

**ARTICLE 35.5 235**  
**MASSAGE THERAPISTS**

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|---|--|
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| <del>12-35.5-120</del> <b>12-235-121.</b>   | Repeal of article - review of functions.   |

1           **12-235-101. [Formerly 12-35.5-101] Short title.** THE SHORT TITLE OF this article  
2 shall be known and may be cited as 235 IS the "Massage Therapy Practice Act".  
3

4           **12-235-102. [Formerly 12-35.5-102] Legislative declaration.** (1) The general  
5 assembly hereby finds and declares that it is in the interest of the public health, safety, and  
6 welfare to require massage therapists to be licensed. Because proper and safe massage  
7 therapy is of statewide concern, this article 235 is deemed to be an exercise of the police  
8 powers of the state.

1 (2) The general assembly further declares that the practice of massage therapy by any  
2 person not licensed pursuant to this article 235 is adverse to the best interests of the people  
3 of this state. It is not, however, the intent of the general assembly in enacting this article 235  
4 to prevent, restrict, or inhibit the practice of massage therapy by any duly licensed person.  
5

6 **12-235-103. Applicability of common provisions.** ARTICLES 1, 20, AND 30 OF THIS  
7 TITLE 12 APPLY, ACCORDING TO THEIR TERMS, TO THIS ARTICLE 235.  
8

9 **12-235-104. [Formerly 12-35.5-103] Definitions.** As used in this article 35.5 235,  
10 unless the context otherwise requires:

11 (1) "Advertise" means to publish, display, or disseminate information and includes,  
12 but is not limited to, the issuance of any card, sign, or direct mail, or causing or permitting  
13 any sign or marking on or in any building or structure or in any newspaper, magazine, or  
14 directory, or any announcement or display via any televised, computerized, electronic, or  
15 telephonic networks or media.

16 (2) "Applicant" means a person applying for a license to practice massage therapy.

17 (3) "Approved massage school" means:

18 (a) A massage therapy educational school that has a valid certificate of approval from  
19 the private occupational school division in accordance with the provisions of article 64 of  
20 title 23;

21 (b) A massage therapy educational program certified by the Colorado community  
22 college system;

23 (c) A massage therapy educational entity or program that is accredited by a nationally  
24 recognized accrediting agency; or

25 (d) A massage therapy program at a school located outside Colorado that is approved  
26 by the director based on standards adopted by the director by rule.

27 (4) "Compensation" means something of value or benefit, whether in cash, in kind,  
28 or in any other form.

29 ~~(5) "Director" means the director of the division.~~ <{*Redundant with definitions*  
30 *common provision, 12-20-102 (6).*}>

31 ~~(6) "Division" means the division of professions and occupations in the department~~  
32 ~~of regulatory agencies.~~ <{*Redundant with definitions common provision, 12-20-102 (7).*}>

33 ~~(6.5) "Licensee" means a person licensed in this state to practice massage therapy.~~  
34 <{*Redundant with definitions common provision, 12-20-102 (10).*}>

35 (7) (5) "Massage" or "massage therapy" means a system of structured touch,  
36 palpation, or movement of the soft tissue of another person's body in order to enhance or  
37 restore the general health and well-being of the recipient. ~~Such~~ THE system includes, but is  
38 not limited to, techniques such as effleurage, commonly called stroking or gliding;  
39 petrissage, commonly called kneading; tapotement or percussion; friction; vibration;

1 compression; passive and active stretching within the normal anatomical range of  
2 movement; hydromassage; and thermal massage. ~~Such~~ THE techniques may be applied with  
3 or without the aid of lubricants, salt or herbal preparations, water, heat, or a massage device  
4 that mimics or enhances the actions possible by human hands.

5 ~~(8)~~ (6) "Massage therapist" means an individual licensed by this state to engage in  
6 the practice of massage therapy. The terms "masseuse" and "masseur" are synonymous with  
7 the term "massage therapist".

8 ~~(9)~~ (7) "Person" means a natural person only.

9 ~~(10) Repealed.~~

10  
11 **12-235-105. [Formerly 12-35.5-104] Use of massage titles restricted.** Only a  
12 person licensed under this article 235 to practice massage therapy may use the titles  
13 "massage therapist", "licensed massage therapist", "massage practitioner", "masseuse",  
14 "masseur", the letters "M.T." or "L.M.T.", or any other generally accepted terms, letters, or  
15 figures that indicate that the person is a massage therapist.

16  
17 **12-235-106. [Formerly 12-35.5-105] Limitations on authority.** (1) Nothing in this  
18 article 235 shall be construed as authorizing a massage therapist to perform any of the  
19 following acts:

- 20 (a) The practice of medicine pursuant to article ~~36~~ **240** of this title **12**;  
21 (b) The practice of physical therapy pursuant to article ~~41~~ **285** of this title **12**;  
22 (c) The practice of chiropractic pursuant to article ~~33~~ **215** of this title **12**; or  
23 (d) Any other forms of healing or healing arts not authorized by this article 235.

24  
25 **12-235-107. [Formerly 12-35.5-106] License required.**

26 ~~(1) Repealed.~~

27 ~~(2)~~(a) (1) **On or after July 1, 2014**, except as otherwise provided in this article 235,  
28 a person in this state who practices massage therapy or who represents himself or herself as  
29 being able to practice massage therapy must possess a valid license issued by the director  
30 pursuant to this article 235 and rules promulgated pursuant to this article 235. <{**Can we**  
31 **strike the date?**}>

32 ~~(b)~~ (2) **On July 1, 2014, each active massage therapy registration becomes an active**  
33 **massage therapy license by operation of law. The conversion from registration to licensure**  
34 **does not affect any prior discipline, limitation, or condition imposed by the director on a**  
35 **massage therapist's registration; limit the director's authority over any registrant; or affect**  
36 **any pending investigation or administrative proceeding. The director shall treat any**  
37 **application for a massage therapist registration pending as of July 1, 2014, as an application**  
38 **for licensure, which application is subject to the requirements established by the director.**  
39 <{**Is this provision obsolete now? Can it be repealed?**}>

