

CHAPTER 103

PROFESSIONS AND OCCUPATIONS

SENATE BILL 96-049

BY SENATORS Martinez, Hernandez, Hopper, L. Powers, and Rupert;
also REPRESENTATIVES Pfiffner, Leyba, Lyle, Mace, and Owen.

AN ACT**CONCERNING THE REGULATION OF THE PRACTICE OF DIRECT-ENTRY MIDWIFERY.**

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

SECTION 1. 12-37-101 (1), Colorado Revised Statutes, 1991 Repl. Vol., as amended, is amended to read:

12-37-101. Scope of article - exemptions. (1) The provisions of this article shall apply only to direct-entry midwives, also known as "lay" midwives, and shall not apply to those persons who are otherwise licensed by the state of Colorado under this title if the practice of midwifery is within the scope of such licensure. No person who is a licensed health care provider under any other article of this title shall simultaneously be so licensed and also be registered under this article, BUT A HEALTH CARE PROVIDER WHO IS REGISTERED UNDER ARTICLE 29.5 OF THIS TITLE MAY ALSO BE REGISTERED UNDER THIS ARTICLE. A licensed health care provider who holds a license in good standing may relinquish said license and subsequently be registered under this article. It is the intent of the general assembly that health care be provided pursuant to this article as an alternative to traditional licensed health care and not for the purpose of enabling providers of traditional licensed health care to circumvent the regulatory oversight to which they are otherwise subject under any other article of this title.

SECTION 2. 12-37-103 (4) and (5) (a), Colorado Revised Statutes, 1991 Repl. Vol., as amended, are amended, and the said 12-37-103 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

12-37-103. Requirement for registration with the division of registrations - annual fee - grounds for revocation. (4) ~~The director may deny registration to or~~

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

~~revoke the registration of a direct-entry midwife pursuant to section 24-4-104, C.R.S., if the director finds that the direct-entry midwife has:~~

~~(a) Failed to provide any information required, or to pay any fee assessed, in accordance with this section, or provided false, deceptive, or misleading information to the division of registrations when the direct-entry midwife knew or should reasonably have known that the information was false, deceptive, or misleading;~~

~~(b) Been responsible for any act or omission which does not meet generally accepted standards of safe care for women and infants, whether or not actual injury to a patient is established;~~

~~(c) Violated any provision of section 12-37-105;~~

~~(d) Habitual intemperance with regard to or excessive use of any habit-forming drug, as defined in section 12-22-102 (13), any controlled substance, as defined in section 12-22-303 (7), or any alcoholic beverage; or~~

~~(e) Violated any rule of the director promulgated under this article.~~

(4.5) A PERSON WHO HAS HAD HIS OR HER REGISTRATION REVOKED SHALL NOT APPLY FOR RE-REGISTRATION UNTIL AT LEAST TWO YEARS HAVE ELAPSED SINCE THE DATE OF THE REVOCATION.

(5) To qualify to register, a direct-entry midwife shall have successfully completed an examination evaluated and approved by the director as an appropriate test to measure competency in the practice of direct-entry midwifery, which examination shall have been developed by a person or entity other than the director or the division and the acquisition of which shall require no expenditure of state funds. The national registry examination administered by the midwives' alliance of North America, incorporated, shall be among those evaluated by the director. The director is authorized to approve any existing test meeting all the criteria set forth in this subsection (5). In addition to successfully completing such examination, a direct-entry midwife shall be deemed qualified to register if such person has:

(a) Attained the age of ~~eighteen~~ NINETEEN years;

SECTION 3. 12-37-105 (5) (a), Colorado Revised Statutes, 1991 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

12-37-105. Prohibited acts - practice standards - informed consent - emergency plan - risk assessment - referral. (5) (a) A direct-entry midwife shall keep appropriate records of midwifery-related activity, including but not limited to the following:

