Colorado Revised Statutes 2018

TITLE 12

PROFESSIONS AND OCCUPATIONS

Cross references: For disposition of moneys collected under this title, see §§ 24-35-101 and 24-36-103; for practicing a profession or operating a business without a license, see § 16-13-306; for rule-making procedures and license suspension and revocation procedures by state agencies, see article 4 of title 24; for the authority of the executive director of the department of regulatory agencies to change the period of validity and renewal date of any license or certificate issued by any examining or licensing board or commission in the division of professions and occupations, see § 24-34-102 (7) and (8); for an alternative disciplinary action for persons licensed, registered, or certified pursuant to this title, see § 24-34-106.

GENERAL

ARTICLE 1

Abstractors

12-1-101 to 12-1-116. (Repealed)

Source: L. 83: Entire article repealed, p. 513, § 4, effective May 16.

Editor's note: This article was numbered as article 1 of chapter 1, C.R.S. 1963. For amendments to this article prior to its repeal in 1983, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 1.5

General Provisions

PART 1

MANDATORY DONATION OF SERVICES

12-1.5-101. Mandatory donation of services prohibited. (1) No regulatory agency or other department, division, agency, branch, instrumentality, or political subdivision of state government shall require any person practicing a regulated profession or occupation to donate such person's professional services without compensation to any other person as a condition of

admission to or continued licensure in such profession or occupation; nor shall payment of money in lieu of such uncompensated service be required.

(2) This section shall not be construed to prohibit the crediting of required hours of continuing education in exchange for hours of donated services by a person in a regulated profession or occupation.

Source: L. 99: Entire article added, p. 405, § 1, effective April 22.

PART 2

BREAST TISSUE DENSITY NOTIFICATION

12-1.5-201. Mammography report - dense breast tissue - required notice. (1) Each person who is required by 42 U.S.C. sec. 263b to provide a patient, the patient's physician, or medical institution with a mammography report and who has determined that the patient has dense breast tissue, as determined by the interpreting physician based on breast imaging reporting and data system standards promulgated by the American college of radiology, shall include the following notice with the mammography report:

Your mammogram shows that your breast tissue is dense. Dense breast tissue is common and is not abnormal. However, dense breast tissue can make it harder to evaluate the results of your mammogram and may also be associated with an increased risk of breast cancer. This information about the results of your mammogram is given to you to raise your awareness and to inform your conversations with your doctor. Together, you can decide which screening options are right for you. A report of your results was sent to your physician.

(2) Notwithstanding any other law, this section does not create a cause of action or create a standard of care, obligation, or duty that provides a basis for a cause of action.

Source: L. 2017: Entire part added, (SB 17-142), ch. 112, p. 401, § 1, effective October 1.

ARTICLE 2

Accountants

12-2-101. Legislative declaration. (1) It is declared to be in the interest of the citizens of the state of Colorado and a proper exercise of the police power of the state of Colorado to provide for the licensing and registration of certified public accountants, to ensure that persons who hold themselves out as possessing professional qualifications as certified public accountants are, in fact, qualified to render accounting services of a professional nature, and to provide for regulation of certified public accountants employed, serving clients, or doing business in Colorado and the maintenance of high standards of professional conduct by those so licensed and registered as certified public accountants. Because of the customary reliance by the public upon audited financial statements and upon financial information presented with the opinion or certificate of persons purporting to possess expert knowledge in accounting or auditing, it is

further declared to be in the interest of such citizens to limit and restrict, under the circumstances set forth in this article, the issuance of opinions or certificates relating to accounting or financial statements which utilize or contain wording indicating that the author has expert knowledge in accounting or auditing or which purport to express an independent auditor's opinion as to financial position, financial results of operations, changes in financial position, reliability of financial information, or compliance with conditions established by law or contract to persons so licensed or registered.

(2) It is declared that the state board of accountancy may invoke discipline proactively with regard to certified public accountants employed, serving clients, or doing business in Colorado when required for the protection of the public health, safety, and welfare of the citizens of this state.

Source: L. 59: p. 128, § 1. **CRS 53:** § 2-2-1. **C.R.S. 1963:** § 2-1-1. **L. 77:** Entire section amended, p. 596, § 1, effective July 1. **L. 90:** Entire section amended, p. 743, § 1, effective July 1. **L. 2000:** Entire section amended, p. 1581, § 1, effective July 1.

12-2-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Accredited college or university" means either:

(a) A college or university which is accredited by one of the following regional accrediting agencies:

(I) The middle states association of colleges and schools;

(II) The north central association of colleges and schools;

(III) The New England association of schools and colleges;

(IV) The northwest association of schools and colleges;

(V) The southern association of colleges and schools;

(VI) The western association of schools and colleges; or

(b) A college or university which meets academic standards substantially equivalent to the standards of the agencies specified in paragraph (a) of this subsection (1). The board shall establish by rule what constitutes substantially equivalent academic standards.

(1.5) "Board" means the state board of accountancy.

(2) "Foreign corporation" means a corporation organized under the laws of another state, which meets the requirements of section 12-2-117 (7).

(2.5) "Foreign limited liability company" means a limited liability company organized under the laws of another state, which meets the requirements of section 12-2-117 (7).

(2.7) "Limited liability company" means a limited liability company organized for the sole purpose of providing professional services to the public customarily performed by certified public accountants and includes foreign limited liability companies.

(2.9) "Peer review" means a study, appraisal, or review by an independent certified public accountant of one or more aspects of the professional work of another certified public accountant or of a registered partnership, corporation, or limited liability company that issues attest or compilation reports.

(3) "Person" includes individuals, partnerships, professional corporations, and limited liability companies.

(4) "Professional corporation" means a corporation organized for the sole purpose of providing professional services to the public customarily performed by certified public accountants and includes foreign corporations.

(5) "State" means any state, territory, or insular possession of the United States and the District of Columbia.

Source: L. 70: p. 97, § 13. **C.R.S. 1963:** § 2-1-31. **L. 90:** (2) and (4) amended, p. 744, § 2, effective July 1. **L. 91:** (1) amended and (1.5) added, p. 1669, § 1, effective March 27. **L. 93:** (2.5) and (2.7) added and (3) amended, p. 24, § 1, effective July 1. **L. 2010:** (2.9) added, (HB 10-1236), ch. 146, p. 506, § 28, effective July 1.

12-2-103. State board of accountancy - subject to termination. (1) The state board of accountancy shall consist of seven members appointed by the governor. Each member of the board shall be a citizen of the United States and a resident of this state. Five members of the board shall be holders of valid certified public accountant certificates issued under the laws of this state, a majority of whom are engaged in active practice as certified public accountants. Two members of the board shall be members of the public who do not hold a certified public accountant certificate. Members shall be appointed for terms of four years each. Any vacancy occurring during a term shall be filled by appointment by the governor for the unexpired term. Upon the expiration of a member's term of office, such member shall continue to serve until a successor is appointed. In no event shall a member of the board serve more than two consecutive terms. The governor shall remove from the board any member whose certificate has become void or has been revoked or suspended and may remove any member of the board for neglect of duty, misconduct, or incompetence.

(2) A majority of the board shall constitute a quorum for the transaction of business.

(3) In any proceeding in court, civil or criminal, arising out of or founded upon any provision of this article, a copy of the records of the board certified as correct by the board shall be admissible in evidence as being the records of the board.

(4) Repealed.

(5) The provisions of section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the state board of accountancy created by this section.

(6) (a) Any member of the board, any member of the board's staff, any person acting as a witness or consultant to the board, 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 liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as board member, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this article shall be immune from any civil or criminal liability that may result from such participation.

(b) The disclosure of reports or working papers subpoenaed by the board or any person or group authorized by the board to conduct an investigation into audit or review attest activities

of a certified public accountant or certified public accounting firm pursuant to section 13-90-107 (1)(f)(III) or (1)(f)(IV), C.R.S., which is not in good faith shall subject the member of the board, person, or group to civil liability for damages to be determined by a court of competent jurisdiction.

Source: L. 59: p. 128, § 2. **CRS 53:** § 2-2-2. **C.R.S. 1963:** § 2-1-2. **L. 67:** p. 962, § 1. **L. 76:** (5) added, p. 622, § 7, effective July 1. **L. 77:** (1) R&RE, p. 597, § 2, effective July 1. **L. 79:** (4) repealed, p. 912, § 16, effective July 1. **L. 90:** (1) and (3) amended, p. 744, § 3, effective July 1. **L. 2000:** (1) amended, p. 1582, § 2, effective July 1. **L. 2003:** (6) amended, p. 1394, § 2, effective August 6. **L. 2004:** (6)(a) amended, p. 1792, § 1, effective August 4.

Cross references: For provisions concerning the termination schedule for the state board of accountancy, see § 12-2-132.

12-2-104. Powers and duties of board. (1) The board has the power and duty to:

(a) Elect annually from among its members a chair and prescribe the duties of such office;

(b) Make such rules and regulations, not inconsistent with the laws of this state, as may be necessary for the orderly conduct of its affairs and for the administration of this article, pursuant to the provisions of article 4 of title 24, C.R.S.;

(c) Make appropriate rules of professional conduct in order to establish and maintain a high standard of integrity in the profession of public accounting. Any rule of professional conduct applies with equal force to all persons holding certificates under this article. No rule of professional conduct shall be promulgated which will work to the disadvantage of one group and in favor of another. Every person practicing as a certified public accountant in the state shall be governed and controlled by such rules. All rules of professional conduct shall be promulgated pursuant to the provisions of article 4 of title 24, C.R.S.

(d) to (f) Repealed.

(g) Prescribe forms for and receive applications for certificates and grant certificates, including contracting with people to receive and review the applications as the agent of the board;

(h) Give examinations to applicants and, as necessary, contract for assistance in administering the examination;

(i) Deny the issuance or renewal of, suspend for a specified period, or revoke a certificate; issue a letter of admonition to or place on probation or fine any person who, while holding a certificate, violates this article; issue confidential letters of concern; issue cease-and-desist orders; or impose other conditions and limitations;

(j) Keep a record of all certificates, suspensions, and revocations and of its own proceedings;

(k) Administer this article and exercise and perform any other powers and duties granted or directed by the general assembly;

(l) Collect all fees prescribed by this article.

(m) Repealed.

(2) Publications of the board circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136, C.R.S.

Source: L. 59: p. 129, § 3. **CRS 53:** § 2-2-3. **C.R.S. 1963:** § 2-1-3. **L. 64:** p. 114, § 7. **L. 77:** (1)(b) and (1)(c) amended, p. 597, § 3, effective July 1. **L. 79:** (1)(f) repealed and (2) added, pp. 434, 441, §§ 2, 31, effective July 1. **L. 81:** (1)(i) amended, p. 659, § 1, effective July 1. **L. 83:** (2) amended, p. 827, § 11, effective July 1. **L. 90:** (1)(a), (1)(c), (1)(g), (1)(h), and (1)(k) amended, (1)(d) and (1)(e) repealed, and (1)(i) R&RE, pp. 745, 757, §§ 4, 30, 5, effective July 1. **L. 96:** (2) amended, p. 1231, § 58, effective August 7. **L. 97:** (1)(m) added, p. 200, § 1, effective August 6. **L. 2000:** (1)(m) repealed, p. 1582, § 3, effective July 1. **L. 2006:** (1)(i) amended, p. 764, § 1, effective July 1. **L. 2008:** (1)(j) amended, p. 692, § 2, effective August 5. **L. 2010:** (1)(a) and (1)(g) amended, (HB 10-1236), ch. 146, p. 502, § 16, effective July 1. **L. 2011:** (1)(i) amended, (HB 11-1015), ch. 2, p. 2, § 1, effective March 1.

12-2-105. Rules and regulations. (Repealed)

Source: L. 59: p. 139, § 20. **CRS 53:** § 2-2-20. **C.R.S. 1963:** § 2-1-20. **L. 77:** Entire section repealed, p. 602, § 14, effective July 1.

12-2-106. Fees. (1) A fee authorized to be established pursuant to section 24-34-105, C.R.S., shall be paid for each application made to the board, whether it is an application for examination or reexamination or for issuance, renewal, reactivation, or reinstatement of a certificate of certified public accountant, an application for registration with the board as a public accounting firm, or any other application requiring formal action or consideration by the board. The fee required shall not be returnable irrespective of the action taken by the board.

(2) A fee authorized to be established pursuant to section 24-34-105, C.R.S., shall be paid for each examination in which the candidate is examined in the subjects prescribed by the board.

(3) Any person making application for a certificate of certified public accountant under section 12-2-113 shall pay a fee authorized to be established pursuant to section 24-34-105, C.R.S., in addition to the fee required in subsection (1) of this section.

(4) (Deleted by amendment, L. 2010, (HB 10-1236), ch. 146, p. 502, § 17, effective July 1, 2010.)

(5) Nothing in this section shall be construed to authorize the board to impose any notice, fee, or other submission requirement on a certified public accountant or registered public accountant from another state or a foreign partnership, corporation, limited partnership, limited liability limited partnership, or limited liability company, that is practicing accountancy in this state pursuant to section 12-2-121 (2).

Source: L. 59: p. 135, § 13. **CRS 53:** § 2-2-13. **C.R.S. 1963:** § 2-1-13. **L. 67:** p. 48, § 1. **L. 79:** (1) to (3) amended, p. 1643, § 64, effective July 19. **L. 90:** (1) to (3) amended, p. 745, § 6, effective July 1. **L. 2008:** (5) added, p. 692, § 3, effective August 5. **L. 2010:** (1) to (4) amended, (HB 10-1236), ch. 146, p. 502, § 17, effective July 1.

12-2-107. Disposition of fees. All fees shall be transmitted to the state treasurer, who shall credit the same pursuant to section 24-34-105, C.R.S., and the general assembly shall make annual appropriations pursuant to said section for the expenditures of the board incurred in the

performance of its duties under this article, which expenditures shall be made out of such appropriations upon vouchers and warrants drawn pursuant to law.

Source: L. 59: p. 130, § 4. **CRS 53:** § 2-2-4. **C.R.S. 1963:** § 2-1-4. **L. 73:** p. 1365, § 2. **L. 79:** Entire section amended, p. 1644, § 65, effective July 19.

12-2-108. Certificate of certified public accountant - issuance - renewal - reinstatement - rules. (1) The board shall grant a certificate of certified public accountant to any applicant who:

(a) Meets the requirements of section 12-2-113;

(b) Satisfies the board of the applicant's continued competence; or

(c) (I) Passes a written examination pursuant to section 12-2-111; and

(II) Meets the requirements of section 12-2-109.

(2) Repealed.

(3) All certificates shall expire pursuant to a schedule established by the director of the division of professions and occupations within the department of regulatory agencies and shall be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director of the division of professions and occupations within the department of regulatory agencies may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her certification pursuant to the schedule established by the director of the division of professions and occupations, such certificate shall expire. Any person whose certificate has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

(4) and (5) (Deleted by amendment, L. 2004, p. 1793, § 2, effective August 4, 2004.)

(6) Any person who practices certified public accounting after the expiration of his or her certificate shall be practicing in violation of this article. The board may refuse to reactivate or reinstate any expired certificate for conduct that constitutes a violation of this article.

(7) Effective on the first renewal period established by the board after May 31, 2011, the board shall not renew the certificate of a holder who issues attest or compilation reports unless the certificate holder performs public accounting within a partnership, professional corporation, or limited liability company or the certificate holder has undergone a peer review conducted according to rules promulgated by the board that meet the standards for performing and reporting on a peer review of the American institute of certified public accountants or an equivalent standard.

Source: L. 59: p. 130, § 5. **CRS 53:** § 2-2-5. **C.R.S. 1963:** § 2-1-5. **L. 73:** p. 514, § 3. **L. 77:** (1)(a) repealed, p. 644, § 13, effective March 16; entire section R&RE, p. 597, § 4, effective July 1. **L. 81:** (1)(a) and (2) repealed and (1)(c) amended, pp. 659, 661, §§ 2, 8, effective July 1. **L. 90:** (1)(d) and (3) to (6) added, p. 746, §§ 7, 8, effective July 1. **L. 2000:** (1)(c), (1)(d), and (5) amended and (1)(e) added, p. 1582, § 4, effective July 1. **L. 2004:** (3) to (5) amended, p. 1793, § 2, effective August 4. **L. 2010:** (1) R&RE, (6) amended, and (7) added, (HB 10-1236), ch. 146, pp. 494, 506, §§ 4, 29, effective July 1.