1           **12-235-108. [Formerly 12-35.5-107] License - reciprocity - denial of license**  
2 **application.** (1) Every applicant for a license to practice massage therapy shall:

3           (a) Attain a degree, diploma, or otherwise successfully complete a massage therapy  
4 program that consists of at least five hundred total hours of course work and clinical work  
5 from an approved massage school;

6           (b) Pass one of the following examinations:

7           (I) The massage and bodywork licensing examination offered by the Federation of  
8 State Massage Therapy Boards;

9           (II) A national certification examination offered by the National Certification Board  
10 for Therapeutic Massage and Bodywork; or

11           (III) An examination approved by the director;

12           (c) Submit an application in the form and manner specified by the director;

13           (d) **Pay a fee in an amount determined by the director IN ACCORDANCE WITH SECTION**  
14 **12-120-105;** <{*Adding reference to fees common provision.*}>

15           (e) Submit to a criminal history record check in the form and manner as described  
16 in subsection (2) of this section; and

17           (f) Document that ~~he or she~~ THE APPLICANT will be at least eighteen years of age at  
18 the time of licensure.

19           (2) In addition to the requirements of subsection (1) of this section, each applicant  
20 must have his or her fingerprints taken by a local law enforcement agency or any third party  
21 approved by the Colorado bureau of investigation for the purpose of obtaining a  
22 fingerprint-based criminal history record check. If an approved third party takes the person's  
23 fingerprints, the fingerprints may be electronically captured using Colorado bureau of  
24 investigation-approved livescan equipment. Third-party vendors shall not keep the applicant  
25 information for more than thirty days unless requested to do so by the applicant. The  
26 applicant shall submit payment by certified check or money order for the fingerprints and  
27 for the actual costs of the record check at the time the fingerprints are submitted to the  
28 Colorado bureau of investigation. Upon receipt of fingerprints and receipt of the payment  
29 for costs, the Colorado bureau of investigation shall conduct a state and national  
30 fingerprint-based criminal history record check utilizing records of the Colorado bureau of  
31 investigation and the federal bureau of investigation and shall forward the results of the  
32 criminal history record check to the director.

33           (3) After an applicant has fulfilled the requirements of subsections (1) and (2) of this  
34 section, the director shall issue a license to the applicant.

35           ~~(4) Repealed.~~

36           ~~(5)~~ (4) The director shall issue a license to an applicant who otherwise meets the  
37 qualifications set forth in this article **235** and who submits satisfactory proof and certifies  
38 under penalty of perjury that the applicant currently possesses an unrestricted license or  
39 registration, in good standing, to practice massage therapy under the laws of another state

1 or territory of the United States or a foreign country if:

2 (a) The director determines that the qualifications for massage therapy licensure or  
3 registration in the other state, territory, or foreign country are substantially equivalent to  
4 those required by this section;

5 (b) The applicant submits proof of experience and competency on a form determined  
6 by the director;

7 (c) The applicant submits to a criminal history record check pursuant to subsection  
8 (2) of this section; and

9 (d) The director reviews any disciplinary actions taken against the applicant.

10 (6) Notwithstanding any provision of this section, the director may deny a license if  
11 the applicant has committed any act that would be grounds for disciplinary action under  
12 section ~~12-35.5-111~~ **12-235-111** or if the director determines, subsequent to the criminal  
13 history record check, that the applicant was convicted of, pled guilty or nolo contendere to,  
14 or received a deferred sentence for a charge of unlawful sexual behavior as defined in  
15 section 16-22-102, C.R.S.; any prostitution-related offense, or a human trafficking-related  
16 offense as described in sections 18-3-503 and 18-3-504, C.R.S., whether or not the act was  
17 committed in Colorado.

18 (7) The director may deny a license if the director determines that the applicant is not  
19 competent, trustworthy, or of good moral character.

20 (8) Pursuant to ~~section~~ **SECTIONS 12-20-202 (5) AND 24-5-101**, C.R.S., the director  
21 shall consider whether an applicant with a criminal record has been rehabilitated, specifically  
22 considering whether the applicant has been a victim of human trafficking and the lapse of  
23 time since the offense. ~~<{Adding cross-reference to common provision regarding~~  
24 ~~consideration of criminal convictions.}>~~  
25

26 **12-235-109. [Formerly 12-35.5-108] License expiration - effect - renewal -**  
27 **reinstatement - penalty.** (1) ~~Licenses issued pursuant to this article 235 are valid for the~~  
28 ~~period of time established by the director Licensees must renew their licenses in accordance~~  
29 ~~with the schedule set forth by the director pursuant to section 24-34-102 (8), C.R.S.~~  
30 ~~PURSUANT TO SECTION 12-20-202 (1) AND ARE SUBJECT TO THE RENEWAL, EXPIRATION,~~  
31 ~~REINSTATEMENT, AND DELINQUENCY FEE PROVISIONS SPECIFIED IN SECTION 12-20-202 (1)~~  
32 ~~AND (2)~~

33 (2) ~~If a licensee fails to renew his or her license within the time period specified in~~  
34 ~~the schedule established by the director, the license expires. A person in possession of an~~  
35 ~~expired license shall not practice massage therapy until he or she reinstates the license.~~

36 (3) (2) ~~The director shall establish application forms and fee amounts for renewal of~~  
37 ~~licenses and reinstatement of expired licenses. in the manner authorized in section~~  
38 ~~24-34-105, C.R.S. A person renewing or reinstating a license shall submit an application in~~  
39 ~~the form and manner set forth by the director. and shall pay a fee in an amount set forth by~~

1 ~~the director pursuant to section 24-34-105, C.R.S.~~ <{*Redundant with fees common*  
2 *provision, 12-20-105, payment of fees common provision, 12-20-201, and renewal/*  
3 *reinstatement common provision, 12-20-202 (1) and (2). Recommend amending as*  
4 *indicated.*}>