(IV) UNTIL SUCH TIME AS THE LIABILITY INSURANCE REQUIRED PURSUANT TO SECTION 12-37-109 (3) IS AVAILABLE, EACH DIRECT-ENTRY MIDWIFE SHALL, PRIOR TO ACCEPTING A CLIENT FOR CARE, PROVIDE SUCH CLIENT WITH A DISCLOSURE STATEMENT INDICATING THAT THE MIDWIFE DOES NOT HAVE LIABILITY INSURANCE. SUCH STATEMENT SHALL BE PRINTED IN AT LEAST TWELVE-POINT BOLD-FACED TYPE, AND SHALL BE READ TO THE CLIENT IN A LANGUAGE SHE UNDERSTANDS. EACH CLIENT

SHALL SIGN THE DISCLOSURE STATEMENT ACKNOWLEDGING THAT SHE UNDERSTANDS THE EFFECT OF ITS PROVISIONS. A COPY OF THE SIGNED DISCLOSURE STATEMENT SHALL BE GIVEN TO THE CLIENT.

SECTION 4. 12-37-105, Colorado Revised Statutes, 1991 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-37-105. Prohibited acts - practice standards - informed consent - emergency plan - risk assessment - referral. (13) IT SHALL BE LAWFUL FOR A REGISTERED DIRECT-ENTRY MIDWIFE TO PURCHASE, POSSESS, CARRY, AND ADMINISTER OXYGEN. THE DEPARTMENT OF REGULATORY AGENCIES SHALL PROMULGATE RULES CONCERNING MINIMUM TRAINING REQUIREMENTS FOR DIRECT-ENTRY MIDWIVES WITH RESPECT TO THE SAFE ADMINISTRATION OF OXYGEN TO PATIENTS. EACH DIRECT-ENTRY MIDWIFE REGISTERED PURSUANT TO THIS ARTICLE SHALL COMPLETE THE MINIMUM TRAINING REQUIREMENTS AND SUBMIT PROOF OF HAVING COMPLETED SUCH REQUIREMENTS TO THE DIRECTOR BEFORE ADMINISTERING OXYGEN TO ANY PATIENT.

SECTION 5. 12-37-106 (1) (c), Colorado Revised Statutes, 1991 Repl. Vol., as amended, is amended to read:

12-37-106. Director - powers and duties. (1) In addition to any other powers and duties conferred on the director by law, the director has the following powers and duties:

(c) ~~To prepare or adopt suitable standards for education and training programs and examinations, which may consist of programs and examinations developed by persons or entities other than the director and approved or certified by the director; except that, in preparing or adopting the initial examination required for registration, the director shall consult with certified nurse-midwives, qualified physicians, and qualified direct-entry midwives as to the validity and scope of the examination~~ TO PREPARE OR ADOPT SUITABLE EDUCATION STANDARDS FOR APPLICANTS AND TO ADOPT A REGISTRATION EXAMINATION;

SECTION 6. 12-37-107 (1), Colorado Revised Statutes, 1991 Repl. Vol., as amended, is amended, and the said 12-37-107 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

12-37-107. Disciplinary action authorized - grounds for discipline. (1) If a direct-entry midwife has violated any of the provisions of section 12-37-103, 12-37-104, ~~or~~ 12-37-105, OR 12-37-109 (3), the director may deny, revoke, or suspend any registration, issue a letter of admonition to a registrant, place a registrant on probation, or apply for a temporary or permanent injunction against a direct-entry midwife, through the attorney general, in any court of competent jurisdiction, enjoining such direct-entry midwife from practicing midwifery or committing any violation of the provisions of the said section 12-37-103, 12-37-104, ~~or~~ 12-37-105, OR 12-37-109 (3). Such injunctive proceedings shall be in addition to and not in lieu of any other penalties or remedies provided in this article.