12-2-109. Educational and experience requirements - rules.

(1) Repealed.

(2) On and after July 1, 2015, a person meets the educational and experience requirements necessary to be issued a certificate of certified public accountant if the applicant:

(a) (I) Has a baccalaureate or higher degree conferred by an accredited college or university with an accounting program approved by the board or has a baccalaureate with a nonaccounting concentration supplemented by what the board determines to be the equivalent of an accounting concentration, including related courses in other areas of business administration; and

(II) Has completed at least one hundred fifty semester hours of college education approved by the board;

(b) Has successfully completed a course of study concerning the subject of professional ethics approved by the board and passed a written examination concerning such subject prepared and given by educational institutions or professional organizations deemed qualified by the board to administer the examination; and

(c) Has one year's experience that:

(I) Meets the requirements set by the board by rule;

(II) Is in any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax, or consulting skills, which may be gained through employment in government, industry, academia, or public practice; and

(III) Is verified by an actively licensed certified public accountant who meets the requirements set by the board by rule.

(3) Repealed.

Source: L. 59: p. 130, § 6. **CRS 53:** § 2-2-6. **C.R.S. 1963:** § 2-1-6. **L. 67:** p. 962, § 2. **L. 70:** p. 90, § 1. **L. 77:** Entire section R&RE, p. 598, § 5, effective July 1. **L. 81:** (1)(c) amended, p. 659, § 3, effective July 1. **L. 2010:** IP(1)(a), (1)(a)(II), (1)(b), and (1)(c) amended and (2) and (3) added, (HB 10-1236), ch. 146, p. 494, § 5, effective July 1. **L. 2011:** (1), IP(2), and (2)(a)(II) amended, (HB 11-1015), ch. 2, p. 2, § 2, effective March 1.

Editor's note: Subsection (3) provided for the repeal of subsections (1) and (3), effective July 1, 2015. (See L. 2010, p. 494.)

12-2-110. Alternate educational and experience requirements. (Repealed)

Source: L. 59: p. 131, § 7. **CRS 53:** § 2-2-7. **C.R.S. 1963:** § 2-1-7. **L. 90:** Entire section repealed, p. 757, § 30, effective July 1.

12-2-111. Examinations - reexaminations - rules. (1) The board shall provide licensure examinations as often as necessary to provide candidates a reasonable opportunity to take the examination. Examinations shall adequately test a candidate's knowledge of accounting, auditing, and any other related subject the board deems relevant and necessary. Any additional examination subject shall be designated by the board by rule. The board shall set the passing score for an examination at a level to adequately reflect the minimum level of competency necessary for the practice of accountancy.

(2) The board shall establish by rule the standards for granting conditional examination credit for candidates who pass one or more but not all of the sections of the examination.

(3) The board may use the standard examinations and advisory grading service promulgated by the American institute of certified public accountants, which examination shall be deemed prima facie to meet the requirements of this section.

(4) A candidate for a certificate of certified public accountant who meets the educational requirements set by the board by rule is entitled to take an examination.

(5) Any candidate who has passed any or all sections of an examination in another state shall be credited for passing such sections if the sections passed are determined by the board to be equivalent to sections of the examination offered in this state and if the testing requirements in the other state are substantially the same as in this state.

(6) If a candidate fails an examination or fails to pass in all subjects as provided in subsection (5) of this section, the board may require the candidate to take additional study before taking another examination.

(7) Repealed.

(8) (Deleted by amendment, L. 93, p. 349, § 1, effective April 12, 1993.)

Source: L. 59: p. 132, § 8. **CRS 53:** § 2-2-8. **C.R.S. 1963:** § 2-1-8. **L. 67:** p. 962, § 3. **L. 77:** (1), (4), (5), and (8) amended and (7) repealed, pp. 598, 602, §§ 6, 14, effective July 1. **L. 81:** (4) amended, p. 660, § 4, effective July 1. **L. 90:** (5) and (8) amended, p. 747, § 9, effective July 1. **L. 93:** (1), (2), (5), and (8) amended, p. 349, § 1, effective April 12. **L. 2010:** (1), (4), and (6) amended, (HB 10-1236), ch. 146, p. 495, § 6, effective July 1.

12-2-112. Approval of schools. (1) The board shall approve the accounting program of the schools that meet the following requirements:

(a) The school has a curriculum designed to give the candidate proficiency in those subjects in which the candidate must pass an examination to be licensed.

(b) Such school shall have adequate equipment and resources, including suitable facilities for practical instruction and shall maintain an adequate professional library. It shall provide a sufficient number of full-time salaried instructors with satisfactory professional training. It shall provide a satisfactory major in accountancy and allied subjects. It shall require for admission the satisfactory completion of an approved four-year secondary school course of study or the equivalent.

(2) If any applicant is a graduate from a school which has not at the time of the filing of the application been approved by the board, the board may make an investigation to determine whether or not the school did, at the time of said applicant's attendance, meet the requirements set forth in subsection (1) of this section. If the board finds that such school did, at that time, meet the requirements set forth in said subsection (1), the board may approve said school as of the time of the applicant's graduation therefrom.

(3) The board may, after a hearing, withdraw its approval of any school which fails to meet the requirements of the law and the standards of the board. The board shall give notice to the school complained against and shall hold a hearing on the complaint within a reasonable time after notice is given.

(4) Before disapproving any school for which approval is sought, the board shall give notice to the school of its contemplated action and shall hold a hearing within a reasonable time after notice is given, affording such school an opportunity to be heard.

Source: L. 59: p. 133, § 9. **CRS 53:** § 2-2-9. **C.R.S. 1963:** § 2-1-9. **L. 77:** IP(1) and (1)(b) amended, p. 599, § 7, effective July 1. **L. 2010:** IP(1) and (1)(a) amended, (HB 10-1236), ch. 146, p. 502, § 18, effective July 1.

12-2-113. Issuance of certificate by reciprocity or by passing examination of another state. (1) The board, in its discretion, may waive the examination of persons qualified under this subsection (1) and may issue a certificate of certified public accountant to:

(a) Any person who is the holder of a certificate of certified public accountant issued after examination under the laws of another state and who possesses the qualifications prescribed in section 12-2-108 for an applicant applying for a certificate as of the time of the issuance of the certificate by such other state or possesses substantially equivalent qualifications;

(b) A person who has passed an examination under the laws of another state and who possesses the qualifications prescribed in section 12-2-108 at the time the person applies for a certificate in this state or possesses substantially equivalent qualifications; or

(c) Any person who is the holder of a certificate, license, or degree in a foreign country which constitutes a recognized qualification for the practice of public accounting in such country, which is comparable to that of a certified public accountant in this state, and which is in full force and effect.

Source: L. 59: p. 134, § 10. **CRS 53:** § 2-2-10. **C.R.S. 1963:** § 2-1-10. **L. 67:** p. 963, § 4. **L. 77:** Entire section amended, p. 599, § 8, effective July 1. **L. 90:** (1)(a) and (1)(b) amended, p. 747, § 10, effective July 1. **L. 2010:** (1)(b) amended, (HB 10-1236), ch. 146, p. 503, § 19, effective July 1.

12-2-114. Existing certificates confirmed. (Repealed)

Source: L. 37: p. 229, § 12. **CSA:** C. 2A, § 12. **CRS 53:** §§ 2-1-12(1), 2-2-12. **L. 59:** p. 134, § 12. **C.R.S. 1963:** § 2-1-12. **L. 90:** (1) amended and (2) and (3) repealed, pp. 747, 757, §§ 11, 30, effective July 1. **L. 2010:** Entire section repealed, (HB 10-1236), ch. 146, p. 503, § 20, effective July 1.

12-2-115. Use of the title "certified public accountant". (1) (a) A person who has received from the board and holds an active certificate of certified public accountant shall be styled and known as a certified public accountant and may also use the abbreviation "C.P.A."

(b) A partnership, professional corporation, or limited liability company of certified public accountants that is registered under this article may use the words "certified public accountants" or the abbreviation "C.P.A.s" in connection with its partnership, professional corporation, or limited liability company name.

(2) A person authorized to use the title "certified public accountant" or the abbreviation "C.P.A." shall provide to any client residing in or headquartered in Colorado, during the course of an engagement, an address and telephone number for the certified public accountant's firm or, in the case of a sole practitioner, the address and telephone number of the sole practitioner.

(3) (a) Except as authorized in subsection (4) of this section, a person shall not assume or use the title or designation "certified public accountant", the abbreviation "C.P.A.", or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that

such person is a certified public accountant unless the person holds a certificate as a certified public accountant issued under this article or under the laws of any other state. A person who is inactive pursuant to section 12-2-122.5 may use the title "inactive certified public accountant" or "inactive C.P.A."

(b) Except as authorized by subsection (1) or (4) of this section, an individual, partnership, professional corporation, or limited liability company shall not assume or use any title or designation using the word "certified", "registered", "chartered", "enrolled", "licensed", "independent", or "approved" in conjunction with the word accountant or auditor or any abbreviation thereof or any title, designation, or abbreviation likely to be confused with "certified public accountant" or the abbreviation "C.P.A.", including the terms "chartered accountant" and "certified accountant" and the abbreviation "C.A."

(c) Except as authorized in subsection (4) of this section, a partnership, professional corporation, or limited liability company shall not assume or use the title or designation "certified public accountants", the abbreviation "C.P.A.s", or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such partnership, professional corporation, or limited liability company is composed of certified public accountants unless such partnership, professional corporation, or limited liability company is registered as a partnership, professional corporation, or limited liability company of certified public accountants under this article or the laws of any other state.

(4) (a) A certified public accountant from another state or jurisdiction of the United States who is practicing in this state pursuant to section 12-2-121 may use the title "certified public accountant", the abbreviation "C.P.A.", or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the person is a certified public accountant.

(b) A foreign partnership, corporation, limited partnership, limited liability limited partnership, or limited liability company that is practicing in this state pursuant to section 12-2-121 may use the title or designation "certified public accountants", the abbreviation "C.P.A.s", or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the partnership, corporation, or limited liability company is composed of certified public accountants.

Source: L. 59: p. 134, § 11. **CRS 53:** § 2-2-11. **C.R.S. 1963:** § 2-1-11. **L. 90:** Entire section amended, p. 748, § 12, effective July 1. **L. 97:** Entire section amended, p. 964, § 2, effective May 21. **L. 2008:** Entire section amended, p. 692, § 4, effective August 5. **L. 2010:** Entire section amended, (HB 10-1236), ch. 146, p. 498, § 10, effective July 1.

12-2-115.5. Retired certified public accountant. (1) Any person who has received from the board and holds a certificate of certified public accountant, including an expired certificate of certified public accountant that remains subject to renewal, reactivation, or reinstatement, may apply to the board for retired status. The board may grant such status by issuing a retired status certificate of certified public accountant to any person who meets established conditions prescribed by the board.

(2) Any person issued a retired status certificate of certified public accountant may be styled and known as a "retired certified public accountant" or "retired C.P.A."

(3) During such time as a certified public accountant remains in a retired status, such person shall not perform those acts set forth in section 12-2-120 (6)(a) and (6)(b). The board shall retain jurisdiction over retired status certified public accountants.

Source: L. 97: Entire section added, p. 964, § 1, effective May 21.

12-2-116. Registered accountants. (Repealed)

Source: L. 59: p. 136, § 15. **CRS 53:** § 2-2-15. **C.R.S. 1963:** § 2-1-15. **L. 90:** Entire section R&RE, p. 748, § 13, effective July 1. **L. 2010:** Entire section repealed, (HB 10-1236), ch. 146, p. 503, § 21, effective July 1.

12-2-117. Partnerships, professional corporations, and limited liability companies composed of certified public accountants - registration thereof - definitions. (1) Except as provided in section 12-2-121 (2), a partnership, professional corporation, or limited liability company engaged in this state in the practice of public accounting as certified public accountants shall register with the board as a partnership, professional corporation, or limited liability company of certified public accountants and must meet the following requirements; and, as used in this article, "partnership" includes a registered limited partnership, limited liability partnership, limited liability limited partnership, foreign limited partnership, foreign limited liability partnership, and foreign limited liability limited partnership:

(a) At least one partner, shareholder, or member who shall also be a director or manager thereof must be a certified public accountant or registered firm of this state in good standing.

(b) (I) A simple majority of the ownership of a certified public accounting firm doing business as a public accounting firm in Colorado, in terms of financial interests and voting rights of all partners, officers, shareholders, members, or managers, shall be licensed certified public accountants in good standing in this state or another state.

(II) (Deleted by amendment, L. 2005, p. 240, § 1, effective July 1, 2005.)

(c) Any other partner, shareholder, or member thereof may, but need not, be a certified public accountant of some state, in good standing, or registered firm in this state who at all times owns such person's partnership interest, corporate share, or membership interest in such person's own right.

(d) Repealed.

(e) Each resident manager in charge of an office of the partnership, professional corporation, or limited liability company in this state must be a certified public accountant of this state in good standing.

(f) (Deleted by amendment, L. 94, p. 1082, § 1, effective May 4, 1994.)

(2) (a) (I) Application for such registration shall be made upon the affidavit of a partner of such partnership, of a shareholder of such professional corporation, or of a member of such limited liability company who is a certified public accountant of this state in good standing and shall provide:

(A) The names and addresses of the persons who are practicing public accounting for the partnership, professional corporation, or limited liability company;

(B) The names and addresses of the persons who are not certified public accountants, but who are partners of a partnership, shareholders of a professional corporation, or members of a limited liability company;

(C) Disclosure of all of the states in which the partnership, professional corporation, or limited liability company is licensed, registered, or permitted to practice. The application shall also disclose all of the states in which licensure, registration, or permission to practice has been denied, suspended, or revoked.

(D) Any other information the board may reasonably request; and

(E) A registration fee, the amount of which shall be set by the board, to cover the board's administrative costs.

(II) Each member of the partnership, professional corporation, or limited liability company may receive a copy of the application.

(III) The partner, shareholder, or member designated by the firm shall notify the board in writing within thirty days after any change in the partnership, professional corporation, or limited liability company, including:

(A) Identities and numbers of partners, shareholders, members, managers, or officers; and

(B) Location of places of business of the partnership, professional corporation, or limited liability company.

(IV) The board may suspend or revoke registration of or impose any other discipline the board sees fit to administer to a partnership, professional corporation, or limited liability company that fails to notify the board of any changes outlined in subparagraph (III) of this paragraph (a).

(b) The board shall in each case determine whether the applicant is eligible for registration.

(2.2) Each firm registration expires pursuant to a schedule established by the director of the division of professions and occupations within the department of regulatory agencies. The registrant shall renew or reinstate the registration. The director of the division of professions and occupations within the department of regulatory agencies may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a firm fails to renew its registration pursuant to the schedule established by the director of the division of professions and occupations, the registration shall expire. A firm whose registration has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

(2.5) As used in subsections (3) and (3.5) of this section, "employee" includes a member of a limited liability company and a partner in a limited partnership, limited liability partnership, or limited liability limited partnership or foreign limited partnership, limited liability partnership, or limited liability limited partnership.

(3) The corporation must be in compliance with the "Colorado Business Corporation Act", articles 101 to 117 of title 7, C.R.S., and, to the extent applicable under section 7-117-103, C.R.S., with the "Colorado Corporation Code", articles 1 to 10 of title 7, C.R.S., as said articles existed prior to their repeal on July 1, 1994. The limited liability company must be in compliance with the "Colorado Limited Liability Company Act", article 80 of title 7, C.R.S. The organizing documents of any partnership, the articles of incorporation of any such corporation, or the articles of organization of any such limited liability company shall contain provisions complying with the following requirements:

(a) The partnership, corporation, or limited liability company shall be organized solely for the purpose of practicing accountancy and such other activities as may from time to time be specifically found by the board to be activities suitable and proper to be performed by certified public accountants only through or under the supervision of at least one person who holds a certificate to practice public accounting as a certified public accountant.