5  
6 ~~**12-35.5-109. Fees.** All fees collected pursuant to this article shall be determined,~~  
7 ~~collected, and appropriated in the manner set forth in section 24-34-105, C.R.S., and~~  
8 ~~periodically adjusted in accordance with section 24-75-402, C.R.S. The fees shall be~~  
9 ~~adequate to cover the direct and indirect expenses incurred for implementation of this article.~~  
10 <{*Redundant with the fees common provision, 12-20-105. Recommend repealing.*}>

11  
12 **12-235-110. [Formerly 12-35.5-110] Scope of article - exclusions - authority for**  
13 **clinical setting - definitions.** (1) Nothing in this article ~~35.5~~ **235** prohibits or requires a  
14 massage therapy license for any of the following:

15 (a) The practice of massage therapy that is a part of a program of study by students  
16 enrolled in a massage therapy program at an approved massage therapy school. Students  
17 enrolled in ~~such~~ THE programs are to be identified as "student massage therapists" and shall  
18 not hold themselves out as licensed massage therapists. Student massage therapists shall  
19 practice massage therapy only under the immediate supervision of a massage therapist  
20 holding a valid and current license. Faculty members teaching nonclinical aspects of  
21 massage therapy are not required to be licensed under this article **235**.

22 (b) The practice of massage therapy by a person employed by the United States  
23 government or any federal governmental entity while acting in the course and scope of ~~such~~  
24 THE employment;

25 (c) The practice of massage therapy by a person who is a resident of another state and  
26 who is in Colorado temporarily under one of the following circumstances:

27 (I) The person is traveling with and administering massage therapy to members of  
28 a professional or amateur sports organization, dance troupe, or other such athletic  
29 organization;

30 (II) The person provides massage therapy, without compensation, at a public athletic  
31 event such as the Olympic games, Special Olympics, youth Olympics, or marathons, if the  
32 massage therapy is provided no earlier than forty-eight hours prior to the commencement of  
33 the event and no later than twenty-four hours after the conclusion of the event;

34 (III) The person is part of an emergency response team or is otherwise working with  
35 or for disaster relief officials to provide massage therapy in connection with a disaster  
36 situation; or

37 (IV) The person is participating as a student in or instructor of an educational  
38 program, if:

39 (A) The program does not exceed sixteen days in duration; or

1 (B) The program exceeds sixteen days in duration and the person obtains a grant of  
2 an extension of time from the director prior to the seventeenth day;

3 (d) The person provides massage therapy to members of the person's immediate  
4 family;

5 (e) The person provides alternative methods that employ contact and does not hold  
6 himself or herself out as a massage therapist. For the purposes of this ~~paragraph (e)~~  
7 SUBSECTION (1)(e), "alternative methods that employ contact" include, but are not limited  
8 to:

9 (I) Practices using reflexology, auricular therapy, and meridian therapies that affect  
10 the reflexes of the body;

11 (II) Practices using touch, words, and directed movements to deepen a person's  
12 awareness of movement patterns in his or her body, such as the Feldenkrais method, the  
13 Trager approach, and body-mind centering;

14 (III) Practices using touch or healing touch to affect the human energy systems, such  
15 as reiki, shiatsu, and meridians;

16 (IV) Structural integration practices such as Rolfing and Hellerwork; and

17 (V) The process of muscle activation techniques.

18 (f) (I) The practice of animal massage if the person performing massage on an  
19 animal:

20 (A) Does not prescribe drugs, perform surgery, or diagnose medical conditions; and

21 (B) Has earned a degree or certificate in animal massage from a school approved by  
22 the private occupational school division of the Colorado department of higher education  
23 under article 64 of title 23, an out-of-state school offering an animal massage program with  
24 an accreditation recognized by the United States department of education, or a school that  
25 is exempt under section 23-64-104.

26 (II) As used in this ~~paragraph (f)~~ SUBSECTION (1)(f), "animal massage" means a  
27 method of treating the body of an animal for remedial or hygienic purposes through  
28 techniques that include rubbing, stroking, kneading, or tapping with the hand or an  
29 instrument or both, which techniques may be applied with or without the aid of a massage  
30 device that mimics the actions possible using human hands.

31 (2) If there is a continued pattern of criminal behavior with arrests, complaints  
32 regarding sexual misconduct, or criminal intent that is related to human trafficking disguised  
33 as a legitimate exemption, the director may, at his or her discretion, determine that a practice  
34 is no longer exempt from licensing pursuant to ~~paragraph (e) of subsection (1)~~ SUBSECTION  
35 (1)(e) of this section.

36 (3) Nothing in this article **235** prohibits the practice of massage therapy by a person  
37 who is licensed or registered to practice medicine, nursing, osteopathy, physiology,  
38 chiropractic, podiatry, cosmetology, or any other health care profession, as long as the  
39 practice is within the limits of each respective practice act.

1           **12-235-111. [Formerly 12-35.5-111] Grounds for discipline - definitions.** (1) The  
2 director is authorized to take disciplinary action pursuant to section ~~12-35.5-112~~ **12-235-112**  
3 against any person who has:

4           (a) Advertised, represented, or held himself or herself out as a licensed massage  
5 therapist after the expiration, suspension, or revocation of his or her license;

6           (b) Engaged in a sexual act with a client while a therapeutic relationship exists. For  
7 the purposes of this ~~paragraph (b)~~ **SUBSECTION (1)(b)**:

8           (I) "Sexual act" means sexual contact, sexual intrusion, or sexual penetration as  
9 defined in section 18-3-401. ~~C.R.S.~~

10           (II) "Therapeutic relationship" means the period of time commencing with the initial  
11 session of massage and ending upon written termination of the relationship from either party.

