

## CHAPTER 286

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**PROFESSIONS AND OCCUPATIONS**


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## SENATE BILL 13-151

BY SENATOR(S) Nicholson, Aguilar, Guzman, Newell, Tochtrop, Todd;  
also REPRESENTATIVE(S) Primavera, Fields, Hullinghorst, Labuda, Ryden, Schafer.

**AN ACT**

**CONCERNING THE CONTINUATION OF THE REGULATION OF MASSAGE THERAPISTS, AND, IN CONNECTION THEREWITH, REQUIRING LICENSURE OF MASSAGE THERAPISTS, IMPLEMENTING OTHER RECOMMENDATIONS CONTAINED IN THE SUNSET REPORT PREPARED BY THE DEPARTMENT OF REGULATORY AGENCIES, AND MAKING AN APPROPRIATION.**

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

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

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- review of functions.** (1) This article, ~~is~~ **AND THE FUNCTIONS OF THE DIRECTOR AS SET FORTH IN THIS ARTICLE, ARE REPEALED,** effective September 1, ~~2013~~ **2022.** PRIOR TO THE REPEAL, THE DEPARTMENT OF REGULATORY AGENCIES SHALL REVIEW THE FUNCTIONS OF THE DIRECTOR PURSUANT TO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

(2) (a) ~~The registration functions of the director as set forth in this article are repealed, effective September 1, 2013.~~

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

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

**24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment.** (44.5) ~~The following agencies, functions, or both, shall terminate on September 1, 2013: The registration of massage therapists by the director of the division of professions and occupations in~~

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

~~accordance with article 35.5 of title 12, C.R.S.~~

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

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

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

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

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

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

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

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

(3) "Approved massage school" means:

(a) A massage therapy educational school that has a valid certificate of approval from the division of private and occupational schools in accordance with the provisions of article 59 of this title;

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

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

(d) 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.

(6.5) "LICENSEE" MEANS A PERSON LICENSED IN THIS STATE TO PRACTICE MASSAGE THERAPY.

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

(10) ~~"Registrant" means a massage therapist registered pursuant to this article.~~

**SECTION 5.** In Colorado Revised Statutes, **amend** 12-35.5-104 as follows:

**12-35.5-104. Use of massage titles restricted.** Only a person ~~registered~~ LICENSED under this article ~~as a massage therapist~~ TO PRACTICE MASSAGE THERAPY may use the titles "massage therapist", "~~registered~~ LICENSED massage therapist", "massage practitioner", "masseuse", "masseur", the letters "M.T." or "~~R.M.T.~~" "L.M.T.", or any other generally accepted terms, letters, or figures that indicate that the person is a massage therapist.

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

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

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

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

(b) ON JULY 1, 2014, EACH ACTIVE MASSAGE THERAPY REGISTRATION BECOMES AN ACTIVE MASSAGE THERAPY LICENSE BY OPERATION OF LAW. THE CONVERSION FROM REGISTRATION TO LICENSURE DOES NOT AFFECT ANY PRIOR DISCIPLINE, LIMITATION, OR CONDITION IMPOSED BY THE DIRECTOR ON A MASSAGE THERAPIST'S REGISTRATION; LIMIT THE DIRECTOR'S AUTHORITY OVER ANY REGISTRANT; OR AFFECT ANY PENDING INVESTIGATION OR ADMINISTRATIVE PROCEEDING. THE DIRECTOR SHALL TREAT ANY APPLICATION FOR A MASSAGE THERAPIST REGISTRATION PENDING AS OF JULY 1, 2014, AS AN APPLICATION FOR LICENSURE, WHICH APPLICATION IS SUBJECT TO THE REQUIREMENTS ESTABLISHED BY THE DIRECTOR.

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

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

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

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

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

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

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

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

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

(6) Notwithstanding any provision of this section, the director may deny a ~~registration~~ 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 ~~plead~~ PLED guilty to a charge of unlawful sexual behavior as defined in section 16-22-102, C.R.S., or any prostitution-related offense, whether or not the act was committed in Colorado.

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

**12-35.5-108. License expiration - effect - renewal - reinstatement - penalty.**

(1) ~~Registrations~~ LICENSES issued pursuant to this article ~~shall be~~ ARE valid for the period of time established by the director. ~~Registrations shall be renewed~~ LICENSEES MUST RENEW THEIR LICENSES in accordance with the schedule set forth by the director PURSUANT TO SECTION 24-34-102 (8), C.R.S.

(2) ~~A registration not renewed~~ IF A LICENSEE FAILS TO RENEW HIS OR HER LICENSE within the time period specified in the schedule established by the director, ~~shall be deemed expired~~ THE LICENSE EXPIRES. A person in possession of an expired ~~registration~~ LICENSE shall not practice massage therapy until he or she reinstates ~~such registration~~ THE LICENSE.