(b) Each partner who is personally engaged within this state in the practice of public accounting shall be a certified public accountant of this state in good standing, and each partner not personally engaged within this state in the practice of public accounting may, but need not, be a certified public accountant of some state in good standing. The president of any such corporation shall be a shareholder and a director, and one or more of such directors shall be certified public accountants of this state in good standing. The manager or managers of any such limited liability company shall be a member or members and one or more of such managers shall be certified public accountants of this state in good standing. Lay directors and officers and managers shall not exercise any authority whatsoever over professional matters.

(c) All partners, shareholders of the corporation, or members of the limited liability company shall be jointly and severally liable for all acts, errors, and omissions of the employees of the partnership, corporation, or limited liability company except during periods of time when the partnership, corporation, or limited liability company maintains in good standing professional liability insurance, or designated or segregated moneys in lieu of such professional liability insurance, which meets the standards set forth in subparagraphs (I) to (V) of this paragraph (c):

(I) The insurance shall insure the partnership, corporation, or limited liability company against liability imposed upon the partnership, corporation, or limited liability company by law for damages resulting from any claim made against the partnership, corporation, or limited liability company arising out of acts, errors, and omissions committed in the performance of professional services for others by those employees of the partnership, corporation, or limited liability company who hold certificates to practice public accounting as certified public accountants.

(II) Such policies shall insure the partnership, corporation, or limited liability company against liability imposed upon it by law for damages arising out of the acts, errors, and omissions of all other employees.

(III) The insurance shall be in an amount for each claim of at least fifty thousand dollars multiplied by the number of certified public accountants employed by or members of the partnership, corporation, or limited liability company within this state, and the policy may provide for an aggregate top limit of liability per year for all claims of one hundred fifty thousand dollars also multiplied by the number of certified public accountants employed by or members of the partnership, corporation, or limited liability company within this state; except that no firm shall be required to carry insurance in excess of three hundred thousand dollars for each claim with an aggregate top limit of liability for all claims during the year of one million dollars and except that the board, in the public interest, may adopt regulations increasing the minimum amounts of insurance coverage required by this subsection (3). A policy of insurance obtained in accordance with this subparagraph (III) may be issued on a claims-made or occurrence basis.

(IV) (A) The policy may provide that it does not apply to: Any dishonest, fraudulent, criminal, or malicious act or omission of the insured partnership, corporation, or limited liability

company or any partner, stockholder, member, or employee thereof; the conduct of any business enterprise in which the insured partnership, corporation, or limited liability company under this article is not permitted to engage but which nevertheless may be owned by the insured partnership, corporation, or limited liability company or in which the insured partnership, corporation, or limited liability company may be a partner or which may be controlled, operated, or managed by the insured partnership, corporation, or limited liability company in its own or in a fiduciary capacity including the ownership, maintenance, or use of any property in connection therewith; and bodily injury to, or sickness, disease, or death of, any person, or to injury to or destruction of any tangible property, including the loss of use thereof.

(B) The policy may be of a type reasonably available in the commercial insurance market and may contain reasonable provisions with respect to policy periods, territory, claims, conditions, exclusions, and other usual matters.

(C) The policy may provide for a deductible, or self-insured retained amount, and may provide for the payment of defense or other costs out of the stated limits of the policy, in either or both cases, all partners, shareholders of the corporation, or members of the limited liability company shall be jointly and severally liable for all acts, errors, and omissions of the employees of the partnership, corporation, or limited liability company to the extent of the amount of such deductible or retained self-insurance, and the amount, if any, by which the payment of defense costs reduces the insurance remaining available for the payment of claims below the minimum limit of insurance required by this paragraph (c).

(V) A partnership, corporation, or limited liability company may maintain, in lieu of the insurance specified in subparagraph (III) of this paragraph (c), moneys specifically designated and segregated as security for the payment of liabilities imposed by law against the partnership, corporation, or limited liability company, or its partners, shareholders, or members, arising out of claims of the type specified in subparagraphs (I) and (II) of this paragraph (c), in the amount of at least fifty thousand dollars multiplied by the number of certified public accountants employed by or members of the partnership, corporation, or limited liability company within this state; except that such amount is not required to exceed one million dollars and except that the board, in the public interest, may adopt rules increasing the minimum amount of designated and segregated moneys required by this subparagraph (V). The partnership, corporation, or limited liability company remains in compliance with this section notwithstanding amounts paid from the designated or segregated moneys in any one calendar year in settling or discharging such claims, so long as the amount of the designated and segregated moneys is increased to at least the minimum required amount as of the first business day of the next calendar year. A partnership, corporation, or limited liability company is in compliance with this subparagraph (V) if it maintains moneys in the required amount in trust or in bank escrow in the form of cash, bank certificates of deposit, or United States treasury obligations, or maintains in effect bank unconditional, irrevocable letters of credit in the required amount or insurance or surety company bonds in the required amount. Such moneys or equivalency shall be maintained in or issued by a qualified United States financial institution as defined by section 10-1-102 (17), C.R.S.

(d) A partnership name shall be ended by words or abbreviations permitted pursuant to the law under which the partnership is organized. The corporate name shall be ended by the word "Corporation" or "Incorporated" or by the words "Professional Corporation" or by the abbreviations "Corp.", "Inc.", or "P.C.". The name of any limited liability company shall be

ended by the words "Limited Liability Company" or the abbreviation "LLC" or the word limited may be abbreviated as "Ltd.", and the word company may be abbreviated as "Co.". An assumed or trade name may be used if it is not misleading and clearly indicates that the firm is engaged in providing accounting services.

(3.5) No limited liability company, limited liability partnership, limited partnership, or limited liability limited partnership, or foreign limited partnership, limited liability partnership, or limited liability limited partnership engaged in the practice of public accounting in this state and in one or more other jurisdictions shall be required to include a provision in its articles of organization or organizing documents as otherwise required by subsection (3) of this section, but shall be subject, with respect to the practice of public accounting within this state, to the requirements of paragraphs (a), (b), (c), and (d) of subsection (3) of this section.

(3.7) Effective on the first renewal period established by the board after May 31, 2011, the board shall not renew the registration of a firm that issues attest or compilation reports unless the registered partnership, professional corporation, or limited liability company has undergone a peer review conducted according to rules promulgated by the board that meet the standards for performing and reporting on a peer review of the American institute of certified public accountants or an equivalent standard.

(4) The partnership, corporation, or limited liability company may exercise the powers and privileges conferred upon partnerships, corporations, and limited liability companies by the laws of Colorado in furtherance of and subject to its partnership, corporate, or limited liability company purposes and may invest its funds in a manner not incompatible with the practice of public accounting as certified public accountants. Any stock purchased by the corporation, or membership interest purchased by the limited liability company or partnership interest purchased by the partnership may be made out of capital as well as surplus without regard to the impairment of the partnership capital, corporation capital, or limited liability company capital.

(5) The partnership, corporation, or limited liability company shall do nothing in this state which, if done by a person who holds a certificate as a certified public accountant within this state and employed by it, would violate the provisions of this article. Any violation by the partnership, corporation, or limited liability company of this article shall be grounds for the board to deny, revoke, suspend, or refuse to renew its registration, or the board may fine, issue a confidential letter of concern to, issue a letter of admonition to, or place on probation the registrant.

(6) Nothing in this section shall diminish or change the obligation of each person who holds a certificate of certified public accountant employed by the partnership, corporation, or limited liability company within this state to conduct such person's practice in accordance with the provisions of this article. Any person who holds a certificate to practice public accounting as a certified public accountant who, by act or omission, causes the partnership, corporation, or limited liability company to act or fail to act in a way which violates this article is personally responsible for such act or omission and subject to discipline therefor.

(7) Foreign partnerships, corporations, limited partnerships, limited liability limited partnerships, or limited liability companies may engage in the practice of public accounting in this state as certified public accountants so long as their organizing documents, articles of incorporation, or articles of organization provide that such partnership, corporation, limited partnership, limited liability limited partnership, or limited liability company is organized solely for the purpose of practicing accountancy and such other activities as may from time to time be

specifically found by the board to be activities suitable and proper to be performed by certified public accountants and comply with and meet the requirements of subsection (3) of this section.

(8) Except as provided in this section, partnerships, professional corporations, and limited liability companies shall not practice public accounting as certified public accountants.

(9) Nothing in this section shall modify the accountant-client privilege specified in section 13-90-107 (1)(f), C.R.S.

(10) When any law of this state or any rule or regulation of any agency or other authority established under the constitution or laws of this state requires or authorizes any audit, financial report, or statement to be made, approved, or certified by a certified public accountant, such audit, report, or statement may be made, approved, or certified by a partnership, professional corporation, or limited liability company registered in this state.

Source: L. 59: p. 136, § 14. **CRS 53:** § 2-2-14. **C.R.S. 1963:** § 2-1-14. **L. 70:** p. 90, § 2. **L. 90:** IP(1), (1)(b), (1)(c), (1)(e), and (2) amended, (1)(d) repealed, and (3) to (10) added, pp. 748, 757, §§ 14, 30, effective July 1. **L. 93:** Entire section amended, p. 24, § 2, effective July 1; IP(3) amended, p. 862, § 31, effective July 1, 1994. **L. 94:** Entire section amended, p. 1082, § 1, effective May 4. **L. 95:** IP(1) amended and (2.5) and (3.5) added, p. 808, § 25, effective May 24. **L. 97:** (3)(c) and (3.5) amended, p. 1522, § 22, effective June 3. **L. 2000:** (1), (2), (2.5), (3.5), and (7) amended, p. 1583, § 5, effective July 1. **L. 2001:** IP(3) and (3)(b) amended, p. 1268, § 8, effective June 5. **L. 2003:** (3)(c)(V) amended, p. 619, § 22, effective July 1. **L. 2005:** (1)(b) amended, p. 240, § 1, effective July 1. **L. 2008:** IP(1) amended, p. 692, § 5, effective August 5. **L. 2010:** IP(1), (2)(b), and (5) amended and (2.2) and (3.7) added, (HB 10-1236), ch. 146, p. 499, § 11, effective July 1.

Editor's note: Amendments to this section and the introductory portion to subsection (3) of this section by House Bill 93-1011 and House Bill 93-1154 were harmonized.

12-2-118. Partnerships or professional corporations composed of registered accountants - registration thereof. (Repealed)

Source: L. 59: p. 137, § 16. **CRS 53:** § 2-2-16. **C.R.S. 1963:** § 2-1-16. **L. 70:** p. 91, § 3. **L. 90:** Entire section repealed, p. 757, § 30, effective July 1.

12-2-119. Continuing education.

(1) to (4) Repealed.

(5) As a condition of renewing, reactivating, or reinstating a certificate of certified public accountant, every applicant shall comply with continuing education requirements adopted by the board.

(6) The board shall promulgate rules and regulations governing the following:

(a) The basic requirements for continuing education; except that the board shall not require continuing education of more than eighty hours every two years;

(b) A delineation of qualifying programs;

(c) A system of control and reporting.

(7) In exercising its power under subsection (6) of this section, the board shall, as a basis for a high standard of practice by certified public accountants, establish requirements which will

assure reasonable currency of knowledge. The requirements shall assure that a variety of alternative means of compliance with continuing education requirements are available to certificate holders and shall take cognizance of specialized areas of practice.

(8) The board shall make exceptions from continuing education requirements for holders of certificates who are not engaged in public practice or who cannot continue their education for reasons of health, military service, or other good cause. If such holders of certificates return to the practice of public accounting, the holders of certificates shall meet such continuing education requirements as the board may determine.

(9) The board shall determine in each case whether a holder of certificate of certified public accountant has complied with continuing education requirements adopted by the board.

Source: L. 59: p. 137, § 17. **CRS 53:** § 2-2-17. **C.R.S. 1963:** § 2-1-17. **L. 67:** pp. 48, 963, §§ 2, 3, 5. **L. 70:** p. 92, § 4. **L. 73:** p. 164, § 1. **L. 79:** (2) amended, p. 1644, § 66, effective July 19. **L. 90:** (1) to (4) repealed and (5), (6)(a), (7), and (9) amended, pp. 757, 748, §§ 30, 15, effective July 1. **L. 2005:** (6)(a) amended, p. 241, § 2, effective July 1.

Cross references: For the authority of the executive director of the department of regulatory agencies to change the period of validity and renewal date of any license or certificate issued by any examining or licensing board or commission in the division of professions and occupations, see § 24-34-102 (7) and (8).

12-2-120. Unlawful acts.

(1) and (2) (Deleted by amendment, L. 2010, (HB 10-1236), ch. 146, p. 500, § 12, effective July 1, 2010.)

(3) and (4) Repealed.

(5) (Deleted by amendment, L. 2010, (HB 10-1236), ch. 146, p. 500, § 12, effective July 1, 2010.)

(6) (a) (I) No person, partnership, professional corporation, or limited liability company shall issue, author, or publish any opinion or certificate relating to any accounting or financial statement if such opinion or certificate utilizes any title or designation, the use of which is prohibited by law.

(II) No person, partnership, professional corporation, or limited liability company shall, without an active certificate of certified public accountant or a valid registration:

(A) As an independent auditor, make or conduct an investigation, examination, or audit of the financial statements or supporting records of any person, organization, or corporation, to determine the accuracy or fairness with which they present the financial position, changes in financial position, or financial results of operations of such person, organization, or corporation;

(B) Attest or express an opinion, as an independent auditor, as to the financial position, changes in financial position, or financial results of the operation of any person, organization, or corporation, or as to the accuracy or reliability of any financial information contained in any such accounting or financial statement.

(III) The requirement in subparagraph (II) of this paragraph (a) that a person, partnership, professional corporation, or limited liability company have an active certificate of certified public accountant or a valid registration issued by the board shall not apply to a

certified public accountant from another state or a foreign partnership, professional corporation, or limited liability company practicing accountancy in this state pursuant to section 12-2-121 (2).

(b) The provisions of paragraph (a) of this subsection (6) shall not prohibit any officer or employee of a corporation, partner or employee of a partnership, member or employee of a limited liability company, or individual or employee of an individual from:

(I) Making or conducting such investigation, examination, or audit; or

(II) Issuing or authoring an assessment or certificate utilizing any wording designating the position, title, or office that the person holds concerning the financial affairs of such corporation, partnership, limited liability company, or individual.

(c) The provisions of paragraph (a) of this subsection (6) shall not prohibit any act of a public official or public employee in the performance of his duties as such or affect the qualifications of any person to testify as a witness before any court or administrative agency of the state of Colorado who is determined to be qualified by such court or agency.

(d) The term "independent auditor" as used in this section shall mean any person or corporation engaged or employed to make or conduct an audit of the financial statements or supporting records of any person, organization, or corporation, to determine, on the basis of such audit, the accuracy or fairness with which they present the financial position, changes in financial position, or financial results of operations of such person, organization, or corporation, other than an officer, employee, or partner of the person, organization, or corporation under audit.

(e) The provisions of paragraph (a) of this subsection (6) shall not prohibit the performance by persons other than certified public accountants of other services involving the use of accounting skills, including the preparation of tax returns and the preparation of financial statements without the expression of opinions or assurances thereon.

(7) and (8) Repealed.

(9) Nothing in this section shall be construed to prohibit any person from preparing or assisting in the preparation of any report or tax return to any agency of the federal, state, or local government or other political subdivision if such preparation or assistance is otherwise permissible under law or under the regulations of such agency or from affixing the signature of the person or firm so preparing or assisting in the preparation of any such report or return to said report or return.

(10) and (11) Repealed.

Source: L. 59: p. 141, § 24. **CRS 53:** § 2-2-24. **C.R.S. 1963:** § 2-1-24. **L. 70:** p. 93, § 9. **L. 77:** (6) R&RE and (7) and (8) repealed, pp. 600, 602, §§ 9, 14, effective July 1. **L. 81:** (6)(e) added, p. 660, § 5, effective July 1. **L. 90:** (1), (2), (5), (6)(a)(I), and IP(6)(a)(II) amended and (3), (4), (10), and (11) repealed, pp. 751, 757, §§ 16, 30, effective July 1. **L. 94:** (2), (5), (6)(a), and (6)(b) amended, p. 1086, § 2, effective May 4. **L. 2008:** (1), (2), and (5) amended and (6)(a)(III) added, p. 693, §§ 6, 7, effective August 5. **L. 2010:** (1), (2), (5), and (6)(b)(II) amended, (HB 10-1236), ch. 146, p. 500, § 12, effective July 1.