12           (c) Failed to refer a patient to a general health care practitioner when the services  
13 required by the client are beyond the level of competence of the massage therapist or beyond  
14 the scope of massage practice;

15           (d) Falsified information in any application or attempted to obtain or obtained a  
16 license by fraud, deception, or misrepresentation;

17           (e) Fraudulently obtained or furnished a massage therapy license; a renewal or  
18 reinstatement of a license, diploma, certificate, or record; or aided and abetted any of those  
19 acts;

20           (f) An alcohol use disorder, as defined in section 27-81-102, or a substance use  
21 disorder, as defined in section 27-82-102, or a dependence on or addiction to alcohol or any  
22 habit-forming drug, or WHO abuses or engages in the habitual or excessive use of any ~~such~~  
23 habit-forming drug or any controlled substance as defined in section 18-18-102, but the  
24 director may take into account the licensee's participation in a substance use disorder  
25 treatment program when considering disciplinary action;

26           (g) (I) Failed to notify the director of a physical condition; a physical illness; or a  
27 behavioral, mental health, or substance use disorder that affects the licensee's ability to treat  
28 clients with reasonable skill and safety or that may endanger the health or safety of clients  
29 receiving massage services from the licensee;

30           (II) Failed to act within the limitations created by a physical illness; a physical  
31 condition; or a behavioral, mental health, or substance use disorder that renders the licensee  
32 unable to practice massage therapy with reasonable skill and safety or that may endanger the  
33 health or safety of persons under his or her care; or

34           (III) Failed to comply with the limitations agreed to under a confidential agreement  
35 entered pursuant to section ~~12-35.5-116.5~~ **SECTIONS 12-30-107 AND 12-235-117**; <{**Adding**  
36 **cross-reference to confidential agreement common provision, 12-30-107.**}>

37           (h) Refused to submit to a physical or mental examination when so ordered by the  
38 director pursuant to section ~~12-35.5-114~~ **SECTIONS 12-30-108 AND 12-235-114**; <{**Adding**  
39 **cross-reference to mental/physical exams common provision, 12-30-108.**}>



1 (i) Failed to notify the director, in writing, of the entry of a final judgment by a court  
2 of competent jurisdiction in favor of any party and against the licensee for malpractice of  
3 massage therapy or any settlement by the licensee in response to charges or allegations of  
4 malpractice of massage therapy. ~~Such~~ THE notice shall be given within ninety days after the  
5 entry of the judgment or settlement and, in the case of a judgment, shall contain the name  
6 of the court, the case number, and the names of all parties to the action.

7 (j) Been convicted of, pled guilty or nolo contendere to, or received a deferred  
8 sentence for a felony or a crime for which the act giving rise to the crime was related to the  
9 practice of massage therapy or was perpetrated against a massage client during a therapeutic  
10 relationship, as defined in ~~subparagraph (II) of paragraph (b) of this subsection (1)~~  
11 SUBSECTION (1)(b)(II) OF THIS SECTION; or committed any act specified in this section. A  
12 certified copy of a document from a court of competent jurisdiction documenting a  
13 conviction or entry of a plea is conclusive evidence of the conviction or plea. In considering  
14 the disciplinary action, the director shall be governed by the provisions of section **SECTIONS**  
15 **12-20-202 (5) AND 24-5-101, C.R.S.** <{*Adding cross-reference to common provision*  
16 *regarding consideration of criminal convictions.*}>

17 (k) Advertised, represented, held himself or herself out in any manner, or used any  
18 designation in connection with his or her name as a massage therapist without being licensed  
19 or exempt pursuant to this article **235**;

20 (l) Violated or aided or abetted a violation of any provision of this article **235**, any  
21 rule adopted under this article **235**, or any lawful order of the director;

22 (m) Been convicted of, pled guilty or nolo contendere to, or received a deferred  
23 sentence for a charge of unlawful sexual behavior as defined in section 16-22-102, ~~C.R.S.~~,  
24 any prostitution-related offense, or any human trafficking-related offense as described in  
25 sections 18-3-503 and 18-3-504, ~~C.R.S.~~, whether or not the act was committed in Colorado;

26 (n) Failed to report to the director the surrender of a massage therapy license,  
27 certification, or registration to, or an adverse action taken against a license, certification, or  
28 registration by, a licensing agency in another state, territory, or country, a governmental  
29 agency, a law enforcement agency, or a court for acts that constitute grounds for discipline  
30 under this article **235**;

31 (o) Committed an act that does not meet, or failed to perform an act necessary to  
32 meet, generally accepted standards of massage therapy care;

33 (p) Used fraudulent, coercive, or dishonest practices, or demonstrated incompetence  
34 or untrustworthiness, in this state or elsewhere; or

35 (q) Exposed an intimate part of his or her body to the view of a client or any person  
36 present with the client, or performed an act of masturbation in the presence of a client. For  
37 the purposes of this subsection (1)(q):

38 (I) "Intimate part" means the external genitalia, the perineum, the anus, the buttocks,  
39 the pubes, or the breast of any person.

1 (II) "Masturbation" means the real or simulated touching, rubbing, or otherwise  
2 stimulating of a person's own genitals or pubic area, regardless of whether the genitals or  
3 pubic area is exposed or covered.

4 (HH) Repealed.  
5

6 **12-235-112. [Formerly 12-35.5-112] Disciplinary proceedings - injunctions -**  
7 **investigations - hearings - judicial review - fine.** (1) The director may revoke, suspend,  
8 deny, or refuse to renew a license, issue a letter of admonition to a licensee, or place a  
9 licensee on probation in accordance with the disciplinary proceedings described in this  
10 section TAKE DISCIPLINARY OR OTHER ACTION AS AUTHORIZED IN SECTION 12-20-404 upon  
11 proof that the person committed a violation of section ~~12-35.5-111~~ **12-235-111.**  
12 <{*Redundant with disciplinary actions common provision, 12-20-404. Recommend*  
13 *amending as indicated.*}>

14 (2) The director may request the attorney general to seek an injunction IN  
15 ACCORDANCE WITH SECTION 12-20-406, in any court of competent jurisdiction, to enjoin any  
16 person from engaging in or aiding and abetting an act or practice prohibited by this article  
17 When seeking a temporary restraining order, preliminary injunction, or injunction under this  
18 subsection (2), the attorney general is not required to allege or prove the inadequacy of any  
19 remedy at law or that substantial or irreparable damage is likely to result from a continued  
20 violation of this article **235.** <{*Redundant with injunctive relief common provision,*  
21 *12-20-406. Recommend amending as indicated.*}>

22 (3) (a) The director is authorized to investigate, hold hearings, and gather evidence  
23 in all matters related to the exercise and performance of the powers and duties of the director  
24 pursuant to article 4 of title 24, C.R.S., SECTION 12-20-403, and this article **235.**  
25 <{*Recommend adding reference to disciplinary procedures common provision.*}>

26 (b) The director or an administrative law judge shall have the power to administer  
27 oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of  
28 witnesses and the production of all relevant papers, books, records, documentary evidence,  
29 and materials in any hearing, investigation, accusation, or other matter coming before the  
30 director. The director may appoint an administrative law judge pursuant to part 10 of article  
31 30 of title 24, C.R.S., to conduct hearings, take evidence, and make findings and report them  
32 to the director.

