

CHAPTER 265

PROFESSIONS AND OCCUPATIONS

HOUSE BILL 16-1320

BY REPRESENTATIVE(S) Foote and Carver, Fields, Lee, Pettersen, Primavera, Priola;
also SENATOR(S) Cooke, Newell.

AN ACT**CONCERNING THE REGULATION OF MASSAGE THERAPY TO MODIFY PRACTICES THAT ARE LINKED TO CRIMINAL BEHAVIOR.**

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

SECTION 1. Legislative declaration. (1) The general assembly finds and declares that:

(a) Colorado has seen an increase in the number of human trafficking and prostitution offenses linked to massage therapy;

(b) Loopholes in existing massage law, both local and state, are manipulated by traffickers to escape detection and liability and cast aspersion on law-abiding massage therapy professionals; and

(c) Administrative actions should be aligned with criminal investigations and actions.

(2) It is therefore the intent of the general assembly to prohibit or modify practices that contribute to criminal behavior by making changes to the "Massage Therapy Practice Act".

SECTION 2. In Colorado Revised Statutes, 12-35.5-103, **amend** (7) as follows:

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

(7) "Massage" or "massage therapy" means a system of structured touch, palpation, or movement of the soft tissue of another person's body in order to

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

enhance or restore the general health and well-being of the recipient. Such system includes, but is not limited to, techniques such as effleurage, commonly called stroking or gliding; petrissage, commonly called kneading; tapotement or percussion; friction; vibration; compression; passive and active stretching within the normal anatomical range of movement; hydromassage; and thermal massage. Such techniques may be applied with or without the aid of lubricants, salt or herbal preparations, water, heat, or a massage device that mimics or enhances the actions possible by human hands. ~~"Massage" or "massage therapy" does not include therapeutic exercise, intentional joint mobilization or manipulation, or any of the methods described in section 12-35.5-110 (1) (e).~~

SECTION 3. In Colorado Revised Statutes, 12-35.5-107, **amend** (1) (d), (1) (e), and (6); and **add** (1) (f), (7), and (8) as follows:

12-35.5-107. License - reciprocity - denial of license application. (1) Every applicant for a license to practice massage therapy shall:

(d) Pay a fee in an amount determined by the director; ~~and~~

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

(f) DOCUMENT THAT HE OR SHE WILL BE AT LEAST EIGHTEEN YEARS OF AGE AT THE TIME OF LICENSURE.

(6) Notwithstanding any provision of this section, the director may deny a license if the applicant has committed any act that would be grounds for disciplinary action under section 12-35.5-111 or if the director determines, subsequent to the criminal history record check, that the applicant was convicted of, ~~or~~ pled guilty OR NOLO CONTENDERE to, OR RECEIVED A DEFERRED SENTENCE FOR a charge of unlawful sexual behavior as defined in section 16-22-102, C.R.S., ~~or~~ any prostitution-related offense, OR A HUMAN TRAFFICKING-RELATED OFFENSE AS DESCRIBED IN SECTIONS 18-3-503 AND 18-3-504, C.R.S., whether or not the act was committed in Colorado.

(7) THE DIRECTOR MAY DENY A LICENSE IF THE DIRECTOR DETERMINES THAT THE APPLICANT IS NOT COMPETENT, TRUSTWORTHY, OR OF GOOD MORAL CHARACTER.

(8) PURSUANT TO SECTION 24-5-101, C.R.S., THE DIRECTOR SHALL CONSIDER WHETHER AN APPLICANT WITH A CRIMINAL RECORD HAS BEEN REHABILITATED, SPECIFICALLY CONSIDERING WHETHER THE APPLICANT HAS BEEN A VICTIM OF HUMAN TRAFFICKING AND THE LAPSE OF TIME SINCE THE OFFENSE.