12-2-121. Exceptions - acts not prohibited - rules. (1) Nothing in this article shall prohibit any person not a certified public accountant from serving as an employee of or an assistant to a certified public accountant holding an active certificate or serving as an employee or assistant of a validly registered partnership, professional corporation, or limited liability

company composed of certified public accountants. Such employee or assistant shall not issue any accounting or financial statement over his name.

(2) (a) Nothing in this article shall prohibit a certified public accountant whose principal place of business is located in another state or jurisdiction of the United States from practicing in this state on professional business, as defined by rules promulgated by the board. Such practice shall be conducted in conformity with rules promulgated by the board. Notwithstanding the requirements of section 12-2-117, a foreign partnership, corporation, limited partnership, limited liability limited partnership, or limited liability company may engage in the practice of accountancy in this state without registering with the board.

(b) Nothing in this article shall prohibit:

(I) An accountant who holds a certificate, degree, or license in a foreign country, constituting a recognized qualification for the practice of public accounting in such country, from practicing in this state on professional business incident to his or her regular practice outside this state, as defined by the board. Such practice shall be conducted in conformity with rules promulgated by the board.

(II) and (III) Repealed.

(c) A certified public accountant from another state or jurisdiction of the United States who is practicing in this state pursuant to this subsection (2) and the firm that employs the certified public accountant simultaneously consent, as a condition of practicing in this state:

(I) To be subject to the jurisdiction of and disciplinary authority of the board;

(II) To comply with the requirements of this subsection (2) and rules promulgated by the board pursuant to this subsection (2);

(III) That if the certified public accountant's certificate, license, or registration issued by the state in which the certified public accountant's principal place of business is located is no longer valid, the certified public accountant will cease to offer or render professional services in this state, either individually or on behalf of a firm; and

(IV) To appoint the state board or entity that issued a certificate, license, or registration to the certified public accountant as the agent for service of process in any action or proceeding brought by the board against the certified public accountant.

(d) The board may recover its reasonable costs incurred as part of its investigative, administrative, and disciplinary proceedings against a certified public accountant from another state or jurisdiction of the United States or from a foreign country if the board:

(I) Enters a final order against the certified public accountant, finding that the certified public accountant violated a provision of this article, a rule adopted by the board, or an order of the board with which the certified public accountant is obligated to comply and the board has the authority to enforce; or

(II) Enters into a consent or settlement agreement in which the board finds, or the certified public accountant admits or does not contest, that he or she violated a provision of this article, a rule adopted by the board, or an order of the board with which the certified public accountant is obligated to comply and the board has the authority to enforce.

Source: L. 59: p. 143, § 25. **CRS 53:** § 2-2-25. **C.R.S. 1963:** § 2-1-25. **L. 67:** p. 964, § 8. **L. 70:** p. 94, § 10. **L. 90:** (1) amended, p. 752, § 17, effective July 1. **L. 94:** (1) amended, p. 1087, § 3, effective May 4. **L. 2005:** (2) amended, p. 241, § 3, effective July 1. **L. 2008:** (2)

amended, p. 690, § 1, effective August 5. **L. 2010:** (2)(a) amended and (2)(b)(II) and (2)(b)(III) repealed, (HB 10-1236), ch. 146, pp. 503, 501, §§ 22, 13, effective July 1.

12-2-122. Single act evidence of practice. Any person who displays, utters, or causes to be displayed or uttered a card, sign, advertisement, or other printed, engraved, or written instrument or device bearing such person's name in conjunction with the words "certified public accountant", the abbreviation "C.P.A.", or any title, designation, or abbreviation prohibited by section 12-2-115 may be presumed in any action brought under section 12-2-126 to have held himself or herself out to be a certified public accountant holding an active certificate of certified public accountant pursuant to section 12-2-108. In any legal action brought under this article, evidence of the commission of a single act prohibited by this article is sufficient to justify an injunction.

Source: L. 59: p. 144, § 28. **CRS 53:** § 2-2-28. **C.R.S. 1963:** § 2-1-28. **L. 90:** Entire section amended, p. 752, § 18, effective July 1. **L. 2010:** Entire section amended, (HB 10-1236), ch. 146, p. 501, § 14, effective July 1.

12-2-122.5. Inactive certificant. (1) The holder of a certificate of certified public accountant, upon written notice by first class mail to the board, shall have his or her name transferred to an inactive list and shall not be required to comply with the continuing education requirements for certificate renewal pursuant to section 12-2-119 so long as he or she remains inactive. Each inactive certificant shall register in the same manner as active certificate holders and pay a fee pursuant to section 12-2-108 (3). At such time as an inactive certificant wishes to resume the practice of public accounting as a certified public accountant, he or she shall file an application therefor, meet any education requirements imposed by the board, and pay a fee as established by the director of the division of professions and occupations within the department of regulatory agencies.

(2) During such time as a certified public accountant remains in an inactive status, the certified public accountant shall not perform those acts restricted to active certified public accountants pursuant to section 12-2-120 (6)(a). The board shall retain jurisdiction over inactive certified public accountants for the purposes of disciplinary action pursuant to section 12-2-123.

Source: L. 90: Entire section added, p. 753, § 19, effective July 1. **L. 2000:** (1) amended, p. 1585, § 6, effective July 1. **L. 2010:** Entire section amended, (HB 10-1236), ch. 146, p. 504, § 23, effective July 1.

12-2-123. Grounds for disciplinary action - administrative penalties. (1) After notice and hearing as provided in section 12-2-125, the board may deny the issuance of, refuse to renew, revoke, or suspend any certificate of a certified public accountant issued under this article 2 or any prior law of this state or may fine, issue a letter of admonition to, or place on probation the holder of any certificate and impose other conditions or limitations for any of the following causes:

(a) Fraud or deceit in obtaining or in attempting to obtain a certificate as a certified public accountant or in obtaining registration under this article;

(b) Fraud or negligence in the practice of public accounting in Colorado or any other state or in the filing of or failure to file the certified public accountant's own income tax returns;

(c) Violation of any provision of this article, of any final rule or regulation promulgated by the board, or of any valid agency order;

(d) Violation of a rule of professional conduct promulgated by the board under the authority granted by this article;

(e) Conviction of a felony under the laws of any state or of the United States, and, for the purposes of this paragraph (e), a plea of guilty or a plea of nolo contendere accepted by the court shall be considered as a conviction;

(f) Conviction of any crime, an element of which is dishonesty or fraud, under the laws of any state or of the United States, and, for the purposes of this paragraph (f), a plea of guilty or a plea of nolo contendere accepted by the court shall be considered as a conviction;

(g) Discipline taken against the person's authority to practice as a certified public accountant or a public accountant in any jurisdiction;

(h) Discipline taken against the person's right to practice before any state or federal agency or agency outside the United States or the public company accounting oversight board, created by the federal "Sarbanes-Oxley Act of 2002", 15 U.S.C. sec. 7201 et seq., for improper conduct or willful violation of the rules or regulations of such state or federal agency or the public company accounting oversight board;

(i) Repealed.

(j) Providing public accounting services to the public for a fee without an active certificate of certified public accountant or a valid registration or acting as a member, partner, or shareholder of a partnership or professional corporation registered pursuant to section 12-2-117;

(k) and (l) Repealed.

(m) Failure to comply with the requirements for continuing education as prescribed by the board;

(n) An act or omission which fails to meet generally accepted accounting principles or generally accepted auditing standards in the profession;

(o) Use of false, misleading, or deceptive advertising;

(p) An alcohol use disorder, as defined in section 27-81-102, or a substance use disorder, as defined in section 27-82-102, or an excessive use of a habit-forming drug, controlled substance, as defined in section 18-18-102 (5), or alcoholic beverage that renders the certified public accountant unfit to practice public accounting;

(q) Failure to retain records of the work performed for each client for a period of five years;

(r) Failure of a partnership, professional corporation, or limited liability company to register with the board pursuant to section 12-2-117 and to renew the registration as prescribed by the board.

(2) In considering the conviction of crimes, as provided in paragraphs (e) and (f) of subsection (1) of this section, the board shall be governed by the provisions of section 24-5-101, C.R.S.

(3) (Deleted by amendment, L. 2010, (HB 10-1236), ch. 146, p. 497, § 9, effective July 1, 2010.)

(4) No certificant whose certificate is revoked shall be allowed to apply for reinstatement of such certificate earlier than two years after the effective date of the revocation.

(5) (a) In addition to any other penalty that may be imposed pursuant to this section, any person violating this article or any rules promulgated pursuant to this article may be fined upon a finding of misconduct by the board as follows, either:

(I) In a proceeding against a certificant, a fine not in excess of five thousand dollars per violation; or

(II) In a proceeding against a registrant, a fine not in excess of ten thousand dollars per violation.

(b) All fines collected pursuant to this subsection (5) shall be transferred to the state treasurer, who shall credit such moneys to the general fund.

Source: L. 59: p. 138, § 18. **CRS 53:** § 2-2-18. **C.R.S. 1963:** § 2-1-18. **L. 67:** p. 964, § 6. **L. 70:** p. 92, § 5. **L. 73:** pp. 165, 514, §§ 2, 4. **L. 77:** (1)(i) repealed, p. 644, § 13, effective March 16; (1)(i) repealed and (1)(j) amended, pp. 601, 602, §§ 10, 14, effective July 1. **L. 81:** IP(1) amended and (1)(n) added, p. 660, § 6, effective July 1. **L. 90:** IP(1), (1)(a) to (1)(f), (1)(j), (1)(m), and (1)(n) amended, (1)(k) and (1)(l) repealed, and (1)(o) to (1)(r) and (3) to (5) added, pp. 753, 757, 754, §§ 20, 30, 21, effective July 1. **L. 94:** (1)(r) amended, p. 1087, § 4, effective May 4. **L. 2000:** (1)(j) amended, p. 1585, § 7, effective July 1. **L. 2004:** (1)(p) amended, p. 1192, § 25, effective August 4; (3) and (5)(b) amended, p. 1793, § 3, effective August 4. **L. 2010:** IP(1), (1)(b), (1)(g), (1)(h), (1)(p), (1)(r), (3), and (5)(a) amended, (HB 10-1236), ch. 146, pp. 496, 497, §§ 7, 9, effective July 1. **L. 2012:** (1)(p) amended, (HB 12-1311), ch. 281, p. 1609, § 9, effective July 1. **L. 2017:** IP(1) and (1)(p) amended, (SB 17-242), ch. 263, p. 1266, § 39, effective May 25.

Cross references: (1) For an alternative disciplinary action for persons certified pursuant to this article, see § 24-34-106.

(2) For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-2-123.5. Response to board communication. A certificant shall, at the request of the board, respond to communications from the board within thirty days after the mailing of any communication.

Source: L. 90: Entire section added, p. 755, § 22, effective July 1. **L. 2010:** Entire section amended, (HB 10-1236), ch. 146, p. 504, § 24, effective July 1.

12-2-124. Revocation or suspension of partnership, professional corporation, or limited liability company registration. (1) After notice and hearing as provided in section 12-2-125, the board shall revoke the registration of a partnership, professional corporation, or limited liability company if, at the time of such hearing, the partnership, professional corporation, or limited liability company does not have all the qualifications prescribed by the section of this article under which it qualified for registration.

(2) After notice and hearing as provided in section 12-2-125, the board may deny, revoke, suspend, or refuse to renew the registration of a partnership, professional corporation, or limited liability company or the board may fine, issue a letter of admonition to, or place on

probation a registrant for any of the causes enumerated in section 12-2-123 or for the following additional causes:

(a) The revocation, suspension, or refusal to renew the certificate of any partner, shareholder, or member;

(b) The cancellation, revocation, suspension, or refusal to renew the authority of the partnership or any partner thereof to practice public accounting in any other jurisdiction;

(c) The cancellation, revocation, suspension, or refusal to renew the authority of the professional corporation, limited liability company, or foreign corporation or limited liability company or any shareholder or member thereof to practice public accounting by any other state or federal jurisdiction, or jurisdiction outside the United States or the public company accounting oversight board, created by the federal "Sarbanes-Oxley Act of 2002", 15 U.S.C. sec. 7201 et seq.

Source: L. 59: p. 139, § 19. **CRS 53:** § 2-2-19. **C.R.S. 1963:** § 2-1-19. **L. 70:** p. 92, § 6. **L. 90:** (1), IP(2), and (2)(a) amended, p. 755, § 23, effective July 1. **L. 94:** Entire section amended, p. 1088, § 5, effective May 4. **L. 2010:** (2) amended, (HB 10-1236), ch. 146, p. 496, § 8, effective July 1. **L. 2011:** IP(2) amended, (HB 11-1015), ch. 2, p. 4, § 3, effective March 1.

12-2-125. Hearings before board - notice - procedure - review. (1) (a) The board may initiate proceedings under this article, either on its own motion or on the complaint of any person.

(b) The board, through the department of regulatory agencies, may employ administrative law judges on a full-time or part-time basis to conduct hearings as provided by this article or on any matter within the board's jurisdiction upon such conditions and terms as the board may determine.

(2) Except as otherwise provided in this article, all proceedings before the board with respect to the denial, suspension, or revocation of certificates or registrations issued under this article shall be conducted pursuant to the provisions of sections 24-4-104 and 24-4-105, C.R.S.

(3) If, after having been served with the notice of hearing as provided for in this section, the accused fails to appear at the hearing and defend, the board may proceed to hear evidence against the accused and may enter such order as is justified by the evidence, which order shall be final unless the accused petitions for a review thereof as provided in this section. Within thirty days after the date of any order, upon a showing of good cause for failing to appear and defend, the board may reopen the proceedings and may permit the accused to submit evidence in his or her behalf.

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

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

board or 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 to obey the order of the court may be punished by the court as a contempt of court.

(5) At all hearings, the attorney general of this state or one of the attorney general's designated assistants shall appear and represent the board.

(6) The decision of the board shall be by majority vote thereof.

Source: L. 59: p. 140, § 21. **CRS 53:** § 2-2-21. **C.R.S. 1963:** § 2-1-21. **L. 77:** Entire section R&RE, p. 601, § 11, effective July 1. **L. 90:** (1) and (2) amended, p. 756, § 24, effective July 1. **L. 2004:** (4) amended and (4.5) added, p. 1794, § 4, effective August 4. **L. 2010:** (3) and (5) amended, (HB 10-1236), ch. 146, p. 504, § 25, effective July 1.

12-2-126. Investigations, examinations, and cease-and-desist orders against unlawful act. (1) (a) (I) The board, on its own motion based on reasonable grounds or on the signed, written complaint of any person, may investigate any person who has engaged, is engaging, or threatens to engage in any act or practice that constitutes a violation of any provision of this article. The board or any member thereof may administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board. The board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the board.

(II) Upon failure of any witness to comply with such subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board or director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the board or 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 to obey the order of the court may be punished by the court as a contempt of court.

(b) (I) Complaints of record that are dismissed by the board and the results of investigation of such complaints shall be closed to public inspection.

(II) Upon completing an investigation, the board shall make one of the following findings:

(A) The complaint is without merit and no further action need be taken.

(B) There is no reasonable cause to warrant further action.

(C) The investigation discloses an instance of conduct that does not warrant formal action and should be dismissed, but the investigation discloses indications of possible errant conduct that could lead to serious consequences if not corrected. If this finding is made, the board shall send a confidential letter of concern to the licensee or registrant.

(D) The investigation discloses an instance of conduct that does not warrant formal action but should not be dismissed as being without merit. If this finding is made, the board may send a letter of admonition to the licensee or registrant by certified mail.

(E) The investigation discloses facts that warrant further proceedings by formal complaint. If this finding is made, the board shall refer the complaint to the attorney general for preparation and filing of a formal complaint.

(III) (A) When a letter of admonition is sent to a licensee or registrant, the board shall include in the letter a notice that the licensee or registrant has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(B) If the request for adjudication is timely made, the letter of admonition is vacated and the board shall proceed by means of formal disciplinary proceedings.