33 (c) Upon failure of any witness to comply with such subpoena or process, the district  
34 court of the county in which the subpoenaed person or licensee resides or conducts business,  
35 upon application by the director with notice to the subpoenaed person or licensee, may issue  
36 to the person or licensee an order requiring that person or licensee to appear before the  
37 director; to produce the relevant papers, books, records, documentary evidence, or materials  
38 if so ordered; or to give evidence touching the matter under investigation or in question. If  
39 a person or licensee fails to obey the order of the court, the court may hold the person or

1 licensee in contempt of court. <{*Paragraphs (b) & (c) redundant with disciplinary*

2 *procedures/subpoena powers common provision, 12-20-403 (2). Recommend repealing.*>  
3 (4) (a) The director, the director's staff, any person acting as a witness or consultant  
4 to the director, any witness testifying in a proceeding authorized under this article, and any  
5 person who lodges a complaint pursuant to this article shall be immune from liability in any  
6 civil action brought against him or her for acts occurring while acting in his or her capacity  
7 as director, staff, consultant, or witness, respectively, if such individual was acting in good  
8 faith within the scope of his or her respective capacity, made a reasonable effort to obtain  
9 the facts of the matter as to which he or she acted, and acted in the reasonable belief that the  
10 action taken by him or her was warranted by the facts.

11 (b) A person who in good faith makes a complaint or report or participates in an  
12 investigative or administrative proceeding pursuant to this article shall be immune from  
13 liability, civil or criminal, that otherwise might result from such participation. <{*Subsection*

14 *(4) redundant with immunity common provision, 12-20-402. Recommend repealing.*>  
15 (5) (4) An employer of a massage therapist shall report to the director any  
16 disciplinary action taken against the massage therapist or the resignation of such THE  
17 massage therapist in lieu of disciplinary action for conduct that violates this article 235.

18 (6) (5) On completion of an investigation, the director shall find one of the  
19 following:

20 (a) The complaint is without merit and no further action need be taken with reference  
21 thereto;

22 (b) There is no reasonable cause to warrant further action; or

23 (c) The complaint discloses misconduct by the licensee that warrants formal action.  
24 When a complaint or an investigation discloses an instance of misconduct that, in the  
25 opinion of the director, warrants formal action, the director shall not resolve the complaint  
26 by a deferred settlement, action, judgment, or prosecution. Rather, the director shall initiate  
27 disciplinary proceedings pursuant to subsection (7) of this section 12-20-404 (2) APPLIES.  
28 <{*Redundant with discipline/no deferment common provision, 12-20-404 (2).*

29 *Recommend amending as indicated.*>  
30 (7) (6) (a) The director shall commence a disciplinary proceeding when the director  
31 has reasonable grounds to believe that a licensee has committed any act that violates section  
32 ~~12-35.5-111~~ 12-235-111.

33 (b) Disciplinary proceedings shall be conducted pursuant to article 4 of title 24,  
34 C.R.S., and the hearing and opportunity for review shall be conducted pursuant to that article  
35 by the director or by an administrative law judge, at the director's discretion SECTION  
36 12-20-403. <{*Paragraph (b) redundant with disciplinary procedures common provision,*

37 *12-20-403. Recommend amending as indicated.*>  
38 (c) If, after the hearing, the director finds the charges proven and orders that  
39 discipline be imposed, he or she THE DIRECTOR shall also determine the extent of the

1 discipline. The director may revoke, suspend, deny, or refuse to renew a license or place a  
2 licensee on probation TAKE DISCIPLINARY ACTION AS SPECIFIED IN SECTION 12-20-404 (1)(b)  
3 OR (1)(d). <{*Paragraph (c) redundant with disciplinary actions common provision,*  
4 *12-20-404 (1)(b) & (1)(d). Recommend amending as indicated.*}>

5 (d) If the director finds the charges against the licensee proven and orders that  
6 discipline be imposed, the director may require, as a condition of reinstatement, that the  
7 licensee take therapy or courses of training or education as may be needed to correct any  
8 deficiency found.

9 (8) (7) SECTION 12-20-408 GOVERNS JUDICIAL REVIEW OF a final action of the  
10 director. may be judicially reviewed by the court of appeals in accordance with section  
11 24-4-106 (11), C.R.S., and Judicial proceedings for the enforcement of an order of the  
12 director may be instituted in accordance with section 24-4-106. C.R.S. <{*Redundant with*  
13 *judicial review common provision, 12-20-408. Recommend amending as indicated. Also*  
14 *consider repealing last sentence as redundant with APA?*}>

15 (9) (a) When a complaint or an investigation discloses an instance of misconduct  
16 that, in the opinion of the director, does not warrant formal action but should not be  
17 dismissed as being without merit, the director may send a letter of admonition to the  
18 licensee.

19 (b) When the director sends a letter of admonition to a licensee, the director shall  
20 notify the licensee of his or her right to request in writing, within twenty days after receipt  
21 of the letter, that the director initiate formal disciplinary proceedings to adjudicate the  
22 propriety of the conduct described in the letter of admonition.