(3) THE DIRECTOR HAS THE POWER TO DENY, REVOKE, OR SUSPEND ANY REGISTRATION OR TO ISSUE A LETTER OF ADMONITION OR PLACE A REGISTRANT ON

PROBATION FOR ANY OF THE FOLLOWING ACTS OR OMISSIONS:

(a) ANY VIOLATION OF THE PROVISIONS OF SECTION 12-37-103, 12-37-104, 12-37-105, OR 12-37-109 (3) OR ANY RULE PROMULGATED PURSUANT TO SECTION 12-37-106 (1) (a);

(b) FAILING TO PROVIDE ANY INFORMATION REQUIRED PURSUANT TO OR TO PAY ANY FEE ASSESSED IN ACCORDANCE WITH SECTION 12-37-103, OR PROVIDING FALSE, DECEPTIVE, OR MISLEADING INFORMATION TO THE DIVISION OF REGISTRATIONS THAT THE DIRECT-ENTRY MIDWIFE KNEW OR SHOULD REASONABLY HAVE KNOWN WAS FALSE, DECEPTIVE, OR MISLEADING;

(c) ENGAGING IN ANY ACT OR OMISSION THAT DOES NOT MEET GENERALLY ACCEPTED STANDARDS OF SAFE CARE FOR WOMEN AND INFANTS, WHETHER OR NOT ACTUAL INJURY TO A PATIENT IS ESTABLISHED;

(d) HABITUAL INTEMPERANCE WITH REGARD TO OR EXCESSIVE USE OF A HABIT-FORMING DRUG, AS DEFINED IN SECTION 12-22-102 (13), A CONTROLLED SUBSTANCE, AS DEFINED IN SECTION 12-22-303 (7), OR AN ALCOHOLIC BEVERAGE;

(e) HAS PROCURED OR ATTEMPTED TO PROCURE A REGISTRATION IN THIS OR ANY OTHER STATE OR JURISDICTION BY FRAUD, DECEIT, MISREPRESENTATION, MISLEADING OMISSION, OR MATERIAL MISSTATEMENT OF FACT;

(f) HAS HAD A LICENSE OR REGISTRATION TO PRACTICE DIRECT-ENTRY MIDWIFERY OR ANY OTHER HEALTH CARE OCCUPATION SUSPENDED OR REVOKED IN ANY JURISDICTION. A CERTIFIED COPY OF THE ORDER OF SUSPENSION OR REVOCATION SHALL BE PRIMA FACIE EVIDENCE OF SUCH SUSPENSION OR REVOCATION.

(g) VIOLATION OF ANY LAW OR REGULATION GOVERNING THE PRACTICE OF DIRECT-ENTRY MIDWIFERY IN ANOTHER STATE OR JURISDICTION. A PLEA OF NOLO CONTENDERE OR ITS EQUIVALENT ACCEPTED BY ANY STATE AGENCY OF ANOTHER STATE OR JURISDICTION MAY BE CONSIDERED TO BE THE SAME AS A FINDING OF VIOLATION FOR PURPOSES OF A PROCEEDING UNDER THIS ARTICLE.

(h) HAS FALSIFIED, FAILED TO MAKE ESSENTIAL ENTRIES IN, OR IN A NEGLIGENT MANNER MADE INCORRECT ENTRIES IN CLIENT RECORDS;

(i) HAS BEEN CONVICTED OF A FELONY OR HAS HAD ACCEPTED BY A COURT A PLEA OF GUILTY OR NOLO CONTENDERE TO A FELONY. A CERTIFIED COPY OF THE JUDGMENT OF A COURT OF COMPETENT JURISDICTION OF SUCH CONVICTION OR PLEA SHALL BE PRIMA FACIE EVIDENCE OF SUCH CONVICTION.

(j) HAS VIOLATED ANY PROVISION OF THIS ARTICLE OR HAS AIDED OR KNOWINGLY PERMITTED ANY PERSON TO VIOLATE ANY PROVISION OF THIS ARTICLE; OR

(k) HAS ADVERTISED THROUGH NEWSPAPERS, MAGAZINES, CIRCULARS, DIRECT MAIL, DIRECTORIES, RADIO, TELEVISION, OR OTHERWISE THAT THE REGISTRANT WILL PERFORM ANY ACT PROHIBITED BY THIS ARTICLE.