(IV) The board shall conduct all proceedings pursuant to this subsection (1) expeditiously and informally so that no licensee or registrant is subjected to unfair and unjust charges and that no complainant is deprived of the right to a timely, fair, and proper investigation of a complaint.

(c) Complaints of record that are not dismissed by the board and are the results of investigations of such complaints shall be closed to public inspection and any meeting concerning such complaints shall be closed to the public during the investigatory period and until a stipulated agreement is reached between the applicant or certificate holder and the board or until notice of hearing and charges are filed and served on an applicant or certificate holder. Except for confidential books of account, financial records, advice, reports, or working papers provided by the client, the certified public accountant, or the certified public accounting firm, the board's records and papers shall be subject to the provisions of sections 24-72-203 and 24-72-204, C.R.S., regarding public records and confidentiality.

(2) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a certificate holder or registered firm is acting in a manner that is an imminent threat to the health, safety, and welfare of the public or a person is acting or has acted without the required certificate or registration, the board may issue an order to cease and desist such activity. 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 uncertified or unregistered practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (2), the respondent may request a hearing on the question of whether acts or practices in violation of this article have occurred. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(3) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this article, then, in addition to any specific powers granted pursuant to this article, the board may issue to such person an order to show cause as to why the board should not issue a final order directing such person to cease and desist from the unlawful act or uncertified practice.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (3) shall be promptly notified by the board of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the board for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order is issued. Personal service or mailing of an order or document pursuant to this subsection (3) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the board as provided in paragraph (b) of this subsection (3). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (3) does not appear at the hearing, the board may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (3) and such other evidence related to the matter as the board deems appropriate. The board shall issue the order within ten days after the board's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the board reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required certificate or has or is about to engage in acts or practices constituting violations of this article, a final cease-and-desist order may be issued directing such person to cease and desist from further unlawful acts or uncertified practices.

(IV) The board shall provide notice, in the manner set forth in paragraph (b) of this subsection (3), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

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

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

(6) A person aggrieved by the final cease-and-desist order may seek judicial review of the board's determination or of the board's final order as provided in section 12-2-127.

(7) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

Source: L. 59: p. 143, § 26. **CRS 53:** § 2-2-26. **C.R.S. 1963:** § 2-1-26. **L. 67:** p. 965, § 9. **L. 70:** p. 94, § 11. **L. 90:** (1) and (2) amended, p. 756, § 25, effective July 1. **L. 2000:** (1) amended, p. 1586, § 8, effective July 1. **L. 2004:** (1)(a) amended and (5) added, p. 1795, § 5, effective August 4. **L. 2005:** (1)(c) amended, p. 241, § 4, effective July 1. **L. 2006:** (2) to (5)

amended and (6) and (7) added, p. 764, § 2, effective July 1. **L. 2010:** (1)(b)(II) amended and (1)(b)(III) and (1)(b)(IV) added, (HB 10-1236), ch. 146, p. 504, § 26, effective July 1. **L. 2011:** (2)(a) amended, (HB 11-1015), ch. 2, p. 4, § 4, effective March 1.

12-2-127. Judicial review. (1) Any person aggrieved by any final action or order of the board and affected thereby is entitled to a review thereof by the court of appeals by appropriate proceedings under section 24-4-106 (11), C.R.S.

(2) For the purposes of review, the residence of the board shall be the city and county of Denver.

Source: L. 59: p. 141, § 22. **CRS 53:** § 2-2-22. **C.R.S. 1963:** § 2-1-22. **L. 67:** p. 964, § 7. **L. 70:** p. 93, § 7. **L. 77:** Entire section R&RE, p. 602, § 12, effective July 1. **L. 90:** (1) R&RE, p. 757, § 26, effective July 1.

12-2-128. Reconsideration and review of action of board. The board, on its own motion or upon application, at any time after the imposition of any discipline as provided in section 12-2-123 (1), may reconsider its prior action and reinstate or restore such license or terminate probation or reduce the severity of its prior disciplinary action. The taking of any such further action, or the holding of a hearing with respect thereto, shall rest in the sole discretion of the board.

Source: L. 59: p. 141, § 23. **CRS 53:** § 2-2-23. **C.R.S. 1963:** § 2-1-23. **L. 70:** p. 93, § 8. **L. 90:** Entire section R&RE, p. 757, § 27, effective July 1.

12-2-129. Unauthorized practice - penalties. Any person who violates section 12-2-115 or 12-2-120 (6)(a) 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 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: L. 59: p. 144, § 27. **CRS 53:** § 2-2-27. **C.R.S. 1963:** § 2-1-27. **L. 67:** p. 965, § 10. **L. 85:** Entire section amended, p. 405, § 1, effective July 1. **L. 90:** Entire section amended, p. 757, § 28, effective July 1. **L. 2002:** Entire section amended, p. 1472, § 46, effective October 1. **L. 2006:** Entire section amended, p. 81, § 1, effective August 7. **L. 2010:** Entire section amended, (HB 10-1236), ch. 146, p. 501, § 15, effective July 1.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

12-2-130. Ownership of accountant's working papers. All statements, records, schedules, working papers, and memoranda made by a certified public accountant incident to or in the course of professional service to a client by the certified public accountant, except financial statements submitted by a certified public accountant to a client and books and records prepared for the use of the client, shall be and remain the property of the certified public

accountant in the absence of an express agreement to the contrary between the certified public accountant and the client.

Source: L. 59: p. 144, § 29. **CRS 53:** § 2-2-29. **C.R.S. 1963:** § 2-1-29. **L. 2010:** Entire section amended, (HB 10-1236), ch. 146, p. 505, § 27, effective July 1.

Cross references: For the statutory privilege with respect to testimony concerning communications between the certified public accountant and such accountant's client, see § 13-90-107 (1)(f).

12-2-130.5. Ownership of state auditor's work papers. Except for reports submitted to the legislative audit committee and books and records prepared for use by such committee, all statements, records, schedules, working papers, and memoranda prepared by a certified public accountant in the employ of the state auditor's office, in the course of professional service to the legislative audit committee, shall be and remain the property of the state auditor's office and shall be kept confidential unless a majority of the members of the legislative audit committee vote to open such documents.

Source: L. 93: Entire section added, p. 14, § 2, effective March 2.

12-2-131. Professional corporations for the practice of public accounting as certified public accountants or as registered accountants. (Repealed)

Source: L. 70: p. 97, § 12. **C.R.S. 1963:** § 2-1-30. **L. 77:** (2)(d)(III) and (2)(e) amended, p. 602, § 13, effective July 1. **L. 90:** Entire section repealed, p. 757, § 30, effective July 1.

12-2-132. Repeal of article. (1) This article is repealed, effective July 1, 2019.

(2) Prior to such repeal, the state board of accountancy shall be reviewed as provided in section 24-34-104, C.R.S.

Source: L. 2000: Entire section added, p. 1587, § 9, effective July 1. **L. 2005:** (1) amended, p. 241, § 5, effective July 1. **L. 2010:** (1) amended, (HB 10-1236), ch. 146, p. 493, § 3, effective July 1.

ARTICLE 3

Alcohol - Manufacture - Sale

12-3-101 to 12-3-106. (Repealed)

Source: L. 96: Entire article repealed, p. 555, § 5, effective April 24.

Editor's note: This article was numbered as article 4 of chapter 85, C.R.S. 1963. For amendments to this article prior to its repeal in 1996, consult the Colorado statutory research

explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For the "Colorado Beer Code", see article 46 of this title; for the "Colorado Liquor Code", see article 47 of this title.

ARTICLE 4

Architects

12-4-101 to 12-4-117. (Repealed)

Source: L. 2006: Entire article repealed, p. 763, § 24, effective July 1.

Editor's note: This article was numbered as article 1 of chapter 10, C.R.S. 1963. For amendments to this article prior to its repeal in 2006, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. The provisions of this article were relocated to part 3 of article 25 of this title. For the location of specific provisions, see the editor's notes following each section in said part 3 and the comparative tables located in the back of the index.

Cross references: For current provisions concerning architects, see part 3 of article 25 of this title.

ARTICLE 5

Attorneys-at-law

12-5-101 to 12-5-120. (Repealed)

Source: L. 2017: Entire article repealed, (SB 17-227), ch. 192, p. 705, § 10, effective August 9.

Editor's note: This article 5 was numbered as article 1 of chapter 12, C.R.S. 1963. For amendments to this article 5 prior to its repeal in 2017, consult the 2016 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume. This article 5 was relocated to article 93 of title 13. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article 5, see the comparative tables located in the back of the index.

ARTICLE 5.5

Hearing Aid Providers

Editor's note: This article was added in 1995. It was repealed in 2012 and was subsequently recreated and reenacted in 2013, resulting in the addition, relocation, or elimination of sections as well as subject matter. For amendments to this article prior to 2012, consult the 2011 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

PART 1

GENERAL PROVISIONS

12-5.5-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Applicant" means a person applying for licensure under this article.

(2) "Apprentice" means a person who holds a current license as an apprentice pursuant to this article.

(3) "Director" means the director of the division or the director's designee.

(4) "Dispense", with regard to a hearing aid, means to sell or transfer title, possession, or the right to use by lease, bailment, or any other method. The term does not apply to wholesale transactions with distributors or dealers.

(5) "Division" means the division of professions and occupations in the department of regulatory agencies.

(6) (a) "Hearing aid" means a wearable device designed or offered to be customized for the purpose of compensating for impaired human hearing and includes:

(I) Any parts, attachments, or accessories to the instrument or device, as defined in rules adopted by the director; and

(II) Ear molds, excluding batteries and cords.

(b) The term does not include a surgically implanted hearing device.

(7) "Hearing aid provider" means a person engaged in the practice of dispensing, fitting, or dealing in hearing aids.

(8) "Licensee" means a person who holds a current license as a hearing aid provider pursuant to this article.

(9) "Practice of dispensing, fitting, or dealing in hearing aids" includes:

(a) Selecting and adapting hearing aids for sale;

(b) Testing human hearing for purposes of selecting and adapting hearing aids for sale; and

(c) Making impressions for ear molds and counseling and instructing prospective users for purposes of selecting, fitting, adapting, or selling hearing aids.

(10) "Surgically implanted hearing device" means a device that is designed to produce useful hearing sensations to a person with a hearing impairment and that has, as one or more components, a unit that is surgically implanted into the ear, skull, or other interior part of the body. The term includes any associated unit that may be worn on the body.

Source: L. 2013: Entire article RC&RE, (SB 13-238), ch. 401, p. 2337, § 1, effective July 1.

12-5.5-102. Scope of article - exemption. (1) This article does not apply to persons who are:

(a) Licensed pursuant to section 22-60.5-210, C.R.S., and who are not licensed under this article for work undertaken as part of their employment by, or contractual agreement with, the public schools; or

(b) Engaged in the practice of audiology or the practice of dispensing, fitting, or dealing in hearing aids in the discharge of their official duties in the service of the United States armed forces, public health service, coast guard, or veterans administration.

(2) This article does not apply to the wholesale sales of hearing aids.

(3) Nothing in this article authorizes a hearing aid provider to engage in the practice of medicine as defined in section 12-36-106.

(4) Nothing in this article prohibits a business or licensee from:

(a) Hiring and employing unlicensed staff to assist with conducting business practices and to assist in dispensing hearing aids if the unlicensed staff are properly supervised by a licensee; except that the employees may not conduct hearing tests or perform the initial fitting of hearing aids; or

(b) Performing tasks that would be permissible if the licensee was not licensed.

(5) This article does not apply to the dispensing of hearing aids outside of this state.

(6) An audiologist licensed pursuant to article 29.9 of this title is not required to obtain a license pursuant to this article.

Source: L. 2013: Entire article RC&RE, (SB 13-238), ch. 401, p. 2338, § 1, effective July 1.

12-5.5-103. Scope of practice. (1) The scope of practice for a hearing aid provider includes:

(a) Eliciting patient case histories, including medical, otological, pharmacological, occupational, and previous amplification history and patient attitudes and expectations;

(b) Administering otoscopy for the purpose of identifying possible otological conditions, including conditions described in section 12-5.5-301 (1)(b), that may indicate the need for medical referral or that may have a bearing on needed rehabilitative measures, outcomes, or recommendations;

(c) Administering and interpreting tests of human hearing, including appropriate objective and subjective methodology and measures;

(d) Determining a person's candidacy for hearing aids or hearing assistive devices, referring the person for surgically implanted hearing device evaluation, or recommending other clinical, rehabilitative, or medical interventions;

(e) Prescribing, selecting, and fitting appropriate hearing instruments and assistive devices, including appropriate technology, electroacoustic targets, programming parameters, and special applications, as indicated;

(f) Assessing hearing instrument efficacy using appropriate fitting verification methodology, including available fitting validation methods;

(g) Taking ear impressions and preparing ear molds for hearing instruments, assistive devices, telecommunications applications, ear protection, and other related applications;

(h) Designing and modifying ear molds and auditory equipment to meet individual patient needs;

(i) Providing counseling and aural rehabilitative services in the use and care of hearing instruments and assistive devices and for effectively using communication coping strategies and other approaches to foster optimal patient rehabilitation; and

(j) Providing supervision and training of those entering the dispensing profession.

Source: L. 2013: Entire article RC&RE, (SB 13-238), ch. 401, p. 2339, § 1, effective July 1.

12-5.5-104. Title protection - use of title. It is unlawful for any person to use the title "hearing aid provider" or "hearing aid dispenser" unless he or she is licensed as a hearing aid provider pursuant to this article.

Source: L. 2013: Entire article RC&RE, (SB 13-238), ch. 401, p. 2340, § 1, effective July 1.

12-5.5-105. Repeal of article. (1) This article is repealed, effective September 1, 2020.

(2) Prior to this repeal, the department of regulatory agencies shall review the licensing and supervisory functions of the director as provided in section 24-34-104, C.R.S.

Source: L. 2013: Entire article RC&RE, (SB 13-238), ch. 401, p. 2340, § 1, effective July 1.

PART 2

LICENSING

12-5.5-201. License required - application - qualifications. (1) A hearing aid provider shall obtain a license pursuant to this section before engaging in the practice of dispensing, fitting, or dealing in hearing aids.

(2) (a) An applicant shall submit an application to the director containing the information described in this subsection (2) and shall pay a fee determined and collected pursuant to section 24-34-105, C.R.S. The director may deny an application for licensure if the required information is not submitted or if an applicant's apprentice license, issued pursuant to section 12-5.5-204, has been revoked. If an applicant or licensee fails to notify the director of a change in the submitted information within thirty days after the change, the failure is cause for disciplinary action.

(b) An applicant shall include the following information in every application for licensure pursuant to this section:

(I) The applicant's name, business address, and business telephone number and other contact information as determined by the director;

(II) A statement indicating whether:

(A) A hearing aid provider license, certificate, or registration was issued to the applicant by a local, state, or national health care agency;

(B) The license, certificate, or registration was suspended or revoked;

(C) Charges or complaints are pending against the applicant; and

(D) Disciplinary action was taken.

(3) In order to qualify for licensure pursuant to this section, an applicant must either:

(a) Have passed the national competency examination of the national board for certification in hearing instrument sciences (NBC-HIS), unless the director determines, by rule, that this examination no longer meets the minimum standards necessary for licensure, in which case, only an examination that the applicant passed prior to the date of the ruling will be acceptable; or

(b) Have passed an appropriate entry-level examination, as determined by the director, and:

(I) Completed at least six months of training with an audiologist or licensed hearing aid provider, pursuant to section 12-5.5-204; or

(II) Have an associate's degree in hearing aid fitting and dispensing that, at the time the applicant was enrolled and graduated, was offered by an institution of higher education or a postsecondary education program accredited by a national, regional, or state agency recognized by the United States department of education, or a program approved by the director.

Source: L. 2013: Entire article RC&RE, (SB 13-238), ch. 401, p. 2340, § 1, effective July 1.

12-5.5-202. Licensure - certificate - expiration - renewal - reinstatement - fees. (1) (a) The director shall license all applicants who meet the requirements for licensure in this article.

(b) The director shall issue or deny a license within sixty days after the date the application is received.

(c) The director shall give each licensee a license bearing a unique license number. The licensee shall include the license number on all written contracts and receipts.

