluations.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 12-35.5-120, **amend**
3 (1); and **repeal** (2) as follows:

4 **12-35.5-120. Repeal of article - review of functions.** (1) This
5 article, ~~is~~ AND THE FUNCTIONS OF THE DIRECTOR AS SET FORTH IN THIS
6 ARTICLE, ARE repealed, effective September 1, ~~2013~~ 2022. PRIOR TO THE
7 REPEAL, THE DEPARTMENT OF REGULATORY AGENCIES SHALL REVIEW THE
8 FUNCTIONS OF THE DIRECTOR PURSUANT TO SECTION 24-34-104, C.R.S.

9 ~~(2) (a) The registration functions of the director as set forth in this~~
10 ~~article are repealed, effective September 1, 2013.~~

11 ~~(b) Prior to such repeal, the registration functions shall be~~
12 ~~reviewed pursuant to section 24-34-104, C.R.S.~~

13 **SECTION 2.** In Colorado Revised Statutes, 24-34-104, **amend**
14 (53.5) introductory portion; **repeal** (44.5); and **add** (53.5) (c) as follows:

15 **24-34-104. General assembly review of regulatory agencies**
16 **and functions for termination, continuation, or reestablishment.**

17 (44.5) ~~The following agencies, functions, or both, shall terminate on~~
18 ~~September 1, 2013. The registration of massage therapists by the director~~

1 of the division of professions and occupations in accordance with article
2 35.5 of title 12, C.R.S.

3 (53.5) The following agencies, functions, or both, shall terminate
4 on September 1, 2022:

5 (c) THE LICENSURE OF MASSAGE THERAPISTS BY THE DIRECTOR OF
6 THE DIVISION OF PROFESSIONS AND OCCUPATIONS IN ACCORDANCE WITH
7 ARTICLE 35.5 OF TITLE 12, C.R.S.

8 **SECTION 3.** In Colorado Revised Statutes, **amend** 12-35.5-102
9 as follows:

10 **12-35.5-102. Legislative declaration.** (1) The general assembly
11 hereby finds and declares that it is in the interest of the public health,
12 safety, and welfare to require ~~registration of~~ massage therapists TO BE
13 LICENSED. Because proper and safe massage therapy is of statewide
14 concern, this article is deemed to be an exercise of the police powers of
15 the state.

16 (2) The general assembly further declares that the practice of
17 massage therapy by any person not ~~registered~~ LICENSED pursuant to this
18 article is adverse to the best interests of the people of this state. It is not,
19 however, the intent of the general assembly in enacting this article to
20 prevent, restrict, or inhibit the practice of massage therapy by any duly
21 ~~registered~~ LICENSED person.

22 **SECTION 4.** In Colorado Revised Statutes, 12-35.5-103, **amend**
23 (2), (3), and (8); **repeal** (10); and **add** (6.5) as follows:

24 **12-35.5-103. Definitions.** As used in this article, unless the
25 context otherwise requires:

26 (2) "Applicant" means a person applying for A LICENSE TO
27 PRACTICE massage therapy. ~~registration.~~

- 1 (3) "Approved massage school" means:
- 2 (a) A massage therapy educational school that has a valid
- 3 certificate of approval from the division of private and occupational
- 4 schools in accordance with the provisions of article 59 of this title;
- 5 (b) A massage therapy educational program certified by the
- 6 Colorado community college system; ~~or~~
- 7 (c) A massage therapy educational entity or program that is
- 8 accredited by a nationally recognized accrediting agency; OR
- 9 (d) A MASSAGE THERAPY PROGRAM AT A SCHOOL LOCATED
- 10 OUTSIDE COLORADO THAT IS APPROVED BY THE DIRECTOR BASED ON
- 11 STANDARDS ADOPTED BY THE DIRECTOR BY RULE.

12 (6.5) "LICENSEE" MEANS A PERSON LICENSED IN THIS STATE TO

13 PRACTICE MASSAGE THERAPY.

14 (8) "Massage therapist" means an individual ~~registered~~ LICENSED

15 by this state to engage in the practice of massage therapy. The terms

16 "masseuse" and "masseur" are synonymous with the term "massage

17 therapist".