(4) ANY PROCEEDING TO DENY, SUSPEND, OR REVOKE A REGISTRATION OR PLACE

A REGISTRANT ON PROBATION SHALL BE CONDUCTED PURSUANT TO SECTIONS 24-4-104 AND 24-4-105, C.R.S. SUCH PROCEEDING MAY BE CONDUCTED BY AN ADMINISTRATIVE LAW JUDGE DESIGNATED PURSUANT TO PART 10 OF ARTICLE 30 OF TITLE 24, C.R.S.

(5) THE DIRECTOR MAY ACCEPT AS PRIMA FACIE EVIDENCE OF GROUNDS FOR DISCIPLINARY ACTION ANY DISCIPLINARY ACTION TAKEN AGAINST A REGISTRANT BY ANOTHER JURISDICTION IF THE VIOLATION THAT PROMPTED SUCH DISCIPLINARY ACTION WOULD BE GROUNDS FOR DISCIPLINARY ACTION UNDER THIS ARTICLE.

(6) TO AID THE DIRECTOR IN ANY HEARING OR INVESTIGATION INSTITUTED PURSUANT TO THIS SECTION, THE DIRECTOR SHALL HAVE THE POWER TO ISSUE SUBPOENAS COMMANDING THE APPEARANCE OF PERSONS AND THE PRODUCTION OF COPIES OF RECORDS CONTAINING INFORMATION RELEVANT TO THE PRACTICE OF DIRECT-ENTRY MIDWIFERY RENDERED BY ANY REGISTRANT, INCLUDING, BUT NOT LIMITED TO, HOSPITAL AND PHYSICIAN RECORDS. THE PROVIDER OF SUCH COPIES SHALL PREPARE THE COPIES FROM THE ORIGINAL RECORD AND SHALL DELETE THE NAME OF THE PATIENT, TO BE RETAINED BY THE CUSTODIAN OF THE RECORDS FROM WHICH THE COPIES WERE MADE, BUT SHALL IDENTIFY THE PATIENT BY A NUMBERED CODE. UPON CERTIFICATION BY THE CUSTODIAN THAT THE COPIES ARE TRUE AND COMPLETE EXCEPT FOR THE PATIENT'S NAME, THE COPIES SHALL BE DEEMED AUTHENTIC, SUBJECT TO THE RIGHT TO INSPECT THE ORIGINALS FOR THE LIMITED PURPOSE OF ASCERTAINING THE ACCURACY OF THE COPIES. NO PRIVILEGE OF CONFIDENTIALITY SHALL EXIST WITH RESPECT TO SUCH COPIES AND NO LIABILITY SHALL LIE AGAINST THE DIRECTOR OR THE CUSTODIAN OR THE DIRECTOR'S OR CUSTODIAN'S AUTHORIZED EMPLOYEES FOR FURNISHING OR USING SUCH COPIES IN ACCORDANCE WITH THIS SECTION.

SECTION 7. 12-37-109 (3), Colorado Revised Statutes, 1991 Repl. Vol., as amended, is amended to read:

12-37-109. Assumption of risk - no vicarious liability - legislative declaration.

(3) At such time as THE DIRECTOR FINDS THAT liability insurance ~~becomes~~ IS available at an affordable price, the direct-entry midwife shall be required to carry such insurance.