(2) Licenses issued pursuant to this article expire pursuant to a schedule established by the director and must be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director shall establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license pursuant to the schedule established by the director, the license expires. A person whose license has expired is subject to the penalties set forth in this article or in section 24-34-102 (8), C.R.S.

Source: L. 2013: Entire article RC&RE, (SB 13-238), ch. 401, p. 2341, § 1, effective July 1.

12-5.5-203. Licensure by endorsement - rules. (1) The director shall issue a license by endorsement to practice as a hearing aid provider in this state to an individual who possesses an active license in good standing to practice in that profession in another state or territory of the United States or in a foreign country if the applicant:

(a) Presents proof satisfactory to the director that the individual possesses a valid license from another state or jurisdiction that requires qualifications substantially equivalent to the

qualifications for licensure in this state and meets all other requirements for licensure pursuant to this article; and

(b) Pays the licensure fee established under section 12-5.5-201.

(2) The director may specify by rule what constitutes substantially equivalent qualifications for the purposes of this section.

Source: L. 2013: Entire article RC&RE, (SB 13-238), ch. 401, p. 2342, § 1, effective July 1.

12-5.5-204. Apprentice license - expiration - rules. (1) A person training to be a licensed hearing aid provider shall submit to the director an application containing the information described in subsection (2) of this section and shall pay an apprentice license fee determined and collected pursuant to section 12-5.5-201.

(2) On and after June 1, 2014, the director shall issue an apprentice license to a person who provides, to the director's satisfaction, verification of training to become a licensed hearing aid provider, which training is under the direct supervision of a licensed hearing aid provider whose license is in good standing.

(3) During the training period:

(a) An apprentice is not permitted to sell hearing aids independently of the supervising licensed hearing aid provider;

(b) A supervising licensed hearing aid provider retains ultimate responsibility for the care provided by the apprentice and is subject to disciplinary action by the director for failure to provide adequate supervision.

(4) Any person issued an apprentice license under this section is subject to:

(a) Discipline under section 12-5.5-402 for engaging in an act that constitutes grounds for discipline under section 12-5.5-501; and

(b) A cease-and-desist order under section 12-5.5-403 for engaging in behavior set forth in section 12-5.5-403.

(5) An apprentice license issued under this section is renewable and is subject to section 12-5.5-202 (2).

(6) An associate license issued pursuant to section 12-5.5-202.5 as it existed prior to its repeal in 2012 remains valid until the expiration date on the license. The director shall not renew, or issue new, associate licenses.

(7) On and after June 1, 2014, a person in this state training to be a licensed hearing aid provider must possess a valid apprentice license issued by the director pursuant to this article and rules promulgated pursuant to this article.

Source: L. 2013: Entire article RC&RE, (SB 13-238), ch. 401, p. 2342, § 1, effective July 1.

12-5.5-205. Disposition of fees - legislative intent. It is the intent of the general assembly to fund all direct and indirect costs incurred in the implementation of this article with annual license and renewal fees. The director shall transmit all fees collected under this article to the state treasurer, who shall credit them to the division of professions and occupations cash fund created in section 24-34-105, C.R.S.

Source: L. 2013: Entire article RC&RE, (SB 13-238), ch. 401, p. 2343, § 1, effective July 1.

12-5.5-206. Retention of records - licensee's obligation. Each licensee who sells a hearing aid or provides goods or services to a customer shall develop a written plan to ensure the maintenance of customer records. The records must be retained for at least seven years and identify the customer by name; the goods or services, except batteries, minor parts, and accessories, provided to each customer; and the date and price of each transaction.

Source: L. 2013: Entire article RC&RE, (SB 13-238), ch. 401, p. 2343, § 1, effective July 1.

PART 3

DIRECTOR: POWERS, DUTIES, AND RULES

12-5.5-301. Director - powers - duties - rules. (1) The director may make investigations and inspections as necessary to determine whether an applicant or licensee has violated this article or any rule adopted by the director.

(2) The director may apply to a court of competent jurisdiction for an order enjoining any act or practice that constitutes a violation of this article. Upon a showing that a person is engaging in or intends to engage in the act or practice, the court shall grant an injunction, restraining order, or other appropriate order, regardless of the existence of another remedy. All proceedings related to such orders are governed by the Colorado rules of civil procedure.

(3) (a) The director or an administrative law judge has the power to administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the director pursuant to this article. The director may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the director.

(b) Upon failure of any witness to comply with a subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or 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. The court may punish a failure to obey the order of the court as a contempt of court.

(4) No later than December 31, 2013, and thereafter as necessary, the director shall adopt rules necessary for the enforcement or administration of this article.

Source: L. 2013: Entire article RC&RE, (SB 13-238), ch. 401, p. 2343, § 1, effective July 1.

12-5.5-302. Disciplinary actions. (1) If the director determines that an applicant or licensee has committed any of the acts specified in part 4 of this article, the director may:

(a) Issue a letter of admonition;

(b) Place a licensee on probation;

(c) Impose an administrative fine not to exceed two thousand five hundred dollars for each separate offense; or

(d) Deny, refuse to renew, revoke, or suspend the license of an applicant or licensee.

(2) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the director, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(3) A person whose license to practice as a hearing aid provider or apprentice under this article is revoked, or who surrenders his or her license to avoid discipline, is ineligible to apply for any new license under this article for two years after the date of revocation or surrender of his or her license.

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

(b) (I) When the director sends a letter of admonition to a licensee pursuant to paragraph (a) of this subsection (4), the director shall also advise the licensee that he or she has the right to request in writing, within twenty days after service of the letter, that the director initiate formal disciplinary proceedings to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(II) If the licensee makes the request for adjudication, the director shall vacate the letter of admonition and shall process the matter by means of formal disciplinary proceedings.

(5) When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the director and, in the opinion of the director, should be dismissed, but the director has noticed indications of possible errant conduct by the licensee that could lead to serious consequences if not corrected, the director may send the licensee a confidential letter of concern.

(6) The director shall not enforce any provisions of this article or rules promulgated pursuant to this article that are held unconstitutional, invalid, or inconsistent with federal laws or regulations, including rules promulgated by the United States food and drug administration.

(7) All fines collected pursuant to this section shall be transmitted to the state treasurer, who shall credit them to the general fund.

Source: L. 2013: Entire article RC&RE, (SB 13-238), ch. 401, p. 2344, § 1, effective July 1.

12-5.5-303. Cease-and-desist orders - unauthorized practice - penalties. (1) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a licensee is acting in a manner that is a threat to the health and safety of the public, or a person is acting or has acted without the required license, the director may issue an order to cease and desist the activity. The order must set forth the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, the specific harm that threatens the health and safety of the public, and the requirement that all unlawful acts or unlicensed practices immediately cease.

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

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

(b) The director shall promptly notify the person of the issuance of the order and shall include in the notice a copy of the order, the factual and legal basis for the order, and the date set by the director for a hearing on the order. The director may serve the notice by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom the order is issued. Personal service or proof of receipt of mailing of an order or document pursuant to this paragraph (b) constitutes notice to the person of the existence and contents of the order or document.

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

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (2) does not appear at the hearing, the director may present evidence that notification was properly sent or served upon the person pursuant to paragraph (b) of this subsection (2) and any other evidence related to the matter as the director deems appropriate. The director shall issue the order within ten days after the director's determination related to reasonable attempts to notify the respondent, and the order becomes final as to that person by operation of law. The conduct of the hearing is governed by sections 24-4-104 and 24-4-105, C.R.S.

(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 license or has or is about to engage in acts or practices constituting violations of this article or rules adopted under this article, the director may issue a final cease-and-desist order directing the person to cease and desist from further unlawful acts or unlicensed practices.

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

(3) The director may enter into a stipulation with a person if it appears to the director, based upon credible evidence presented to the director, that the person has engaged in or is about to engage in:

(a) An unlicensed act or practice;

(b) An act or practice constituting a violation of this article, a rule promulgated pursuant to this article, or an order issued pursuant to this article; or

(c) An act or practice constituting grounds for administrative sanction pursuant to this article.

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

(5) A person aggrieved by the final cease-and-desist order may seek judicial review of the director's determination or of the director's final order in a court of competent jurisdiction.

(6) A person who practices or offers or attempts to practice as a hearing aid provider or who engages in the practice of dispensing, fitting, or dealing in hearing aids without an active hearing aid provider 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 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: L. 2013: Entire article RC&RE, (SB 13-238), ch. 401, p. 2345, § 1, effective July 1.

12-5.5-304. Immunity. The director, the director's staff, a person acting as a witness or consultant to the director, and a witness testifying in a proceeding authorized under this article, is immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as director, staff, consultant, or witness, respectively, if the individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this article is immune from any civil or criminal liability that may result from that participation.

Source: L. 2013: Entire article RC&RE, (SB 13-238), ch. 401, p. 2347, § 1, effective July 1.

PART 4

GROUNDS FOR DISCIPLINE

12-5.5-401. Grounds for discipline. (1) The following acts constitute grounds for discipline:

(a) Making a false or misleading statement or omission in an application for licensure;

(b) Violating any provision of this article, a rule promulgated by the director under this article, or an order issued by the director under this article;

(c) Using false or misleading advertising;

(d) Representing that the service or advice of a person licensed to practice medicine will be used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing aids when that is not true or using the terms "doctor", "clinic", "state-licensed clinic", "state-registered", "state-certified", "state-approved", or any other term, abbreviation, or symbol when it would give the false impression that service is being provided by persons trained in medicine or that the licensee's service has been recommended by the state when that is not the case, or when it would be false or misleading;

(e) Directly or indirectly giving or offering to give money or anything of value to any person who advises another in a professional capacity as an inducement to influence the person or have the person influence others to purchase or contract to purchase products sold or offered for sale by a licensee or influencing persons to refrain from dealing in the products of competitors;

(f) Employing a device, a scheme, or artifice with the intent to defraud a purchaser of a hearing aid;

(g) Selling a hearing aid to a child under eighteen years of age without receiving documentation that the child has been examined by a licensed physician and an audiologist within six months prior to the fitting;

(h) Intentionally disposing of, concealing, diverting, converting, or otherwise failing to account for any funds or assets of a purchaser of a hearing aid that is under the applicant's, licensee's, or apprentice's control;

(i) Making a false or misleading statement of fact concerning goods or services or the buyer's right to cancel with the intention or effect of deterring or preventing the buyer from exercising the buyer's right to cancel, or refusing to honor a buyer's request to cancel a contract for the purchase of a hearing aid, if the request was made during the rescission period set forth in section 12-5.5-301 (2)(g);

(j) Charging, collecting, or recovering any cost or fee for any good or service that has been represented by the licensee as free;

(k) Failing to adequately supervise a licensed hearing aid provider apprentice or any employee pursuant to section 12-5.5-204 or 12-5.5-102 (4)(a);

(l) Employing a sales agent or employee who violates any provision of this article, a rule promulgated by the director under this article, or an order issued by the director under this article;

(m) Failing to comply with a stipulation or agreement made with the director or with a final agency order;

(n) Failing to respond in an honest, materially responsive, and timely manner to a complaint issued pursuant to section 12-5.5-402 (4);

(o) Being convicted of, accepting a plea of guilty or nolo contendere to, or receipt of a deferred sentence in any court for a felony or for any crime involving fraud, deception, false pretense, theft, misrepresentation, false advertising, or dishonest dealing;

(p) Selling, dispensing, adjusting, providing training or teaching in regard to, or otherwise servicing surgically implanted hearing devices unless the hearing aid provider is an audiologist or a physician; and

(q) Violating the "Colorado Consumer Protection Act", article 1 of title 6, C.R.S.

Source: L. 2013: Entire article RC&RE, (SB 13-238), ch. 401, p. 2347, § 1, effective July 1.

ARTICLE 6

Automobiles

12-6-101 to 12-6-539. (Repealed)

Source: L. 2018: Entire article repealed, (SB 18-030), ch. 7, p. 138, § 4, effective October 1.

Editor's note: (1) This article 6 was numbered as article 11 of chapter 13, C.R.S. 1963. For amendments to this article 6 prior to its repeal in 2018, consult the 2017 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume. This article 6 was relocated to article 20 of title 44 and part 24 of article 4 of title 42 by SB 18-030. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article 6, see the comparative tables located in the back of the index.

(2) (a) Changes by SB 18-219 to §§ 12-6-114, 12-6-132.5, 12-6-132.6, and 12-6-538.5 were harmonized with SB 18-030 and relocated to §§ 44-20-117, 44-20-141.5, 44-20-141.6, and 44-20-439.5, respectively, effective October 1, 2018.

(b) Changes by HB 18-1105 to §§ 12-6-123 IP(1), (1)(e), and (1)(f); 12-6-523 (2); and 12-6-528 were harmonized with SB 18-030 and relocated to §§ 44-20-133 IP(1), (1)(d), and (1)(e); 44-20-423 (2); and 44-20-430, respectively. For the law in effect from August 8, 2018, until the effective date of the relocation, see L. 2018, pp. 328, 329.

(c) Changes by HB 18-1354 to § 12-6-523 (1)(a) and IP(1)(x)(I) were harmonized with SB 18-030 and relocated to § 44-20-423 (1)(a) and IP(1)(x)(I), respectively, effective October 1, 2018.

ARTICLE 7

Bail Bonding Agents

12-7-101 to 12-7-113. (Repealed)

Source: L. 2012: Entire article repealed, (HB 12-1266), ch. 280, p. 1509, § 40, effective July 1.

Editor's note: This article was numbered as article 20 of chapter 72, C.R.S. 1963. For amendments to this article prior to its repeal in 2012, consult the 2011 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

Cross references: For cash bonding agents, see article 23 of title 10.

ARTICLE 8

Barbers and Cosmetologists

Editor's note: This article was numbered as articles 1 and 2 of chapter 15, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1977, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1977, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

12-8-101. Short title. This article shall be known and may be cited as the "Barber and Cosmetologist Act".

Source: L. 77: Entire article R&RE, p. 612, § 1, effective July 1. **L. 90:** Entire section amended, p. 760, § 1, effective July 1.

Editor's note: This section is similar to former § 12-17-101 as it existed prior to 1977.

12-8-102. Legislative declaration. The purpose of this article is to protect the public's health, safety, and welfare with respect to the professional practice of barbers, hairstylists, cosmetologists, estheticians, and nail technicians, and, therefore, testing procedures and disciplinary actions are of the highest priority. Access of qualified professionals to these professions shall not be unduly restricted. The director of the division of professions and occupations in the department of regulatory agencies is hereby directed to enforce this article to accomplish the purposes set forth in this section.

Source: L. 77: Entire article R&RE, p. 612, § 1, effective July 1. **L. 90:** Entire section amended, p. 760, § 2, effective July 1. **L. 2000:** Entire section amended, p. 2015, § 1, effective July 1. **L. 2005:** Entire section amended, p. 560, § 1, effective July 1. **L. 2015:** Entire section amended, (SB 15-106), ch. 122, p. 376, § 2, effective May 1.

Editor's note: This section is similar to former § 12-17-102 as it existed prior to 1977.

12-8-103. Definitions. As used in this article 8, unless the context otherwise requires:

(1) "Barber" means a person who engages in any of the practices of barbering.

(2) "Barbering" means any one or combination of the following practices when done upon the upper part of the human body for cosmetic purposes and not for the treatment of disease or physical or mental ailments and when done for payment either directly or indirectly or when done without payment for the public generally: Shaving or trimming the beard; cutting the hair; giving facial or scalp massage or treatment with oils, creams, or lotions, or other chemical preparations, either by hand or with mechanical appliances; dyeing the hair or applying hair tonic; applying cosmetic preparations, antiseptics, powders, oils, clays, or lotions to the scalp, face, neck, or shoulders.

(3) "Barber school" means an establishment operated by a person for the purpose of teaching barbering that is certified by the private occupational school division or the Colorado community college system, or is an accredited technical school that teaches barbering.

(4) "Barbershop" or "beauty salon" means a fixed establishment, temporary location, or place in which one or more persons engage in the practice of barbering or cosmetology. The term "temporary location" includes a motor home as defined in section 42-1-102 (57), C.R.S.