18 (10) ~~"Registrant" means a massage therapist registered pursuant~~

19 ~~to this article.~~

20 **SECTION 5.** In Colorado Revised Statutes, **amend** 12-35.5-104

21 as follows:

22 **12-35.5-104. Use of massage titles restricted.** Only a person

23 ~~registered~~ LICENSED under this article as a ~~massage therapist~~ TO PRACTICE

24 MASSAGE THERAPY may use the titles "massage therapist", "~~registered~~

25 "LICENSED massage therapist", "massage practitioner", "masseuse",

26 "masseur", the letters "M.T." or "~~R.M.T.~~" "L.M.T.", or any other

27 generally accepted terms, letters, or figures that indicate that the person

1 is a massage therapist.

2 **SECTION 6.** In Colorado Revised Statutes, **amend** 12-35.5-106
3 as follows:

4 **12-35.5-106. License required - repeal.** (1) (a) On or after April
5 1, 2009, BUT PRIOR TO JULY 1, 2014, except as otherwise provided in this
6 article, a person in this state who practices massage therapy or who
7 represents ~~oneself~~ HIMSELF OR HERSELF as being able to practice massage
8 therapy must possess a valid registration issued by the director pursuant
9 to this article and rules promulgated pursuant to this article. BEFORE JULY
10 1, 2014, REFERENCES IN THIS ARTICLE TO "LICENSE" INCLUDE
11 "REGISTRATION" AND REFERENCES TO "LICENSEE" AND "MASSAGE
12 THERAPIST" INCLUDE "REGISTRANT" AND "MASSAGE THERAPIST",
13 RESPECTIVELY, AS THOSE TERMS WERE DEFINED PRIOR TO THE EFFECTIVE
14 DATE OF THIS SUBSECTION (1), AS AMENDED.

15 (b) THIS SUBSECTION (1) IS REPEALED, EFFECTIVE JULY 1, 2014.

16 (2) (a) ON OR AFTER JULY 1, 2014, EXCEPT AS OTHERWISE
17 PROVIDED IN THIS ARTICLE, A PERSON IN THIS STATE WHO PRACTICES
18 MASSAGE THERAPY OR WHO REPRESENTS HIMSELF OR HERSELF AS BEING
19 ABLE TO PRACTICE MASSAGE THERAPY MUST POSSESS A VALID LICENSE
20 ISSUED BY THE DIRECTOR PURSUANT TO THIS ARTICLE AND RULES
21 PROMULGATED PURSUANT TO THIS ARTICLE.

22 (b) ON JULY 1, 2014, EACH ACTIVE MASSAGE THERAPY
23 REGISTRATION BECOMES AN ACTIVE MASSAGE THERAPY LICENSE BY
24 OPERATION OF LAW. THE CONVERSION FROM REGISTRATION TO LICENSURE
25 DOES NOT AFFECT ANY PRIOR DISCIPLINE, LIMITATION, OR CONDITION
26 IMPOSED BY THE DIRECTOR ON A MASSAGE THERAPIST'S REGISTRATION;
27 LIMIT THE DIRECTOR'S AUTHORITY OVER ANY REGISTRANT; OR AFFECT ANY

1 PENDING INVESTIGATION OR ADMINISTRATIVE PROCEEDING. THE DIRECTOR
2 SHALL TREAT ANY APPLICATION FOR A MASSAGE THERAPIST REGISTRATION
3 PENDING AS OF JULY 1, 2014, AS AN APPLICATION FOR LICENSURE, WHICH
4 APPLICATION IS SUBJECT TO THE REQUIREMENTS ESTABLISHED BY THE
5 DIRECTOR.

6 **SECTION 7.** In Colorado Revised Statutes, 12-35.5-107, **amend**
7 (1) introductory portion, (3), (5) introductory portion, and (6); and **repeal**
8 (4) as follows:

9 **12-35.5-107. License - reciprocity - denial of license**
10 **application.** (1) Every applicant for a ~~registration~~ LICENSE to practice
11 massage therapy shall:

12 (3) After an applicant has fulfilled the requirements of subsections
13 (1) and (2) of this section, the director shall issue a ~~registration~~ LICENSE
14 to the applicant.