23 (c) If the licensee timely requests adjudication, the letter of admonition is vacated,  
24 and the director shall process the matter by means of formal disciplinary proceedings.  
25 <{*Redundant with letters of admonition common provision, 12-2-404 (4). Recommend*  
26 *repealing.*}>

27 (10) When a complaint or an investigation discloses an instance of conduct that does  
28 not warrant formal action by the director and, in the director's opinion, should be dismissed,  
29 but the director has noticed conduct that could lead to serious consequences if not corrected,  
30 the director may send a confidential letter of concern to the licensee. <{*Redundant with*  
31 *confidential letter of concern common provision, 12-2-404 (5). Recommend repealing.*}>

32 (11) (8) If a person commits an act that violates this article 235, the director may  
33 impose a fine not to exceed five thousand dollars per violation. Each day of a continuing  
34 violation constitutes a separate violation.

35  
36 **12-35.5-112.5. Revocation.** Any person whose license is revoked or who surrenders  
37 his or her license in lieu of discipline under this article is ineligible to apply for a license  
38 under this article for at least two years after the date of revocation or surrender of the license.  
39 <{*Redundant with waiting period common provision, 12-2-404 (3). Recommend*

1 *repealing.* }>  
2

3 **12-235-113. [Formerly 12-35.5-113] Cease-and-desist orders.** (1)(a) If it appears  
4 to the director, based upon credible evidence as presented in a written complaint by any  
5 person, that a licensee is acting in a manner that is an imminent threat to the health and  
6 safety of the public, or a person is acting or has acted without the required license, the  
7 director may issue an order to cease and desist the activity and shall set forth in the order the  
8 statutes and rules alleged to have been violated, the facts alleged to have constituted the  
9 violation, and the requirement that all unlawful acts or unlicensed practices immediately  
10 cease.

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

15 (2) (a) If it appears to the director, based upon credible evidence as presented in a  
16 written complaint by any person, that a person has violated any other provision of this  
17 article, then, in addition to any specific powers granted pursuant to this article, the director  
18 may issue to such person an order to show cause as to why the director should not issue a  
19 final order directing such person to cease and desist from the unlawful act.

20 (b) A person against whom an order to show cause has been issued pursuant to  
21 paragraph (a) of this subsection (2) shall be promptly notified by the director of the issuance  
22 of the order, along with a copy of the order, the factual and legal basis for the order, and the  
23 date set by the director for a hearing on the order. Such notice may be served by personal  
24 service, by first-class United States mail, postage prepaid, or as may be practicable upon any  
25 person against whom such order is issued. Personal service or mailing of an order or  
26 document pursuant to this subsection (2) shall constitute notice thereof to the person.

27 (c) (I) The hearing on an order to show cause shall be commenced no sooner than  
28 ten and no later than forty-five calendar days after the date of transmission or service of the  
29 notification by the director as provided in paragraph (b) of this subsection (2). The hearing  
30 may be continued by agreement of all parties based upon the complexity of the matter,  
31 number of parties to the matter, and legal issues presented in the matter, but in no event shall  
32 the hearing commence later than sixty calendar days after the date of transmission or service  
33 of the notification.

34 (H) If a person against whom an order to show cause has been issued pursuant to  
35 paragraph (a) of this subsection (2) does not appear at the hearing, the director may present  
36 evidence that notification was properly sent or served upon such person pursuant to  
37 paragraph (b) of this subsection (2) and such other evidence related to the matter as the  
38 director deems appropriate. The director shall issue the order within ten days after the  
39 director's determination related to reasonable attempts to notify the respondent, and the order

1 shall become final as to that person by operation of law. Such hearing shall be conducted  
2 pursuant to sections 24-4-104 and 24-4-105, C.R.S.

3 (III) If the director reasonably finds that the person against whom the order to show  
4 cause was issued is acting or has acted without the required license, or has engaged or is  
5 about to engage in acts or practices constituting violations of this article, the director may  
6 issue a final cease-and-desist order directing the person to cease and desist from further  
7 unlawful acts or unlicensed practices.

8 (IV) The director shall provide notice, in the manner set forth in paragraph (b) of this  
9 subsection (2), of the final cease-and-desist order within ten calendar days after the hearing  
10 conducted pursuant to this paragraph (c) to each person against whom the final order has  
11 been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall  
12 be effective when issued and shall be a final order for purposes of judicial review.

13 (3) If it appears to the director, based upon credible evidence presented to the  
14 director, that a person has engaged in or is about to engage in any act or practice constituting  
15 a violation of this article, any rule promulgated pursuant to this article, any order issued  
16 pursuant to this article, or any act or practice constituting grounds for administrative sanction  
17 pursuant to this article, the director may enter into a stipulation with such person.

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

23 (5) A person aggrieved by the final cease-and-desist order may seek judicial review  
24 of the director's determination or of the director's final order as provided in subsection (2)  
25 of this section.

26 **THE DIRECTOR MAY ISSUE CEASE-AND-DESIST ORDERS UNDER THE CIRCUMSTANCES**  
27 **AND IN ACCORDANCE WITH THE PROCEDURES SPECIFIED IN SECTION 12-20-405. <{Redundant**  
28 ***with cease-and-desist common provision, 12-20-405. Recommend repealing and replacing***  
29 ***with reference to common provision.}>***

30  
31 **12-235-114. [Formerly 12-35.5-114] Mental and physical examination of**  
32 **licensees. (1) (a) If the director has reasonable cause to believe that a licensee is unable to**  
33 **practice with reasonable skill and safety, UNDER THE CIRCUMSTANCES AND IN ACCORDANCE**  
34 **WITH THE PROCEDURES SPECIFIED IN SECTION 12-30-108, the director may order the A**  
35 **licensee to take a mental or physical examination administered by a physician or other**  
36 **licensed health care professional designated by the director. <{Subsection (1)(a) redundant**  
37 ***with mental/physical exams common provision, 12-30-108. Recommend amending as***  
38 ***indicated.}>***

39 (b) If a licensee refuses to submit to a mental or physical examination that has been