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

**SECTION 9.** In Colorado Revised Statutes, 12-35.5-110, **amend** (1) introductory portion and (1) (a) 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 ~~registration~~ LICENSE for any of the following:

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

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

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

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

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

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

(g) (I) FAILED TO NOTIFY THE DIRECTOR OF a physical or mental condition or ~~disability that renders the registrant unable to provide massage therapy~~ OR ILLNESS THAT AFFECTS THE LICENSEE'S ABILITY TO TREAT CLIENTS with reasonable skill and

safety or that may endanger the health or safety of clients receiving massage services FROM THE LICENSEE;

(II) FAILED TO ACT WITHIN THE LIMITATIONS CREATED BY A PHYSICAL OR MENTAL ILLNESS OR CONDITION THAT RENDERS THE LICENSEE UNABLE TO PRACTICE MASSAGE THERAPY WITH REASONABLE SKILL AND SAFETY OR THAT MAY ENDANGER THE HEALTH OR SAFETY OF PERSONS UNDER HIS OR HER CARE; OR

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

(j) Been convicted of, OR PLED GUILTY OR NOLO CONTENDERE TO, a felony or ~~pled guilty or nolo contendere to a felony~~ 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 court of competent jurisdiction of a conviction or plea ~~shall be~~ 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.

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

(n) FAILED TO REPORT TO THE DIRECTOR 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 THIS ARTICLE;

(o) COMMITTED AN ACT THAT DOES NOT MEET, OR FAILED TO PERFORM AN ACT NECESSARY TO MEET, GENERALLY ACCEPTED STANDARDS OF MASSAGE THERAPY CARE.

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

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

(3)(c) Upon failure of any witness to comply with such subpoena or process, the district court of the county in which the subpoenaed person or ~~registrant~~ LICENSEE resides or conducts business, upon application by the director with notice to the subpoenaed person or ~~registrant~~ LICENSEE, may issue to the person or ~~registrant~~ LICENSEE an order requiring that person or ~~registrant~~ LICENSEE to appear before the

director; to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence touching the matter under investigation or in question. ~~Failure~~ IF A PERSON OR LICENSEE FAILS TO OBEY THE ORDER OF THE COURT, ~~may be punished by the court as a~~ MAY HOLD THE PERSON OR LICENSEE IN CONTEMPT OF COURT.

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

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

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

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

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

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

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

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

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

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

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

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

**12-35.5-113. Cease-and-desist orders.** (1) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a ~~registrant~~ LICENSEE is acting in a manner that is an imminent threat to the health and safety of the public, or a person is acting or has acted without the required ~~registration~~ LICENSE, the director may issue an order to cease and desist ~~such~~ THE activity AND SHALL SET FORTH IN the order ~~shall set forth~~ the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or ~~unregistered~~ UNLICENSED practices immediately cease.

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

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

**12-35.5-114. Mental and physical examination of licensees.** (1) (a) If the director has reasonable cause to believe that a ~~registrant~~ LICENSEE is unable to practice with reasonable skill and safety, the director may order the ~~registrant~~ LICENSEE to take a mental or physical examination administered by a physician or other licensed health care professional designated by the director.

(b) ~~Refusal by a registrant~~ If A LICENSEE REFUSES to submit to a mental or physical examination that has been properly ordered by the director pursuant to subsection (2) of this section, ~~unless~~ AND THE REFUSAL IS NOT due to circumstances beyond the ~~registrant's~~ LICENSEE'S control, THE REFUSAL constitutes grounds for discipline pursuant to section 12-35.5-111 (1) (h). ~~and~~ WHEN A LICENSEE HAS REFUSED TO SUBMIT TO AN EXAMINATION, the director may suspend the ~~registrant's~~ ~~registration~~ LICENSEE'S LICENSE in accordance with section 12-35.5-112 until:

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

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

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

(2) IN AN ORDER TO A REGISTRANT LICENSEE PURSUANT TO SUBSECTION (1) OF THIS SECTION TO UNDERGO A MENTAL OR PHYSICAL EXAMINATION, THE DIRECTOR SHALL ~~CONTAIN~~ INCLUDE THE BASIS OF THE DIRECTOR'S REASONABLE CAUSE TO BELIEVE THAT THE REGISTRANT LICENSEE IS UNABLE TO PRACTICE WITH REASONABLE SKILL AND SAFETY. FOR THE PURPOSES OF ANY DISCIPLINARY PROCEEDING AUTHORIZED UNDER THIS ARTICLE, THE REGISTRANT SHALL BE LICENSEE IS DEEMED TO HAVE WAIVED ALL OBJECTIONS TO THE ADMISSIBILITY OF THE EXAMINING PHYSICIAN'S TESTIMONY OR EXAMINATION REPORTS ON THE GROUND THAT THEY ARE PRIVILEGED COMMUNICATIONS.