15 (4) ~~For a period of one year after the date that applications for~~
16 ~~registration are made available, the director may issue a registration to a~~
17 ~~person who submits the application, fee, and criminal history record~~
18 ~~check pursuant to paragraphs (c), (d), and (e) of subsection (1) of this~~
19 ~~section and who:~~

20 (a) ~~Has at least five years of professional experience practicing~~
21 ~~massage therapy and has completed at least three hundred hours of~~
22 ~~massage training; or~~

23 (b) ~~Meets one of the following qualifications:~~

24 (i) ~~The applicant has attained a degree, diploma, or otherwise~~
25 ~~successfully completed a massage therapy program that consists of at~~
26 ~~least five hundred total hours of course work and clinical work from an~~
27 ~~approved massage school; or~~

1 ~~(H) The applicant has passed an examination described in~~
2 ~~paragraph (b) of subsection (1) of this section.~~

3 (5) The director shall issue a ~~registration~~ LICENSE to an applicant
4 who otherwise meets the qualifications set forth in this article and who
5 submits satisfactory proof and certifies under penalty of perjury that the
6 applicant currently possesses an unrestricted license or registration, in
7 good standing, to practice massage therapy under the laws of another state
8 or territory of the United States or a foreign country if:

9 (6) Notwithstanding any provision of this section, the director may
10 deny a ~~registration~~ LICENSE if the applicant has committed any act that
11 would be grounds for disciplinary action under section 12-35.5-111 or if
12 the director determines, subsequent to the criminal history record check,
13 that the applicant was convicted of or ~~plead~~ PLED guilty to a charge of
14 unlawful sexual behavior as defined in section 16-22-102, C.R.S., or any
15 prostitution-related offense, whether or not the act was committed in
16 Colorado.

17 **SECTION 8.** In Colorado Revised Statutes, **amend** 12-35.5-108
18 as follows:

19 **12-35.5-108. License expiration - effect - renewal -**
20 **reinstatement - penalty.** (1) ~~Registrations~~ LICENSES issued pursuant to
21 this article ~~shall be~~ ARE valid for the period of time established by the
22 director. ~~Registrations shall be renewed~~ LICENSEES MUST RENEW THEIR
23 LICENSES in accordance with the schedule set forth by the director
24 PURSUANT TO SECTION 24-34-102 (8), C.R.S.

25 (2) ~~A registration not renewed~~ IF A LICENSEE FAILS TO RENEW HIS
26 OR HER LICENSE within the time period specified in the schedule
27 established by the director, ~~shall be deemed expired~~ THE LICENSE EXPIRES.

1 A person in possession of an expired ~~registration~~ LICENSE shall not
2 practice massage therapy until he or she reinstates ~~such registration~~ THE
3 LICENSE.

4 (3) The director shall establish application forms and fee amounts
5 for renewal of ~~registrations~~ LICENSES and reinstatement of expired
6 ~~registrations~~ LICENSES IN THE MANNER AUTHORIZED IN SECTION
7 24-34-105, C.R.S. A person renewing or reinstating a ~~registration~~ LICENSE
8 shall submit an application in the form and manner set forth by the
9 director and shall pay a fee in an amount set forth by the director
10 PURSUANT TO SECTION 24-34-105, C.R.S.

11 **SECTION 9.** In Colorado Revised Statutes, 12-35.5-110, **amend**
12 (1) introductory portion and (1) (a) as follows:

13 **12-35.5-110. Scope of article - exclusions - authority for**
14 **clinical setting.** (1) Nothing in this article prohibits or requires a
15 massage therapy ~~registration~~ LICENSE for any of the following:

16 (a) The practice of massage therapy that is a part of a program of
17 study by students enrolled in a massage therapy program at an approved
18 massage therapy school. Students enrolled in such programs ~~shall~~ ARE TO
19 be identified as "student massage therapists" and shall not hold
20 themselves out as ~~registered~~ LICENSED massage therapists. Student
21 massage therapists shall practice massage therapy only under the
22 immediate supervision of a massage therapist holding a valid and current
23 ~~registration~~ LICENSE. Faculty members teaching nonclinical aspects of
24 massage therapy ~~shall~~ ARE not ~~be~~ required to be ~~registered~~ ~~massage~~
25 ~~therapists~~ LICENSED UNDER THIS ARTICLE.