(5) "Beauty school" means an establishment operated by a person for the purpose of teaching cosmetologists, estheticians, hairstylists, and nail technicians that is certified by the private occupational school division or the Colorado community college system, or is an accredited technical school that teaches cosmetology.

(6) Repealed.

(7) (Deleted by amendment, L. 2005, p. 560, § 2, effective July 1, 2005.)

(8) "Cosmetologist" means a person who engages in any of the practices of cosmetology.

(9) "Cosmetology" means any one act or practice, or any combination of acts or practices, not for the treatment of disease, physical illness, or a behavioral, mental health, or substance use disorder, when done for payment either directly or indirectly or when done without payment for the public generally, usually performed by and included in or known as the profession of beauty culturists, beauty operators, beauticians, estheticians, cosmetologists, or hairdressers or of any other person, partnership, corporation, or other legal entity holding itself out as practicing cosmetology by whatever designation and within the meaning of this article 8. In particular, "cosmetology" includes, but is not limited to, any one or a combination of the following acts or practices: Arranging, dressing, curling, waving, cleansing, cutting, singeing, bleaching, coloring, or similar work upon the hair of a person by any means and, with hands or a mechanical or electrical apparatus or appliance or by the use of cosmetic or chemical preparations; manicuring or pedicuring the nails of a person; giving facials, applying makeup, giving skin care, or applying eyelashes involving physical contact with a person; beautifying the face, neck, arms, bust, or torso of the human body by use of cosmetic preparations, antiseptics, tonics, lotions, or creams; massaging, cleaning, or stimulating the face, neck, arms, bust, or torso of the human body with the use of antiseptics, tonics, lotions, or creams; removing superfluous hair from the body of a person by the use of depilatories or waxing or by the use of tweezers; and the trimming of the beard.

(9.3) "Director" means the director of the division of professions and occupations in the department of regulatory agencies.

(9.4) "Esthetician" means any person who engages in any one or more of the following practices not for the treatment of disease or physical ailments:

(a) Giving facials, applying makeup, giving skin care, or applying eyelashes, involving physical contact, to any person;

(b) Beautifying the face, neck, arms, bust, or torso of the human body by the use of cosmetic preparations, antiseptics, tonics, lotions, or creams;

(c) Massaging, cleaning, or stimulating the face, neck, arms, bust, or torso of the human body by means of the hands, devices, apparatus, or appliances with the use of cosmetic preparations, antiseptics, tonics, lotions, or creams;

(d) Removing superfluous hair from the body of any person by the use of depilatories or waxing or by the use of tweezers.

(9.5) Repealed.

(9.7) "Hairstyling" means providing one or more of the following hair care services not for the treatment of disease or physical or mental ailments upon the upper part of the human body for cosmetic purposes for payment either directly or indirectly, or when done without payment for the public generally:

(a) Cleansing, massaging, or stimulating the scalp with oils, creams, lotions, or other cosmetic or chemical preparations, using the hands or with manual, mechanical, or electrical implements or appliances;

(b) Applying cosmetic or chemical preparations, antiseptics, powders, oils, clays, or lotions to the scalp;

(c) Cutting, arranging, applying hair extensions to, or styling the hair by any means using the hands or with manual, mechanical, or electrical implements or appliances;

(d) Cleansing, coloring, lightening, waving, or straightening the hair with cosmetic or chemical preparations, using manual, mechanical, or electrical implements or appliances;

(e) Trimming the beard.

(9.8) "Hairstylist" means a person who engages in any of the practices of hairstyling.

(10) Repealed.

(10.5) "Manicuring" means any one act or practice, or combination of acts or practices, not for the treatment of disease or physical or mental ailments, when done for direct or indirect payment or when done without payment for the public generally. "Manicuring" includes, but is not limited to, the filing, buffing, polishing, cleansing, extending, protecting, wrapping, covering, building, pushing, or trimming of nails or any other similar work upon the nails of a person by any means, including the softening of the hands, arms, ankles, or feet of a person by use of hands, a mechanical or electrical apparatus or appliance, cosmetic or chemical preparations, antiseptics, lotions, or creams or by massaging, cleansing, stimulating, manipulating, or exercising the arms, hands, feet, or ankles of a person. Manicuring also includes waxing or the use of depilatories on the leg up to the knee and the waxing or the use of depilatories on the arm up to the elbow.

(11) "Nail technician" means a person who engages in the limited practices of cosmetology known as manicuring. Unless otherwise licensed under this article, a nail technician shall not engage in the practice of cosmetology, except manicuring.

(11.5) "Natural hair braiding" means a service that results in tension on hair strands or roots by twisting, wrapping, weaving, extending, locking, or braiding by hand or with a mechanical device, as long as the service does not include hair cutting or the application of dyes, reactive chemicals, or other preparations to alter the color of the hair or to straighten, curl, or alter the structure of the hair.

(12) "Owner" includes any person who has a financial interest in a barbershop or beauty salon or any other place of business entitling such person to participate in the promotion, management, or proceeds thereof. It does not include a person whose connection with the barbershop, beauty salon, or other place of business entitles such person only to reasonable salary or wages for services actually rendered. The owner of a place of business is the person responsible for registering such place of business with the director.

(13) "Place of business" means a fixed establishment, temporary location, or place, including any mobile barber shop or beauty salon, in which one or more persons engage in the practice of barbering, hairstyling, or cosmetology or practice as a nail technician or an

esthetician. The term "temporary location" includes a motor home as defined in section 42-1-102 (57), C.R.S.

Source: L. 77: Entire article R&RE, p. 612, § 1, effective July 1. **L. 84:** (4) amended, p. 408, § 1, effective July 1. **L. 90:** (9.5), (10.5), and (13) added, (10) repealed, and (11) and (12) amended, pp. 761, 771, §§ 3, 32, effective July 1. **L. 94:** (4) and (13) amended, p. 2547, § 23, effective January 1, 1995. **L. 2000:** (6) repealed, (9.3), (9.7), and (9.8) added, and (12) amended, p. 2015, §§ 2, 3, effective July 1. **L. 2005:** (3), (5), (7), (9), (9.5), (10.5), (11), and (13) amended and (9.4) and (9.7)(e) added, pp. 560, 562, §§ 2, 3, effective July 1. **L. 2015:** (5), (9), IP(9.4), (9.5), IP(9.7), (9.7)(c), (10.5), (11), and (13) amended and (11.5) added, (SB 15-106), ch. 122, p. 377, § 3, effective May 1. **L. 2016:** (9.5) repealed, (SB 16-189), ch. 210, p. 757, § 19, effective June 6. **L. 2017:** IP and (9) amended, (SB 17-242), ch. 263, p. 1266, § 40, effective May 25.

Editor's note: This section is similar to former §§ 12-8-101 and 12-17-103 as they existed prior to 1977.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-8-104. State board of barbers and cosmetologists. (Repealed)

Source: L. 77: Entire article R&RE, p. 614, § 1, effective July 1. **L. 79:** (3) repealed, p. 912, § 16, effective July 1. **L. 90:** (1) amended, p. 761, § 4, effective July 1. **L. 2000:** Entire section repealed, p. 2016, § 4, effective July 1.

Editor's note: This section was similar to former §§ 12-8-102, 12-8-103, 12-8-104, 12-17-108, and 12-17-110 as they existed prior to 1977.

12-8-105. Administrator - assistants. (Repealed)

Source: L. 77: Entire article R&RE, p. 614, § 1, effective July 1. **L. 78:** Entire section amended, p. 257, § 19, effective May 23. **L. 90:** Entire section repealed, p. 771, § 32, effective July 1.

Editor's note: This section was similar to former §§ 12-8-103 and 12-17-109 as they existed prior to 1977.

12-8-106. Meetings - quorum - rules. (Repealed)

Source: L. 77: Entire article R&RE, p. 615, § 1, effective July 1. **L. 90:** Entire section amended, p. 762, § 5, effective July 1. **L. 2000:** Entire section repealed, p. 2017, § 5, effective July 1.

Editor's note: This section was similar to former § 12-17-111 as it existed prior to 1977.

12-8-107. Books and records - report - publications. (1) The director shall keep a record of proceedings. The director shall keep a register of applicants for licenses showing the name and address of each applicant and whether such applicant was granted or refused a license. The director shall keep a register of places of business showing each owner's name and the address of each such place of business. The books and records of the director shall be prima facie evidence of matters contained therein and shall constitute public records.

(2) Repealed.

(3) Publications of the director circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136, C.R.S.

Source: L. 77: Entire article R&RE, p. 615, § 1, effective July 1. **L. 79:** (2) amended, p. 435, § 4, effective July 1. **L. 83:** (2) and (3) amended, p. 828, § 12, effective July 1. **L. 90:** (1) amended, p. 762, § 6, effective July 1. **L. 2000:** Entire section amended, p. 2017, § 6, effective July 1. **L. 2005:** (2) repealed, p. 562, § 4, effective July 1.

Editor's note: This section is similar to former §§ 12-8-105, 12-8-113, and 12-17-112 as they existed prior to 1977.

12-8-108. Powers and duties of the director - advisory committee - rules. (1) The director has the following powers and duties:

(a) To promulgate, in accordance with article 4 of title 24, C.R.S., such rules and regulations as are necessary for the administration of this article;

(b) To revoke or suspend a license or registration pursuant to section 12-8-114.5, or to deny, fine, place on probation, or limit the scope of practice of an applicant, licensee, or registrant, upon proof of a violation of this article or the rules promulgated pursuant to this article;

(c) To prescribe, with the approval of the department of public health and environment, such safety and sanitary rules as the director may deem necessary to protect the health and safety of the public;

(d) To supervise and regulate the industries of barbering, hairstyling, and cosmetology and the practices of estheticians and nail technicians of this state in accordance with this article, but nothing contained in this article shall be construed to abrogate the status, force, or operation of any provisions of any public health law of this state or any local health ordinance or regulation;

(e) To establish criteria for applicant eligibility for examination and to establish procedures for the registration of places of business;

(f) (I) To investigate upon his or her own initiative or upon receiving a complaint all suspected or alleged violations of this article, unless the director or his or her designee determines that a complaint or alleged violation is without merit, and to enter premises in which violations are alleged to have occurred during business hours.

(II) The director or an administrative law judge shall have the power to administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the director pursuant to this

article. The director may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the director.

(III) Upon failure of any witness to comply with such subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board or director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or 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 to obey the order of the court may be punished by the court as a contempt of court.

(g) By and through the attorney general of this state, to apply to a court of competent jurisdiction for an order enjoining any act or practice which constitutes a violation of this article. Upon a showing to the satisfaction of the court that a person is engaging or intends to engage in any such act or practice, an injunction, temporary restraining order, or other appropriate order shall be granted by such court, regardless of the existence of another remedy therefor. The requirements for notice, hearing, duration of any injunction or temporary restraining order issued pursuant to this paragraph (g), or other similar matter shall be in accordance with the Colorado rules of civil procedure.

(h) (I) To send letters of admonition. When a complaint or investigation discloses an instance of misconduct that, in the opinion of the director, does not warrant formal action by the director but that should not be dismissed as being without merit, a letter of admonition may be issued and sent to the licensee or registrant.

(II) When a letter of admonition is sent by the director to a licensee or registrant, the licensee or registrant shall be advised that he or she has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(III) If the request for adjudication is timely made, the letter of admonition shall be deemed vacated and the matter shall be processed by means of formal disciplinary proceedings.

(i) To issue cease-and-desist orders pursuant to section 12-8-127.5;

(j) To issue confidential letters of concern. When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the director and, in the opinion of the director, the complaint should be dismissed, but the director has noticed indications of possible errant conduct by the licensee or registrant that could lead to serious consequences if not corrected, a confidential letter of concern may be issued and sent to the licensee or registrant.

(2) (a) The director shall appoint a six-member advisory committee to assist in the performance of the director's duties. The advisory committee consists of at least three licensees who have expertise in the area under review; one owner or operator of a school that provides training for licensees in the industry and is licensed by the private occupational school division; a representative from a Colorado licensed school that provides training for licensees in the industry; and a member of the public. Members of the advisory committee shall not be compensated for their services but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties under this article. The advisory committee shall meet at least once per year and prior to the adoption of rules, and at the request of the director.

(b) (Deleted by amendment, L. 2015.)

Source: L. 77: Entire article R&RE, p. 615, § 1, effective July 1. **L. 90:** Entire section R&RE, p. 762, § 7, effective July 1. **L. 94:** (1)(c) amended, p. 2725, § 322, effective July 1. **L. 2000:** IP(1), (1)(b), (1)(c), (1)(f), and (1)(h) amended and (2) added, p. 2018, § 7, effective July 1. **L. 2004:** (1)(f) and (1)(h) amended, p. 1802, § 20, effective August 4. **L. 2005:** (1)(d), (1)(f)(I), and (2) amended, p. 563, § 5, effective July 1. **L. 2006:** (1)(j) added, p. 774, § 9, effective July 1. **L. 2015:** (1)(b), (1)(c), (1)(d), (1)(h)(I), (1)(h)(II), and (2) amended, (SB 15-106), ch. 122, p. 378, § 4, effective May 1.

Editor's note: This section is similar to former §§ 12-8-203, 12-17-120, 12-17-121, and 12-17-204 as they existed prior to 1977.

Cross references: For the Colorado rule of civil procedure on injunctions, see C.R.C.P. 65.

12-8-109. Rules and orders adopted by the state board of barbers and cosmetologists under previous law - persons licensed or registered under previous law. (Repealed)

Source: L. 77: Entire article R&RE, p. 616, § 1, effective July 1. **L. 2000:** Entire section R&RE, p. 2019, § 8, effective July 1. **L. 2015:** Entire section repealed, (SB 15-106), ch. 122, p. 379, § 5, effective May 1.

Editor's note: This section was similar to former §§ 12-8-205 and 12-17-205 as they existed prior to 1977.

12-8-110. Examinations. (1) For the benefit of applicants, the director shall hold examinations as often as necessary, subject to appropriation constraints.

(2) The respective examinations of applicants for licenses to practice barbering, hairstyling, or cosmetology under this article shall be conducted under rules prescribed by the director and shall include practical demonstrations, written tests in reference to the practices to which a license is applied, and such related studies or subjects as the director may determine necessary for the proper and efficient performance of such practices, and such examinations shall not be confined to any specific system or method. The practical demonstrations shall be conducted under conditions that are as similar to actual operating conditions as possible. The director is authorized to rent adequate facilities in which to hold such examinations.

(3) The examinations must be consistent with the practical and theoretical requirements of the practices of barbering, hairstyling, or cosmetology or providing nail technician or esthetician services as provided by this article, and the director shall review, revise, and update the examinations periodically on a reasonable basis in consultation with the advisory committee created pursuant to section 12-8-108. Examinations must be graded promptly, and the results of the examinations must be made available to the applicants promptly. The examination must emphasize health and safety issues.

(4) The director shall offer a separate and complete testing station and facility for each applicant, and no oral examination shall be given in connection with practical demonstrations.

(5) No person is permitted to examine applicants in any of the practical portions for barbers, hairstylists, cosmetologists, estheticians, or nail technicians in which the person has not had practical experience and received a license as provided in this article.

(6) Repealed.

Source: L. 77: Entire article R&RE, p. 616, § 1, effective July 1. **L. 90:** (1) R&RE, (3) and (5) amended, and (6) repealed, pp. 763, 764, 771, §§ 8, 9, 32, effective July 1. **L. 2000:** (1) to (5) amended, p. 2019, § 9, effective July 1. **L. 2005:** (3) amended, p. 563, § 6, effective July 1. **L. 2015:** (3) and (5) amended, (SB 15-106), ch. 122, p. 379, § 6, effective May 1.

Editor's note: This section is similar to former §§ 12-8-106 and 12-17-116 as they existed prior to 1977.

12-8-111. Application - form. (1) Each applicant for examination shall file with the director, or the director's designee, a written application in such form as the director may require to set forth the qualifications of the applicant and shall submit satisfactory proof of the required age and education.

(2) Each applicant for registration shall file with the director, or the director's designee, a written application in such form as the director may require pursuant to section 12-8-114.5.

(3) Repealed.