(3) THE REGISTRANT LICENSEE MAY SUBMIT TO THE DIRECTOR TESTIMONY OR EXAMINATION REPORTS FROM A PHYSICIAN OR OTHER LICENSED HEALTH CARE PROFESSIONAL CHOSEN BY THE REGISTRANT LICENSEE AND PERTAINING TO ANY CONDITION THAT THE DIRECTOR HAS ALLEGED MAY PRECLUDE THE REGISTRANT LICENSEE FROM PRACTICING WITH REASONABLE SKILL AND SAFETY. ~~THESE~~ THE DIRECTOR MAY BE CONSIDERED BY THE DIRECTOR CONSIDER THE TESTIMONY OR EXAMINATION REPORTS IN CONJUNCTION WITH, BUT NOT IN LIEU OF, TESTIMONY AND EXAMINATION REPORTS OF THE PHYSICIAN OR OTHER LICENSED HEALTH CARE PROFESSIONAL DESIGNATED BY THE DIRECTOR.

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

**12-35.5-115. Unauthorized practice - criminal penalties.** A person who practices or offers or attempts to practice massage therapy without an active registration 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.

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

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

(2) (a) UPON DETERMINING THAT A MASSAGE THERAPIST WITH A PHYSICAL OR MENTAL ILLNESS OR CONDITION IS ABLE TO RENDER LIMITED SERVICES WITH REASONABLE SKILL AND SAFETY TO CLIENTS, THE DIRECTOR MAY ENTER INTO A CONFIDENTIAL AGREEMENT WITH THE MASSAGE THERAPIST IN WHICH THE MASSAGE THERAPIST AGREES TO LIMIT HIS OR HER PRACTICE BASED ON THE RESTRICTIONS IMPOSED BY THE ILLNESS OR CONDITION, AS DETERMINED BY THE DIRECTOR.

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

(c) THE PARTIES MAY MODIFY OR DISSOLVE THE AGREEMENT AS NECESSARY

BASED ON THE RESULTS OF A REEVALUATION OR OF MONITORING.

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

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

**SECTION 17.** In Colorado Revised Statutes, **amend** 12-35.5-117 as follows:

**12-35.5-117. Rule-making authority.** The director shall promulgate rules for the administration of this article. IF THE DIRECTOR PROMULGATES RULES REGARDING GENERALLY ACCEPTED STANDARDS OF MASSAGE THERAPY CARE, THE RULES ARE NOT AN EXHAUSTIVE STATEMENT OF THE GENERALLY ACCEPTED STANDARDS OF MASSAGE THERAPY CARE.

**SECTION 18.** In Colorado Revised Statutes, 12-35.5-118, **amend** (2) as follows:

**12-35.5-118. Local government - regulations - enforcement.** (2) Local government law enforcement agencies may inspect massage therapy ~~registrations~~ LICENSES and the business premises where massage therapy is practiced for compliance with applicable laws. Nothing in this section ~~shall be construed to preclude~~ PRECLUDES criminal prosecution for a violation of any criminal law. If ~~such~~ AN inspection reveals the practice of massage therapy by a person without a valid ~~registration~~ LICENSE, the LOCAL GOVERNMENT LAW ENFORCEMENT AGENCY SHALL CHARGE THE person ~~shall be charged~~ with a misdemeanor pursuant to section 12-35.5-115.

**SECTION 19. Appropriation.** (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the division of professions and occupations cash fund created in section 24-34-105 (2) (b) (I), Colorado Revised Statutes, not otherwise appropriated, to the department of regulatory agencies, for the fiscal year beginning July 1, 2013, the sum of \$149,691 and 1.9 FTE, or so much thereof as may be necessary, to be allocated for the implementation of this act as follows:

(a) \$101,025 and 1.9 FTE to the division of professions and occupations for personal services;

(b) \$10,922 to the division of professions and occupations for operating expenses;

(c) \$16,500 to the division of professions and occupations for expert consultant services; and

(d) \$21,244 to the executive director's office and administrative services for the purchase of legal services.

(2) In addition to any other appropriation, there is hereby appropriated to the department of law, for the fiscal year beginning July 1, 2013, the sum of \$21,244, or so much thereof as may be necessary, for the provision of legal services for the department of regulatory agencies related to the implementation of this act. Said sum is from reappropriated funds received from the department of regulatory agencies out of the appropriation made in paragraph (d) of subsection (1) of this section.

**SECTION 20. Act subject to petition - effective date.** This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 7, 2013, if adjournment sine die is on May 8, 2013); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2014 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: May 24, 2013