26 **SECTION 10.** In Colorado Revised Statutes, 12-35.5-111,
27 **amend** (1) (a), (1) (d), (1) (e), (1) (f), (1) (g), (1) (j), and (1) (k); and **add**

1 (1) (n) and (1) (o) as follows:

2 **12-35.5-111. Grounds for discipline - definitions.** (1) The
3 director is authorized to take disciplinary action pursuant to section
4 12-35.5-112 against any person who has:

5 (a) Advertised, represented, or held himself or herself out as a
6 ~~registered~~ LICENSED massage therapist after the expiration, suspension, or
7 revocation of his or her ~~registration~~ LICENSE;

8 (d) Falsified information in any application or attempted to obtain
9 or obtained a ~~registration~~ LICENSE by fraud, deception, or
10 misrepresentation;

11 (e) Fraudulently obtained or furnished a massage therapy
12 ~~registration~~ LICENSE; a renewal or reinstatement of a ~~registration~~ LICENSE,
13 diploma, certificate, or record; or aided and abetted any ~~such~~ OF THOSE
14 acts;

15 (f) A dependence on or addiction to alcohol or any habit-forming
16 drug or abuses or engages in the habitual or excessive use of any such
17 habit-forming drug or any controlled substance as defined in section
18 18-18-102, C.R.S., but the director may take into account the ~~registrant's~~
19 LICENSEE'S participation in a rehabilitation program when considering
20 disciplinary action;

21 (g) (I) FAILED TO NOTIFY THE DIRECTOR OF a physical or mental
22 condition or ~~disability that renders the registrant unable to provide~~
23 ~~massage therapy~~ OR ILLNESS THAT AFFECTS THE LICENSEE'S ABILITY TO
24 TREAT CLIENTS with reasonable skill and safety or that may endanger the
25 health or safety of clients receiving massage services FROM THE LICENSEE;

26 (II) FAILED TO ACT WITHIN THE LIMITATIONS CREATED BY A
27 PHYSICAL OR MENTAL ILLNESS OR CONDITION THAT RENDERS THE

1 LICENSEE UNABLE TO PRACTICE MASSAGE THERAPY WITH REASONABLE
2 SKILL AND SAFETY OR THAT MAY ENDANGER THE HEALTH OR SAFETY OF
3 PERSONS UNDER HIS OR HER CARE; OR

4 (III) FAILED TO COMPLY WITH THE LIMITATIONS AGREED TO UNDER
5 A CONFIDENTIAL AGREEMENT ENTERED PURSUANT TO SECTION
6 12-35.5-116.5;

7 (j) Been convicted of, OR PLED GUILTY OR NOLO CONTENDERE TO,
8 a felony or ~~pled guilty or nolo contendere to a felony~~ A CRIME FOR WHICH
9 THE ACT GIVING RISE TO THE CRIME WAS RELATED TO THE PRACTICE OF
10 MASSAGE THERAPY OR WAS PERPETRATED AGAINST A MASSAGE CLIENT
11 DURING A THERAPEUTIC RELATIONSHIP, AS DEFINED IN SUBPARAGRAPH (II)
12 OF PARAGRAPH (b) OF THIS SUBSECTION (1); or committed any act
13 specified in this section. A certified copy of the judgment of a court of
14 competent jurisdiction of a conviction or plea ~~shall be~~ IS conclusive
15 evidence of the conviction or plea. In considering the disciplinary action,
16 the director shall be governed by the provisions of section 24-5-101,
17 C.R.S.