SECTION 4. In Colorado Revised Statutes, 12-35.5-110, **amend** (1) (e); and **add** (2) and (3) as follows:

12-35.5-110. Scope of article - exclusions - authority for clinical setting. (1) Nothing in this article prohibits or requires a massage therapy license for any of the following:

(e) The person provides alternative methods that employ contact and does not hold himself or herself out as a massage therapist. For the purposes of this

paragraph (e), "alternative methods that employ contact" include, but are not limited to:

(I) Practices ~~in which only the soft tissue of a person's hands, feet, or ears are manipulated~~ USING REFLEXOLOGY, AURICULAR THERAPY, AND MERIDIAN THERAPIES THAT AFFECT THE REFLEXES OF THE BODY;

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

(III) Practices using touch OR HEALING TOUCH to affect the human energy systems, such as reiki, shiatsu; and ~~Asian or polarity bodywork therapy~~ MERIDIANS;

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

(V) The process of muscle activation techniques.

(2) IF THERE IS A CONTINUED PATTERN OF CRIMINAL BEHAVIOR WITH ARRESTS, COMPLAINTS REGARDING SEXUAL MISCONDUCT, OR CRIMINAL INTENT THAT IS RELATED TO HUMAN TRAFFICKING DISGUISED AS A LEGITIMATE EXEMPTION, THE DIRECTOR MAY, AT HIS OR HER DISCRETION DETERMINE THAT A PRACTICE IS NO LONGER EXEMPT FROM LICENSING PURSUANT TO PARAGRAPH (e) OF SUBSECTION (1) OF THIS SECTION.

(3) NOTHING IN THIS ARTICLE PROHIBITS THE PRACTICE OF MASSAGE THERAPY BY A PERSON WHO IS LICENSED OR REGISTERED TO PRACTICE MEDICINE, NURSING, OSTEOPATHY, PHYSIOLOGY, CHIROPRACTIC, PODIATRY, COSMETOLOGY, OR ANY OTHER HEALTH CARE PROFESSION, AS LONG AS THE PRACTICE IS WITHIN THE LIMITS OF EACH RESPECTIVE PRACTICE ACT.

SECTION 5. In Colorado Revised Statutes, 12-35.5-111, **amend** (1) (j) and (1) (m); and **add** (1) (p) and (1) (q) as follows:

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

(j) Been convicted of, ~~or~~ pled guilty or nolo contendere to, OR RECEIVED A DEFERRED SENTENCE FOR a felony or a crime for which the act giving rise to the crime was related to the practice of massage therapy or was perpetrated against a massage client during a therapeutic relationship, as defined in subparagraph (II) of paragraph (b) of this subsection (1); or committed any act specified in this section. A certified copy of ~~the judgment of~~ A DOCUMENT FROM a court of competent jurisdiction ~~of~~ DOCUMENTING a conviction or ENTRY OF A plea is conclusive evidence of the conviction or plea. In considering the disciplinary action, the director shall be governed by the provisions of section 24-5-101, C.R.S.

(m) Been convicted of, ~~or~~ pled guilty OR NOLO CONTENDERE to, OR RECEIVED A DEFERRED SENTENCE FOR a charge of unlawful sexual behavior as defined in section 16-22-102, C.R.S., ~~or~~ any prostitution-related offense, OR ANY HUMAN

TRAFFICKING-RELATED OFFENSE AS DESCRIBED IN SECTIONS 18-3-503 AND 18-3-504, C.R.S., whether or not the act was committed in Colorado;

(p) USED FRAUDULENT, COERCIVE, OR DISHONEST PRACTICES, OR DEMONSTRATED INCOMPETENCE OR UNTRUSTWORTHINESS, IN THIS STATE OR ELSEWHERE;

(q) EXPOSED AN INTIMATE PART OF HIS OR HER BODY TO THE VIEW OF A CLIENT OR ANY PERSON PRESENT WITH THE CLIENT, OR PERFORMED AN ACT OF MASTURBATION IN THE PRESENCE OF A CLIENT. FOR THE PURPOSES OF THIS PARAGRAPH (q):

(I) "INTIMATE PART" MEANS THE EXTERNAL GENITALIA, THE PERINEUM, THE ANUS, THE BUTTOCKS, THE PUBES, OR THE BREAST OF ANY PERSON.

(II) "MASTURBATION" MEANS THE REAL OR SIMULATED TOUCHING, RUBBING, OR OTHERWISE STIMULATING OF A PERSON'S OWN GENITALS OR PUBIC AREA, REGARDLESS OF WHETHER THE GENITALS OR PUBIC AREA IS EXPOSED OR COVERED.