SECTION 8. Article 37 of title 12, Colorado Revised Statutes, 1991 Repl. Vol., as amended, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

12-37-109.5. Immunity. THE DIRECTOR, DIVISION, STAFF, ANY PERSON ACTING AS A CONSULTANT TO THE DIRECTOR, ANY WITNESS TESTIFYING IN A PROCEEDING AUTHORIZED UNDER THIS ARTICLE, AND ANY PERSON WHO LODGES A COMPLAINT PURSUANT TO THIS ARTICLE SHALL BE IMMUNE FROM CRIMINAL LIABILITY AND SUIT IN ANY CIVIL ACTION BROUGHT BY ANY PERSON BASED UPON AN ACTION OF THE DIRECTOR IF SUCH PERSON, STAFF PERSON, CONSULTANT, OR WITNESS ACTS IN GOOD FAITH WITHIN THE SCOPE OF THIS ARTICLE, HAS MADE A REASONABLE EFFORT TO ASCERTAIN THE FACTS OF THE MATTER AS TO WHICH HE OR SHE ACTS, AND ACTS IN THE REASONABLE BELIEF THAT THE ACTION TAKEN BY HIM OR HER IS WARRANTED BY THE FACTS. THE IMMUNITY PROVIDED BY THIS SECTION SHALL ALSO EXTEND TO ANY PERSON PARTICIPATING IN GOOD FAITH IN ANY INVESTIGATIVE PROCEEDING PURSUANT

TO THIS ARTICLE.

12-37-109.7. Confidential files. THE DIRECTOR MAY KEEP CONFIDENTIAL ALL FILES AND INFORMATION CONCERNING AN INVESTIGATION AUTHORIZED UNDER THIS ARTICLE UNTIL THE RESULTS OF SUCH INVESTIGATION ARE PROVIDED TO THE DIRECTOR AND EITHER THE COMPLAINT IS DISMISSED OR NOTICE OF HEARING AND CHARGES ARE SERVED UPON THE REGISTRANT.

SECTION 9. 12-37-110, Colorado Revised Statutes, 1991 Repl. Vol., as amended, is amended to read:

12-37-110. Repeal of article. (1) This article is repealed, effective ~~July 1, 1996~~ JULY 1, 2001.

(2) PRIOR TO SUCH REPEAL, THE REGISTERING OF DIRECT-ENTRY MIDWIVES BY THE DIVISION OF REGISTRATIONS SHALL BE REVIEWED AS PROVIDED IN SECTION 24-34-104, C.R.S.

SECTION 10. 12-36-106 (1) (f) (II), Colorado Revised Statutes, 1991 Repl. Vol., as amended, is amended to read:

12-36-106. Practice of medicine defined - exemptions from licensing requirements - repeal. (1) For the purpose of this article "practice of medicine" means:

(f) The practice of midwifery, except:

(II) (A) Services rendered by a person properly registered as a direct-entry midwife and practicing in accordance with the provisions of article 37 of this title.

(B) This subparagraph (II) is repealed, effective ~~July 1, 1996~~ JULY 1, 2001.

SECTION 11. 24-34-104 (25.6) (b), Colorado Revised Statutes, 1988 Repl. Vol., as amended, is repealed as follows:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (25.6) The following agencies and functions of the specified agencies shall terminate on July 1, 1996:

(b) ~~The registering of direct-entry midwives by the division of registrations in accordance with article 37 of title 12, C.R.S.~~

SECTION 12. 24-34-104 (30) (a), Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (30) (a) The following functions of the specified agency shall terminate on July 1, 2001:

(V) THE REGISTRATION OF DIRECT-ENTRY MIDWIVES BY THE DIVISION OF

REGISTRATIONS IN ACCORDANCE WITH ARTICLE 37 OF TITLE 12, C.R.S.

SECTION 13. 25-2-103, Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended to read:

25-2-103. Centralized registration system for all vital statistics - appointment of registrar - regulations. (1) In order to provide for the maintenance of a centralized registry of the vital statistics of this state, the office of state registrar of vital statistics, referred to in this article as the "state registrar", is hereby created in the department of public health and environment. The state registrar shall be appointed by the state board of health and shall have such staff and clerical help as reasonably may be required in the performance of ~~his~~ THE STATE REGISTRAR'S duties. The state registrar and ~~his~~ THE staff and clerical help OF THE STATE REGISTRAR shall be subject to the state constitution and state personnel system laws.