18 (k) Advertised, represented, held himself or herself out in any
19 manner, or used any designation in connection with his or her name as a
20 massage therapist without being ~~registered~~ LICENSED or exempt pursuant
21 to this article;

22 (n) FAILED TO REPORT TO THE DIRECTOR THE SURRENDER OF A
23 MASSAGE THERAPY LICENSE, CERTIFICATION, OR REGISTRATION TO, OR AN
24 ADVERSE ACTION TAKEN AGAINST A LICENSE, CERTIFICATION, OR
25 REGISTRATION BY, A LICENSING AGENCY IN ANOTHER STATE, TERRITORY,
26 OR COUNTRY, A GOVERNMENTAL AGENCY, A LAW ENFORCEMENT AGENCY,
27 OR A COURT FOR ACTS THAT CONSTITUTE GROUNDS FOR DISCIPLINE UNDER

1 THIS ARTICLE;

2 (o) COMMITTED AN ACT THAT DOES NOT MEET, OR FAILED TO
3 PERFORM AN ACT NECESSARY TO MEET, GENERALLY ACCEPTED
4 STANDARDS OF MASSAGE THERAPY CARE, AS DEFINED BY THE DIRECTOR
5 BY RULE.

6 **SECTION 11.** In Colorado Revised Statutes, 12-35.5-112,
7 **amend** (1), (3) (c), (6) (c), (7) (a), (7) (c), and (7) (d); and **add** (9) and
8 (10) as follows:

9 **12-35.5-112. Disciplinary proceedings - injunctions -**
10 **investigations - hearings - judicial review.** (1) The director may
11 revoke, suspend, deny, or refuse to renew a ~~registration~~ of LICENSE, ISSUE
12 A LETTER OF ADMONITION TO A LICENSEE, or place A LICENSEE on
13 probation a ~~registrant~~ in accordance with the disciplinary proceedings
14 described in this section upon proof that the person committed a violation
15 of section 12-35.5-111.

16 (3) (c) Upon failure of any witness to comply with such subpoena
17 or process, the district court of the county in which the subpoenaed
18 person or ~~registrant~~ LICENSEE resides or conducts business, upon
19 application by the director with notice to the subpoenaed person or
20 ~~registrant~~ LICENSEE, may issue to the person or ~~registrant~~ LICENSEE an
21 order requiring that person or ~~registrant~~ LICENSEE to appear before the
22 director; to produce the relevant papers, books, records, documentary
23 evidence, or materials if so ordered; or to give evidence touching the
24 matter under investigation or in question. ~~Failure~~ IF A PERSON OR
25 LICENSEE FAILS to obey the order of the court, ~~may be punished by~~ the
26 court ~~as a~~ MAY HOLD THE PERSON OR LICENSEE IN contempt of court.

27 (6) On completion of an investigation, the director shall find one

1 of the following:

2 (c) The complaint discloses misconduct by the ~~registrant~~ LICENSEE
3 that warrants formal action. When a complaint or an investigation
4 discloses an instance of misconduct that, in the opinion of the director,
5 warrants formal action, the DIRECTOR SHALL NOT RESOLVE THE complaint
6 ~~shall not be resolved~~ by a deferred settlement, action, judgment, or
7 prosecution. Rather, the director shall initiate disciplinary proceedings
8 pursuant to subsection (7) of this section.

9 (7) (a) THE DIRECTOR SHALL COMMENCE a disciplinary proceeding
10 ~~shall be commenced~~ when the director has reasonable grounds to believe
11 that a ~~registrant~~ LICENSEE has committed any act that violates section
12 12-35.5-111.

13 (c) If, after the hearing, the director finds the charges proven and
14 orders that discipline be imposed, he or she shall also determine the
15 extent of ~~such~~ THE discipline. The director may revoke, suspend, deny, or
16 refuse to renew a ~~registration~~ LICENSE or place a ~~registrant~~ LICENSEE on
17 probation.

18 (d) If the director finds the charges against the ~~registrant~~ ~~proved~~
19 LICENSEE PROVEN and orders that discipline be imposed, the director may
20 require, as a condition of reinstatement, that the ~~registrant~~ LICENSEE take
21 therapy or courses of training or education as may be needed to correct
22 any deficiency found.