(III) "THERAPEUTIC RELATIONSHIP" MEANS THE PERIOD OF TIME BEGINNING WITH THE INITIAL MASSAGE THERAPY SESSION AND ENDING UPON WRITTEN TERMINATION OF THE RELATIONSHIP BY EITHER PARTY.

SECTION 6. In Colorado Revised Statutes, 12-35.5-112, **amend** (2); and **add** (11) as follows:

12-35.5-112. Disciplinary proceedings - injunctions - investigations - hearings - judicial review - fine. (2) The director may request the attorney general to seek an injunction, in any court of competent jurisdiction, to enjoin any person from ~~committing an act~~ ENGAGING IN OR AIDING AND ABETTING AN ACT OR PRACTICE prohibited by this article. When seeking ~~an~~ A TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, OR **injunction under this subsection (2)**, the attorney general ~~shall~~ **is not be** required to allege or prove the inadequacy of any remedy at law or that substantial or irreparable damage is likely to result from a continued violation of this article.

(11) IF A PERSON COMMITS AN ACT THAT VIOLATES THIS ARTICLE, THE DIRECTOR MAY IMPOSE A FINE NOT TO EXCEED FIVE THOUSAND DOLLARS PER VIOLATION. EACH DAY OF A CONTINUING VIOLATION CONSTITUTES A SEPARATE VIOLATION.

SECTION 7. In Colorado Revised Statutes, **amend** 12-35.5-115 as follows:

12-35.5-115. Unauthorized practice - criminal penalties. (1) A person who practices or offers or attempts to practice massage therapy without an active license issued under this article commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first offense, and for the second or any subsequent offense, the person commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(2) A PERSON WHO KNOWINGLY AIDS OR ABETS THE UNLICENSED PRACTICE OF MASSAGE THERAPY COMMITS A CLASS 2 MISDEMEANOR FOR THE FIRST OFFENSE AND A CLASS 1 MISDEMEANOR FOR ANY SUBSEQUENT OFFENSE, AND SHALL BE PUNISHED

AS PROVIDED IN SECTION 18-1.3-501, C.R.S.

SECTION 8. In Colorado Revised Statutes, 12-35.5-118, **add** (3) as follows:

12-35.5-118. Local government - regulations - enforcement. (3) A CITY, COUNTY, CITY AND COUNTY, OR OTHER POLITICAL SUBDIVISION MAY INSPECT MASSAGE BUSINESSES, EXCEPT FOR A SOLE PROPRIETORSHIP WITH A PERSON'S RESIDENCE, UPON COMPLAINT OF ILLEGAL ACTIVITY AND ENSURE THAT THE PEOPLE PERFORMING MASSAGE THERAPY ARE LICENSEES. A CITY, COUNTY, CITY AND COUNTY, OR OTHER POLITICAL SUBDIVISION SHALL NOT CHARGE A FEE FOR THE INSPECTION OR LICENSE VERIFICATION.

SECTION 9. In Colorado Revised Statutes, 6-1-724, **amend** (6) (q) as follows:

6-1-724. Unlicensed alternative health care practitioners - deceptive trade practices - short title - legislative declaration - definitions. (6) A complementary and alternative health care practitioner providing complementary and alternative health care services under this section who is not licensed, certified, or registered by the state shall not:

(q) Practice or represent that he or she is practicing MASSAGE OR massage therapy ~~which, for purposes of this section:~~ AS DEFINED IN ARTICLE 35.5 OF TITLE 12, C.R.S.

~~(f) Includes practices where the primary purpose is to provide deep stroking muscle tissue massage of the human body; and~~

~~(H) Excludes:~~

~~(A) Stroking of the hands, feet, or ears; or~~

~~(B) The use of touch, words, and directed movement of a healing art within the bodywork community, including healing touch, mind-body centering, orthobionomy, reflexology, rolfing, reiki, qigong, muscle activation techniques, and practices with the primary purpose of affecting energy systems of the human body;~~

SECTION 10. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 8, 2016