1 properly ordered by the director pursuant to subsection (2) of this section, and the refusal is  
 2 not due to circumstances beyond the licensee's control, the refusal constitutes grounds for  
 3 discipline pursuant to section 12-35.5-111(1)(h). When a licensee has refused to submit to  
 4 an examination, the director may suspend the licensee's license in accordance with section  
 5 12-35.5-112 until:

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

7 (H) ~~The director has made a determination of the licensee's fitness to practice.~~ <{*The*  
 8 *unhighlighted portion of paragraph (b) is consistent with the mental/physical exams*  
 9 *common provision, 12-30-108 (1)(b). However, the highlighted portion refers to "grounds*  
 10 *for discipline" rather than "may suspend the license . . . until the required examinations*  
 11 *are conducted" in the common provision, 12-30-108 (1)(b)(I). Is there a substantive*  
 12 *difference in practice? Also, in the above language, there is reference to suspending the*  
 13 *license, but the language does not specify that the director is to lift the suspension once*  
 14 *the licensee submits to the exam. The director is permitted to maintain the suspension*  
 15 *until the exam results are known and the director has determined the licensee's fitness to*  
 16 *practice. These criteria do NOT appear in the mental/physical exam common provision.*  
 17 *Is this a substantive difference in how the provision is applied?}>*

18 (c) ~~The director shall proceed with an order for examination and determination of~~  
 19 ~~a licensee's fitness to practice in a timely manner.~~ <{*Paragraph (c) contains unique*  
 20 *language that is not in the mental/physical exams common provision, 12-30-108, so we*  
 21 *assume it should be retained.*>

22 (2) ~~In an order to a licensee pursuant to subsection (1) of this section to undergo a~~  
 23 ~~mental or physical examination, the director shall include the basis of the director's~~  
 24 ~~reasonable cause to believe that the licensee is unable to practice with reasonable skill and~~  
 25 ~~safety. For purposes of any disciplinary proceeding authorized under this article, the licensee~~  
 26 ~~is deemed to have waived all objections to the admissibility of the examining physician's~~  
 27 ~~testimony or examination reports on the ground that they are privileged communications.~~  
 28 <{*Subsection (2) redundant with mental/physical exams common provision, 12-30-108*  
 29 *(1)(c) and portions of (2). Recommend repealing}>*

30  
 31 <{*Note that the common provision, 12-30-108 (2) 1st sentence, contains the following*  
 32 *language that does NOT appear in this section: "Every nurse LICENSEE, CERTIFICATE*  
 33 *HOLDER, OR REGISTRANT AUTHORIZED TO PRACTICE A HEALTH CARE PROFESSION*  
 34 *REGULATED BY A PART OR ARTICLE OF THIS TITLE 12 shall be deemed, by so practicing or*  
 35 *by applying for renewal registration of such nurse's THE license, CERTIFICATE, OR*  
 36 *REGISTRATION, to have consented to submit to mental or physical examinations when*  
 37 *directed in writing by the board APPLICABLE REGULATOR." Should this provision be*  
 38 *specifically excluded from applicability to massage therapists since it does not appear in*  
 39 *the mental/physical exams provision in the massage therapy practice act?}>*

1 <{Note that the common provision, 12-30-108 (2) 3rd sentence, also contains the  
 2 following language that does NOT appear in this section: "Subject to applicable federal  
 3 law, such nurse THE LICENSEE, CERTIFICATE HOLDER, OR REGISTRANT shall be deemed to  
 4 have waived all objections to the production of medical records to the board REGULATOR  
 5 from health care providers that may be necessary for the evaluations EXAMINATIONS  
 6 described in paragraph (a) of this subsection (8) . . . SUBSECTION (1)(a) OF THIS SECTION."  
 7 Should this provision be specifically excluded from applicability to massage therapists  
 8 since it does not appear in the mental/physical exams provision in the massage therapists  
 9 practice act?>

10  
 11 (3) (2) The licensee may submit to the director testimony or examination reports from  
 12 a physician or other licensed health care professional chosen by the licensee and pertaining  
 13 to any condition that the director has alleged may preclude the licensee from practicing with  
 14 reasonable skill and safety. The director may consider the testimony or examination reports  
 15 in conjunction with, but not in lieu of, testimony and examination reports of the physician  
 16 or other licensed health care professional designated by the director. <{Stricken from  
 17 mental/physical exams common provision, 12-30-108 (2), so recommend retaining this  
 18 provision.>

19 (4) The results of a mental or physical examination ordered by the director shall not  
 20 be used as evidence in any proceeding other than one before the director and shall not be  
 21 deemed public records nor made available to the public. <{Redundant with mental/physical  
 22 exams common provision, 12-30-108 (4). Recommend repealing.>

23  
 24 <{Need to consider, for the above mental/physical exams provision, if it is so unique that  
 25 it warrants complete exclusion from common provision, 12-30-108, and retention of the  
 26 existing language in 12-35.5-114.>

27  
 28 **12-235-115. [Formerly 12-35.5-115] Unauthorized practice - criminal penalties.**

29 (1) A person who practices or offers or attempts to practice massage therapy without an  
 30 active license issued under this article commits a class 2 misdemeanor and shall be punished  
 31 as provided in section 18-1.3-501, C.R.S., for the first offense, and for the second or any  
 32 subsequent offense, the person commits a class 1 misdemeanor and shall be punished as  
 33 provided in section 18-1.3-501, C.R.S. 235 IS SUBJECT TO PENALTIES PURSUANT TO SECTION  
 34 12-20-407 (1)(b). <{Redundant with unauthorized practice common provision, 12-20-407  
 35 (1)(b). Recommend amending as indicated.>

36 (2) A person who knowingly aids or abets the unlicensed practice of massage therapy  
 37 commits a class 2 misdemeanor for the first offense and a class 1 misdemeanor for any  
 38 subsequent offense, and shall be punished as provided in section 18-1.3-501, C.R.S. IS  
 39 SUBJECT TO PENALTIES PURSUANT TO SECTION 12-20-407 (1)(b). <{Redundant with



1 unauthorized practice common provision, 12-20-407. Recommend amending as  
2 indicated.}>