23 (9) (a) WHEN A COMPLAINT OR AN INVESTIGATION DISCLOSES AN
24 INSTANCE OF MISCONDUCT THAT, IN THE OPINION OF THE DIRECTOR, DOES
25 NOT WARRANT FORMAL ACTION BUT SHOULD NOT BE DISMISSED AS BEING
26 WITHOUT MERIT, THE DIRECTOR MAY SEND A LETTER OF ADMONITION TO
27 THE LICENSEE.

1 (b) WHEN THE DIRECTOR SENDS A LETTER OF ADMONITION TO A
2 LICENSEE, THE DIRECTOR SHALL NOTIFY THE LICENSEE OF HIS OR HER
3 RIGHT TO REQUEST IN WRITING, WITHIN TWENTY DAYS AFTER RECEIPT OF
4 THE LETTER, THAT THE DIRECTOR INITIATE FORMAL DISCIPLINARY
5 PROCEEDINGS TO ADJUDICATE THE PROPRIETY OF THE CONDUCT
6 DESCRIBED IN THE LETTER OF ADMONITION.

7 (c) IF THE LICENSEE TIMELY REQUESTS ADJUDICATION, THE LETTER
8 OF ADMONITION IS VACATED, AND THE DIRECTOR SHALL PROCESS THE
9 MATTER BY MEANS OF FORMAL DISCIPLINARY PROCEEDINGS.

10 (10) WHEN A COMPLAINT OR AN INVESTIGATION DISCLOSES AN
11 INSTANCE OF CONDUCT THAT DOES NOT WARRANT FORMAL ACTION BY THE
12 DIRECTOR AND, IN THE DIRECTOR'S OPINION, SHOULD BE DISMISSED, BUT
13 THE DIRECTOR HAS NOTICED CONDUCT THAT COULD LEAD TO SERIOUS
14 CONSEQUENCES IF NOT CORRECTED, THE DIRECTOR MAY SEND A
15 CONFIDENTIAL LETTER OF CONCERN TO THE LICENSEE.

16 **SECTION 12.** In Colorado Revised Statutes, **add** 12-35.5-112.5
17 as follows:

18 **12-35.5-112.5. Revocation.** ANY PERSON WHOSE LICENSE IS
19 REVOKED OR WHO SURRENDERS HIS OR HER LICENSE IN LIEU OF DISCIPLINE
20 UNDER THIS ARTICLE IS INELIGIBLE TO APPLY FOR A LICENSE UNDER THIS
21 ARTICLE FOR AT LEAST TWO YEARS AFTER THE DATE OF REVOCATION OR
22 SURRENDER OF THE LICENSE.

23 **SECTION 13.** In Colorado Revised Statutes, 12-35.5-113,
24 **amend** (1) (a) and (2) (c) (III) as follows:

25 **12-35.5-113. Cease-and-desist orders.** (1) (a) If it appears to the
26 director, based upon credible evidence as presented in a written complaint
27 by any person, that a ~~registrant~~ LICENSEE is acting in a manner that is an

1 imminent threat to the health and safety of the public, or a person is acting
2 or has acted without the required ~~registration~~ LICENSE, the director may
3 issue an order to cease and desist ~~such~~ THE activity AND SHALL SET FORTH
4 IN the order ~~shall set forth~~ the statutes and rules alleged to have been
5 violated, the facts alleged to have constituted the violation, and the
6 requirement that all unlawful acts or ~~unregistered~~ UNLICENSED practices
7 immediately cease.

8 (2) (c) (III) If the director reasonably finds that the person against
9 whom the order to show cause was issued is acting or has acted without
10 the required ~~registration~~ LICENSE, or has ENGAGED or is about to engage
11 in acts or practices constituting violations of this article, THE DIRECTOR
12 MAY ISSUE a final cease-and-desist order ~~may be issued~~, directing ~~such~~
13 THE person to cease and desist from further unlawful acts or ~~unregistered~~
14 UNLICENSED practices.

15 **SECTION 14.** In Colorado Revised Statutes, 12-35.5-114,
16 **amend** (1), (2), and (3) as follows:

17 **12-35.5-114. Mental and physical examination of licensees.**

18 (1) (a) If the director has reasonable cause to believe that a ~~registrant~~
19 LICENSEE is unable to practice with reasonable skill and safety, the
20 director may order the ~~registrant~~ LICENSEE to take a mental or physical
21 examination administered by a physician or other licensed health care
22 professional designated by the director.