(2) The state board of health shall adopt, promulgate, amend, and repeal such rules ~~and regulations~~ and orders in accordance with the provisions of section 24-4-103, C.R.S., as are necessary and proper for carrying out the provisions of this article.

(3) (a) The state registrar shall direct and supervise the operation of the vital statistics system, prepare and publish annual reports of vital statistics, and administer and enforce the provisions of this article and all rules ~~and regulations~~ issued under this article.

(b) IN CONJUNCTION WITH THE REQUIREMENTS OF PARAGRAPH (a) OF THIS SUBSECTION (3), THE STATE REGISTRAR SHALL COLLECT THE NAME OF THE PROVIDER OF PRENATAL CARE, IF ANY, AND THE NAME OF THE PROVIDER OF INITIAL DELIVERY SERVICES AND SHALL REQUIRE THAT SUCH INFORMATION BE REPORTED ON ALL BIRTH CERTIFICATES. IN ADDITION, WHENEVER AN INVESTIGATION OR INQUEST IS CONDUCTED PURSUANT TO SECTION 30-10-606, C.R.S., CONCERNING THE DEATH OF A CHILD UNDER ONE YEAR OF AGE, THE CORONER SHALL FORWARD THE INFORMATION DESCRIBED IN THIS PARAGRAPH (b) TO THE STATE REGISTRAR FOR INCLUSION ON THE DEATH CERTIFICATE OF THE SUBJECT OF THE INQUEST OR INVESTIGATION.

(4) Federal, state, local, and other public or private agencies may, upon request, be furnished copies of records of data for statistical purposes upon such terms and conditions as may be prescribed by regulation.

(5) The state registrar shall designate organized local health departments established pursuant to part 5 or 7 of article 1 of this title and may establish or designate additional offices throughout Colorado to aid in the efficient administration of the system of vital statistics.

(6) The state registrar may:

(a) Require departments or offices so designated or established to comply with performance and accounting standards as set forth in rules ~~and regulations~~ promulgated by the state board of health; ~~The state registrar may~~

(b) Delegate such functions and duties ~~vested in him~~ to ~~his~~ THE staff and clerical help and to any offices established or designated by the state registrar pursuant to this

section as ~~he deems~~ DEEMED necessary or expedient; ~~The state registrar may~~

(c) Conduct training programs to promote the uniformity of the administration of this article throughout Colorado.

SECTION 14. 25-2-112 (2.5), Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended to read:

25-2-112. Certificates of birth - filing - establishment of paternity - repeal.

(2.5) (a) For the purposes of subsection (2) of this section, a registrant under article 37 of title 12, C.R.S., who attends or witnesses a birth outside an institution shall prepare and file the certificate as required by said subsection (2).

(b) This subsection (2.5) is repealed, effective ~~July 1, 1996~~ JULY 1, 2001.

SECTION 15. 30-10-606 (4), Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

30-10-606. Coroner - inquiry, grounds - postmortem - jury - certificate of death. (4) (a) In all cases where the coroner has held an investigation or inquest, the certificate of death shall be issued by the coroner or ~~his~~ THE CORONER'S deputy.

(b) Any certificate of death issued by a coroner or ~~his~~ A CORONER'S deputy shall be filed with the registrar and shall state ~~his~~ THEIR findings concerning the nature of the disease or the manner of death, and, if from external causes, the certificate shall state whether in ~~his~~ THEIR opinion death was accidental, suicidal, or felonious. IN ADDITION, THE CERTIFICATE SHALL INCLUDE THE INFORMATION DESCRIBED IN SECTION 25-2-103 (3) (b), C.R.S., WHENEVER THE SUBJECT OF THE INVESTIGATION OR INQUEST IS UNDER ONE YEAR OF AGE.

SECTION 16. 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: April 17, 1996