3  
4 **12-235-116. [Formerly 12-35.5-116] Professional liability insurance required.** It  
5 is unlawful for any person to practice massage therapy within this state unless the person  
6 purchases and maintains professional liability insurance in an amount not less than fifty  
7 thousand dollars per claim with an aggregate liability limit for all claims during the year of  
8 three hundred thousand dollars. Professional liability insurance required by this section shall  
9 cover all acts within the scope of massage therapy practice as defined by section ~~12-35.5-103~~  
10 **12-235-104.**

11  
12 **12-235-117. [Formerly 12-35.5-116.5] Confidential agreement to limit practice.**

13 (1) ~~If a massage therapist has a physical illness; a physical condition; or a behavioral~~  
14 ~~or mental health disorder that renders him or her unable to practice massage therapy with~~  
15 ~~reasonable skill and safety to clients, the massage therapist shall notify the director of the~~  
16 ~~physical illness; the physical condition; or the behavioral or mental health disorder in a~~  
17 ~~manner and within a period determined by the director. The director may require the~~  
18 ~~massage therapist to submit to an examination to evaluate the extent of the physical illness;~~  
19 ~~the physical condition; or the behavioral or mental health disorder and its impact on the~~  
20 ~~massage therapist's ability to practice massage therapy with reasonable skill and safety to~~  
21 ~~clients.~~

22 (2)(a) ~~Upon determining that a massage therapist with a physical illness; a physical~~  
23 ~~condition; or a behavioral or mental health disorder is able to render limited services with~~  
24 ~~reasonable skill and safety to clients; The director may enter into a confidential agreement~~  
25 ~~with the massage therapist in which the massage therapist agrees to limit his or her practice~~  
26 ~~based on the restrictions imposed by the physical illness; the physical condition; or the~~  
27 ~~behavioral or mental health disorder, as determined by the director UNDER THE~~  
28 ~~CIRCUMSTANCES AND IN ACCORDANCE WITH THE PROCEDURES AND REQUIREMENTS SPECIFIED~~  
29 ~~IN SECTION 12-30-107.~~

30 (b) ~~As part of the agreement, the massage therapist is subject to periodic~~  
31 ~~reevaluations or monitoring as determined appropriate by the director.~~

32 (c) ~~The parties may modify or dissolve the agreement as necessary based on the~~  
33 ~~results of a reevaluation or of monitoring.~~

34 (3) ~~By entering into an agreement with the director pursuant to this section to limit~~  
35 ~~his or her practice, a massage therapist is not engaging in activities prohibited pursuant to~~  
36 ~~section 12-35.5-111. The agreement does not constitute a restriction or discipline by the~~  
37 ~~director. However, if the massage therapist fails to comply with the terms of an agreement~~  
38 ~~entered into pursuant to this section, the failure constitutes a prohibited activity pursuant to~~  
39 ~~section 12-35.5-111(1)(g), and the massage therapist is subject to discipline in accordance~~

1 with section 12-35.5-112. <{Above subsections redundant with confidential agreements  
2 common provision, 12-30-107. Recommend repealing most of the language and  
3 amending as indicated.}>

4 (4)(2) This section ~~does~~ AND SECTION 12-30-107 DO not apply to a massage therapist  
5 subject to discipline for prohibited activities as described in section 12-35.5-111 (1)(f)  
6 12-235-111 (1)(f). <{Since 12-35.5-111 (1)(f) refers to prohibited activities not specified  
7 in the corresponding portion of the confidential agreements common provisions,  
8 12-30-107 (4)(a)(II), recommend retaining the above provision.}>

9  
10 <{Note that the above proposal on the confidential agreements is one approach. There  
11 is an alternative approach suggested in the audiologists proposal. Thoughts on the  
12 preferred approach?}>

13  
14 12-235-118. [Formerly 12-35.5-117] **Rule-making authority.** The director shall  
15 promulgate rules for the administration of this article 235. If the director promulgates rules  
16 regarding generally accepted standards of massage therapy care, the rules are not an  
17 exhaustive statement of the generally accepted standards of massage therapy care. <{Some  
18 redundancy with rule-making common provision, 12-20-204, but not recommend any  
19 changes.}>

20  
21 12-235-119. [Formerly 12-35.5-118] **Local government - regulations -**  
22 **enforcement.** (1) No city, county, city and county, or other political subdivision of this state  
23 shall enact or enforce any local ordinance that regulates the practice or the profession of  
24 massage therapy.

25 (2) Local government law enforcement agencies may inspect massage therapy  
26 licenses and the business premises where massage therapy is practiced for compliance with  
27 applicable laws. Nothing in this section precludes criminal prosecution for a violation of any  
28 criminal law. If an inspection reveals the practice of massage therapy by a person without  
29 a valid license, the local government law enforcement agency shall charge the person with  
30 a misdemeanor pursuant to section 12-35.5-115 SECTIONS 12-20-407 (1)(b) AND 12-235-115.

31 (3) A city, county, city and county, or other political subdivision may inspect  
32 massage businesses, except for a sole proprietorship with a person's residence, upon  
33 complaint of illegal activity and ensure that the people performing massage therapy are  
34 licensees. A city, county, city and county, or other political subdivision shall not charge a  
35 fee for the inspection or license verification.

36  
37 12-235-120. [12-35.5-119] **Severability.** If any provision of this article 235 is held  
38 to be invalid, ~~such~~ THE invalidity shall not affect other provisions of this article 235 that can  
39 be given effect without ~~such~~ THE invalid provision, and to this end the provisions of this

1 article **235** are declared to be severable.

2  
3 **12-235-121. [Formerly 12-35.5-120] Repeal of article - review of functions.**  
4 (†) This article **235**, and the functions of the director as set forth in this article **235**, are  
5 repealed, effective September 1, 2022. ~~Prior to~~ BEFORE the repeal, the ~~department of~~  
6 ~~regulatory agencies shall review the~~ functions of the director pursuant to ARE SCHEDULED  
7 FOR REVIEW IN ACCORDANCE WITH section 24-34-104. ~~C.R.S.~~

8 (2) ~~Repealed.~~