23 (b) ~~Refusal by a registrant~~ IF A LICENSEE REFUSES to submit to a
24 mental or physical examination that has been properly ordered by the
25 director pursuant to subsection (2) of this section, ~~unless~~ AND THE
26 REFUSAL IS NOT due to circumstances beyond the ~~registrant's~~ LICENSEE'S
27 control, THE REFUSAL constitutes grounds for discipline pursuant to

1 section 12-35.5-111 (1) (h). ~~and~~ WHEN A LICENSEE HAS REFUSED TO
2 SUBMIT TO AN EXAMINATION, the director may suspend the ~~registrant's~~
3 ~~registration~~ LICENSEE'S LICENSE in accordance with section 12-35.5-112
4 until:

5 (I) The results of the examination are known; and

6 (II) The director has made a determination of the ~~registrant's~~
7 LICENSEE'S fitness to practice.

8 (c) The director shall proceed with ~~any such~~ AN order for
9 examination and determination OF A LICENSEE'S FITNESS TO PRACTICE in
10 a timely manner.

11 (2) IN an order to a ~~registrant~~ LICENSEE pursuant to subsection (1)
12 of this section to undergo a mental or physical examination, THE
13 DIRECTOR shall ~~contain~~ INCLUDE the basis of the director's reasonable
14 cause to believe that the ~~registrant~~ LICENSEE is unable to practice with
15 reasonable skill and safety. For ~~the~~ purposes of any disciplinary
16 proceeding authorized under this article, the ~~registrant shall be~~ LICENSEE
17 IS deemed to have waived all objections to the admissibility of the
18 examining physician's testimony or examination reports on the ground
19 that they are privileged communications.

20 (3) The ~~registrant~~ LICENSEE may submit to the director testimony
21 or examination reports from a physician or other licensed health care
22 professional chosen by the ~~registrant~~ LICENSEE and pertaining to any
23 condition that the director has alleged may preclude the ~~registrant~~
24 LICENSEE from practicing with reasonable skill and safety. ~~These~~ THE
25 DIRECTOR may ~~be considered by the director~~ CONSIDER THE TESTIMONY
26 OR EXAMINATION REPORTS in conjunction with, but not in lieu of,
27 testimony and examination reports of the physician or other licensed

1 health care professional designated by the director.

2 **SECTION 15.** In Colorado Revised Statutes, **amend** 12-35.5-115
3 as follows:

4 **12-35.5-115. Unauthorized practice - criminal penalties.** A
5 person who practices or offers or attempts to practice massage therapy
6 without an active ~~registration~~ LICENSE issued under this article commits
7 a class 2 misdemeanor and shall be punished as provided in section
8 18-1.3-501, C.R.S., for the first offense, and for the second or any
9 subsequent offense, the person commits a class 1 misdemeanor and shall
10 be punished as provided in section 18-1.3-501, C.R.S.

11 **SECTION 16.** In Colorado Revised Statutes, **add** 12-35.5-116.5
12 as follows:

13 **12-35.5-116.5. Confidential agreement to limit practice -**
14 **violation - grounds for discipline.** (1) IF A MESSAGE THERAPIST HAS A
15 PHYSICAL OR MENTAL ILLNESS OR CONDITION THAT RENDERS HIM OR HER
16 UNABLE TO PRACTICE MASSAGE THERAPY WITH REASONABLE SKILL AND
17 SAFETY TO CLIENTS, THE MESSAGE THERAPIST SHALL NOTIFY THE
18 DIRECTOR OF THE ILLNESS OR CONDITION IN A MANNER AND WITHIN A
19 PERIOD DETERMINED BY THE DIRECTOR. THE DIRECTOR MAY REQUIRE THE
20 MESSAGE THERAPIST TO SUBMIT TO AN EXAMINATION TO EVALUATE THE
21 EXTENT OF THE ILLNESS OR CONDITION AND ITS IMPACT ON THE MESSAGE
22 THERAPIST'S ABILITY TO PRACTICE MASSAGE THERAPY WITH REASONABLE
23 SKILL AND SAFETY TO CLIENTS.

24 (2) (a) UPON DETERMINING THAT A MESSAGE THERAPIST WITH A
25 PHYSICAL OR MENTAL ILLNESS OR CONDITION IS ABLE TO RENDER LIMITED
26 SERVICES WITH REASONABLE SKILL AND SAFETY TO CLIENTS, THE
27 DIRECTOR MAY ENTER INTO A CONFIDENTIAL AGREEMENT WITH THE

1 MASSAGE THERAPIST IN WHICH THE MASSAGE THERAPIST AGREES TO LIMIT
2 HIS OR HER PRACTICE BASED ON THE RESTRICTIONS IMPOSED BY THE
3 ILLNESS OR CONDITION, AS DETERMINED BY THE DIRECTOR.

4 (b) AS PART OF THE AGREEMENT, THE MASSAGE THERAPIST IS
5 SUBJECT TO PERIODIC REEVALUATIONS OR MONITORING AS DETERMINED
6 APPROPRIATE BY THE DIRECTOR.

7 (c) THE PARTIES MAY MODIFY OR DISSOLVE THE AGREEMENT AS
8 NECESSARY BASED ON THE RESULTS OF A REEVALUATION OR OF
9 MONITORING.

10 (3) BY ENTERING INTO AN AGREEMENT WITH THE DIRECTOR
11 PURSUANT TO THIS SECTION TO LIMIT HIS OR HER PRACTICE, A MASSAGE
12 THERAPIST IS NOT ENGAGING IN ACTIVITIES PROHIBITED PURSUANT TO
13 SECTION 12-35.5-111. THE AGREEMENT DOES NOT CONSTITUTE A
14 RESTRICTION OR DISCIPLINE BY THE DIRECTOR. HOWEVER, IF THE MASSAGE
15 THERAPIST FAILS TO COMPLY WITH THE TERMS OF AN AGREEMENT
16 ENTERED INTO PURSUANT TO THIS SECTION, THE FAILURE CONSTITUTES A
17 PROHIBITED ACTIVITY PURSUANT TO SECTION 12-35.5-111 (1) (g), AND
18 THE MASSAGE THERAPIST IS SUBJECT TO DISCIPLINE IN ACCORDANCE WITH
19 SECTION 12-35.5-112.

20 (4) THIS SECTION DOES NOT APPLY TO A MASSAGE THERAPIST
21 SUBJECT TO DISCIPLINE FOR PROHIBITED ACTIVITIES AS DESCRIBED IN
22 SECTION 12-35.5-111 (1) (f).

23 **SECTION 17.** In Colorado Revised Statutes, 12-35.5-118,
24 **amend** (2) as follows:

25 **12-35.5-118. Local government - regulations - enforcement.**

26 (2) Local government law enforcement agencies may inspect massage
27 therapy ~~registrations~~ LICENSES and the business premises where massage

1 therapy is practiced for compliance with applicable laws. Nothing in this
2 section ~~shall be construed to preclude~~ PRECLUDES criminal prosecution
3 for a violation of any criminal law. If ~~such~~ AN inspection reveals the
4 practice of massage therapy by a person without a valid ~~registration~~
5 LICENSE, the LOCAL GOVERNMENT LAW ENFORCEMENT AGENCY SHALL
6 CHARGE THE person ~~shall be charged~~ with a misdemeanor pursuant to
7 section 12-35.5-115.

8 **SECTION 18. Act subject to petition - effective date.** This act
9 takes effect at 12:01 a.m. on the day following the expiration of the
10 ninety-day period after final adjournment of the general assembly (August
11 7, 2013, if adjournment sine die is on May 8, 2013); except that, if a
12 referendum petition is filed pursuant to section 1 (3) of article V of the
13 state constitution against this act or an item, section, or part of this act
14 within such period, then the act, item, section, or part will not take effect
15 unless approved by the people at the general election to be held in
16 November 2014 and, in such case, will take effect on the date of the
17 official declaration of the vote thereon by the governor.