(4) A person who has had a license revoked or has surrendered a license in lieu of discipline may not submit an application for licensure until two years after the date that the license was revoked or surrendered.

Source: L. 77: Entire article R&RE, p. 617, § 1, effective July 1. **L. 83:** Entire section amended, p. 520, § 2, effective March 15; entire section amended, p. 519, § 1, effective April 29. **L. 90:** Entire section amended, p. 764, § 10, effective July 1. **L. 2000:** (1) and (2) amended, p. 2020, § 10, effective July 1. **L. 2015:** (3) repealed and (4) added, (SB 15-106), ch. 122, p. 380, § 7, effective May 1.

Editor's note: (1) This section is similar to former § 12-17-113 as it existed prior to 1977.

(2) Amendments to this section by House Bill 83-1098 and House Bill 83-1123 were harmonized.

12-8-112. Results of examinations. The results of examinations and the qualifications of applicants for admission to such examinations or for licenses shall be determined by the director or by such person as the director shall designate.

Source: L. 77: Entire article R&RE, p. 617, § 1, effective July 1. **L. 2000:** Entire section amended, p. 2020, § 11, effective July 1.

12-8-113. When the director admits applicant. If the director finds that the applicant meets the qualifications of sections 12-8-111 and 12-8-114 and has submitted any other

credentials required by the director for admission to the examination and has paid the required fee, the director shall admit such applicant to examination.

Source: L. 77: Entire article R&RE, p. 617, § 1, effective July 1. **L. 2000:** Entire section amended, p. 2020, § 12, effective July 1.

Editor's note: This section is similar to former § 12-17-115 as it existed prior to 1977.

12-8-114. Qualifications of applicants - requirements - rules. (1) An applicant for any license provided in this article or for examination shall be at least sixteen years of age.

(2) An applicant for examination shall furnish proof of graduation from a barber school or beauty school approved by the private occupational school division pursuant to article 64 of title 23; approved by the state board for community colleges and occupational education pursuant to article 60 of title 23; or, if the school is located in another state or country, approved by the governmental agency responsible for approving such schools in that state or country. The applicant shall also furnish proof that the applicant has successfully completed educational requirements equal to those set by the director. If the applicant has graduated from a school located outside Colorado, the applicant shall furnish proof that the applicant has successfully completed educational requirements substantially equal to those set by the director.

(3) The director shall promulgate rules to implement this section, but shall not require an applicant for examination to furnish proof of training of more than the number of hours of course completion in the subject area in which the applicant seeks licensure as follows:

(a) (I) Fifty credits, as defined by:

(A) Institutional accreditation requirements;

(B) The Colorado commission on higher education full-time equivalent clock-to-credit hour requirements; or

(C) The department of education accreditation requirements; or

(II) One thousand five hundred contact hours for a cosmetologist;

(b) (I) Fifty credits, as defined by:

(A) Institutional accreditation requirements;

(B) The Colorado commission on higher education full-time equivalent clock-to-credit hour requirements; or

(C) The department of education accreditation requirements; or

(II) One thousand five hundred contact hours for a barber;

(c) Six hundred contact hours for an esthetician;

(d) Six hundred contact hours for a nail technician;

(e) One thousand two hundred contact hours for a hairstylist.

(4) Every person desiring to obtain a license to practice the occupation of a barber, cosmetologist, esthetician, hairstylist, or nail technician in this state shall apply and pay to the director an examination fee. The director shall issue a license to applicants who successfully pass the examination and who qualify upon the payment of the required fee.

(5) Notwithstanding any law to the contrary, no examinations for a hairstylist license and no hairstylist licenses shall be issued until on or after January 15, 2001.

Source: L. 77: Entire article R&RE, p. 617, § 1, effective July 1. **L. 90:** Entire section R&RE, p. 764, § 11, effective July 1. **L. 91:** (2) amended, p. 1464, § 1, effective February 25. **L. 2000:** (2) and (4) amended and (3)(e) and (5) added, pp. 2020, 2021, §§ 13, 14, effective July 1. **L. 2005:** (1), (3), and (4) amended, p. 564, § 7, effective July 1. **L. 2008:** (2) amended, p. 1480, § 22, effective May 28. **L. 2015:** (3) and (4) amended, (SB 15-106), ch. 122, p. 380, § 8, effective May 1. **L. 2017:** (2) amended, (HB 17-1239), ch. 261, p. 1203, § 3, effective August 9; IP(3), (3)(a), and (3)(b) amended, (HB 17-1196), ch. 131, p. 443, § 1, effective August 9.

Editor's note: This section is similar to former §§ 12-8-109 and 12-17-114 as they existed prior to 1977.

12-8-114.5. Registration for places of business. (1) Each owner of a place of business shall register with the director. The director shall maintain a registry of the places of business. The director is authorized to establish and collect a fee that is based on the director's actual costs associated with the maintenance of the registry.

(2) If an applicant for registration has paid the required fee and complied with the requirements of this article, the director shall issue the registration. The registration must be conspicuously displayed in the place of business.

(3) It is unlawful for a place of business to offer barbering, cosmetology, hairstyling, or esthetician or nail technician services in this state unless the place of business is registered with the director.

Source: L. 90: Entire section added, p. 765, § 12, effective July 1. **L. 2000:** IP(1), (2), and (3) amended, p. 2021, § 15, effective July 1. **L. 2005:** Entire section repealed, p. 564, § 8, effective July 1. **L. 2015:** Entire section RC&RE, (SB 15-106), ch. 122, p. 381, § 9, effective May 1.

12-8-115. Renewal and reinstatement of license. All licenses shall expire pursuant to a schedule established by the director and shall be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license pursuant to the schedule established by the director of the division of professions and occupations, such license shall expire. Any person whose license has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

Source: L. 77: Entire article R&RE, p. 618, § 1, effective July 1. **L. 90:** (2) amended and (4) repealed, pp. 765, 771, effective July 1. **L. 2000:** (1) amended, p. 2021, § 15, effective July 1. **L. 2004:** Entire section R&RE, p. 1803, § 21, effective August 4.

Editor's note: This section is similar to former §§ 12-8-108, 12-17-126, and 12-17-127 as they existed prior to 1977.

Cross references: For the authority of the executive director of the department of regulatory agencies to change the period of validity and renewal date of any license or certificate

issued by any examining or licensing board or commission in the division of professions and occupations, see § 24-34-102 (7) and (8).

12-8-116. Fees. (1) Fees shall be as established pursuant to section 24-34-105, C.R.S.

(2) No fees shall be refunded.

(3) The executive director of the department of regulatory agencies shall determine the length of time for licensing periods and for license renewal periods, not to exceed three years.

(4) All fees for examinations, registrations, and licenses must be paid in advance, except as otherwise provided in this article.

(5) The director shall collect all fees and transmit the fees to the state treasurer, who shall credit the moneys pursuant to section 24-34-105, C.R.S. The general assembly shall make annual appropriations pursuant to section 24-34-105, C.R.S., for expenditures of the director incurred in the performance of his or her duties pursuant to this article, which expenditures must be made by vouchers and warrants drawn pursuant to law.

Source: L. 77: Entire article R&RE, p. 618, § 1, effective July 1. **L. 79:** (1) R&RE, p. 1645, § 71, effective July 19. **L. 2015:** (4) and (5) added, (SB 15-106), ch. 122, p. 381, § 10, effective May 1.

Cross references: For the authority of the executive director of the department of regulatory agencies to change the period of validity and renewal date of any license or certificate issued by any examining or licensing board or commission in the division of professions and occupations, see § 24-34-102 (7) and (8).

12-8-117. Disposition of fees. (Repealed)

Source: L. 77: Entire article R&RE, p. 618, § 1, effective July 1. **L. 79:** Entire section amended, p. 1647, § 72, effective July 19. **L. 2000:** Entire section amended, p. 2021, § 17, effective July 1. **L. 2015:** Entire section repealed, (SB 15-106), ch. 122, p. 381, § 11, effective May 1.

Editor's note: This section was similar to former §§ 12-8-119 and 12-17-124 as they existed prior to 1977.

12-8-118. Licensure by endorsement. (1) The director shall issue a license by endorsement to engage in the practice of barbering, cosmetology, hairstyling, manicuring, or esthetician services in this state to an individual who possesses an active license in good standing to practice in that profession in another state or territory of the United States or in a foreign country if the applicant presents proof that is satisfactory to the director, that the applicant:

(a) Possesses a valid license from another state or jurisdiction that is substantially equivalent to the requirements in Colorado for licensure and meets all other requirements for licensure pursuant to this article. The director may specify by rule what shall constitute substantially equivalent licensure and qualifications; and

(b) Has paid the prescribed licensure fees.

Source: L. 77: Entire article R&RE, p. 619, § 1, effective July 1. **L. 90:** Entire section amended, p. 765, § 14, effective July 1. **L. 91:** Entire section amended, p. 1465, § 1, effective February 25. **L. 2000:** Entire section amended, p. 2022, § 18, effective July 1. **L. 2005:** Entire section R&RE, p. 564, § 9, effective July 1.

Editor's note: This section is similar to former § 12-17-119 as it existed prior to 1977.

12-8-119. Issuance of license - display. If an applicant for examination to practice barbering, hairstyling, or cosmetology or to provide esthetician or nail technician services passes the examination and has paid the required fee and complies with the requirements of this article, the director shall issue a license to that effect. The license is evidence that the person to whom it is issued is entitled to engage in the practices, occupation, or occupations stipulated in the license. The license must be conspicuously displayed in the licensee's principal office or place of business or employment.

Source: L. 77: Entire article R&RE, p. 619, § 1, effective July 1. **L. 2000:** Entire section amended, p. 2022, § 19, effective July 1. **L. 2005:** Entire section amended, p. 565, § 10, effective July 1. **L. 2015:** Entire section amended, (SB 15-106), ch. 122, p. 381, § 12, effective May 1.

Editor's note: This section is similar to former §§ 12-8-112 and 12-17-117 as they existed prior to 1977.

12-8-120. License required. It is unlawful for any person to engage in, or attempt to engage in, the occupation of barbering, hairstyling, or cosmetology or to provide esthetician or nail technician services in this state unless the person first obtains a license as provided in this article.

Source: L. 77: Entire article R&RE, p. 619, § 1, effective July 1. **L. 90:** Entire section R&RE, p. 766, § 15, effective July 1. **L. 2005:** Entire section amended, p. 565, § 11, effective July 1. **L. 2015:** Entire section amended, (SB 15-106), ch. 122, p. 382, § 13, effective May 1.

Editor's note: This section is similar to former §§ 12-8-107 and 12-17-104 as they existed prior to 1977.

12-8-121. Exemptions. (1) Nothing in this article prohibits services by:

(a) A person who is acting within the scope of practice for which he or she is licensed, registered, or certified;

(b) Licensed or unlicensed volunteers in the performance of charitable services for washing and setting the hair of:

(I) Patients confined to hospitals or nursing, convalescent, or boarding homes;

(II) Persons confined to their homes by reason of age, physical or mental infirmity, or physical disability;

(c) A student of a barbering, hairstyling, or cosmetology school or of esthetician or nail technician services who has received more than twenty percent of the hours of instruction

required in section 12-8-114 (3) and who is rendering services at the school under supervision of a licensee within the school setting;

(d) A person who provides the service of natural hair braiding.

(2) and (3) Repealed.

(4) Lectures and demonstrations on beauty culture, hairdressing, and the use of beauty preparations performed without compensation do not constitute the practice of cosmetology, and nothing in this article prevents the giving of lectures to and demonstrations on any person. The application of beauty products for the exclusive purpose of recommending, demonstrating, or selling the products does not constitute the practice of cosmetology.

Source: L. 77: Entire article R&RE, p. 619, § 1, effective July 1 . **L. 90:** (1)(c) and (1)(d) added, (2) and (3) repealed, and (4) amended, pp. 766, 771, §§ 16, 32, 17, effective July 1. **L. 93:** (1)(b)(II) amended, p. 1632, § 10, effective July 1. **L. 2000:** (1)(d) amended, p. 2022, § 20, effective July 1. **L. 2005:** (1)(d) amended, p. 565, § 12, effective July 1. **L. 2015:** (1) and (4) amended, (SB 15-106), ch. 122, p. 382, § 14, effective May 1.

Editor's note: This section is similar to former §§ 12-17-106 and 12-17-125 as they existed prior to 1977.

12-8-122. Director may employ aid - compensation. The director may employ any person licensed pursuant to this article for the purpose of conducting examinations. The person must not be connected with any school teaching barbering, hairstyling, or cosmetology or esthetician or nail technician students. Any person employed by the director may receive compensation for services for each day employed in the actual discharge of the person's official duties and actual and necessary expenses incurred, to be set by the director upon the approval of the executive director of the department of regulatory agencies.

Source: L. 77: Entire article R&RE, p. 620, § 1, effective July 1. **L. 90:** Entire section amended, p. 766, § 18, effective July 1. **L. 2000:** Entire section amended, p. 2022, § 21, effective July 1. **L. 2005:** Entire section amended, p. 565, § 13, effective July 1. **L. 2015:** Entire section amended, (SB 15-106), ch. 122, p. 382, § 15, effective May 1.

Editor's note: This section is similar to former § 12-17-118 as it existed prior to 1977.

12-8-123. Inspections. Upon written complaint, inspections under section 12-8-108 (1)(f) of barbershops, beauty salons, places of business, and booths rented therein operated by independent licensees may be conducted by the director, or the director may contract for such inspections. The director shall maintain detailed records of all complaints and responses to such complaints.

Source: L. 77: Entire article R&RE, p. 620, § 1, effective July 1. **L. 90:** Entire section R&RE, p. 766, § 19, effective July 1. **L. 2000:** Entire section amended, p. 2023, § 22, effective July 1.

Editor's note: This section is similar to former § 12-8-118 as it existed prior to 1977.

12-8-124. Approved educational program for barbers - requirements. (Repealed)

Source: L. 77: Entire article R&RE, p. 620, § 1, effective July 1. **L. 90:** Entire section repealed, p. 771, § 32, effective July 1.

Editor's note: This section was similar to former § 12-8-111 as it existed prior to 1977.

12-8-124.5. Instructors of barbering and cosmetology. (Repealed)

Source: L. 90: Entire section added, p. 767, § 20, effective July 1.

Editor's note: Subsection (9)(b) provided for the repeal of this section, effective November 1, 1990. (See L. 90, p. 767.)

12-8-125. License for beauty school - requirements. (Repealed)

Source: L. 77: Entire article R&RE, p. 621, § 1, effective July 1. **L. 90:** Entire section repealed, p. 771, § 32, effective July 1.

Editor's note: This section was similar to former § 12-17-105 as it existed prior to 1977.

12-8-126. Beauty school operation. (Repealed)

Source: L. 77: Entire article R&RE, p. 621, § 1, effective July 1. **L. 90:** Entire section repealed, p. 771, § 32, effective July 1.

Editor's note: This section was similar to former § 12-17-107 as it existed prior to 1977.

12-8-127. Unauthorized practice - penalties. (1) Any person who practices or offers or attempts to practice barbering, hairstyling, esthetics, manicuring, or cosmetology 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 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(2) In addition to any other penalty, any person who violates the provisions of this article or the rules and regulations of the director promulgated under this article may be penalized by the director upon a finding of a violation pursuant to article 4 of title 24, C.R.S., as follows:

(a) In the first administrative proceeding against any person, a fine of not less than one hundred dollars but not more than five hundred dollars per day per violation;

(b) In any subsequent administrative proceeding against any person for transactions occurring after a final agency action determining that a violation of this article has occurred, a fine of not less than one thousand dollars but not more than two thousand dollars per day per violation.

(3) Repealed.

(4) All fines collected pursuant to this article shall be transferred to the state treasurer, who shall credit such moneys to the general fund.

Source: L. 77: Entire article R&RE, p. 621, § 1, effective July 1. **L. 90:** Entire section amended, p. 767, § 21, effective July 1. **L. 2000:** (1) and IP(2) amended, p. 2023, § 23, effective July 1. **L. 2002:** (1) amended, p. 1473, § 49, effective October 1. **L. 2004:** (4) amended, p. 1803, § 22, effective August 4. **L. 2005:** (1) amended, p. 565, § 14, effective July 1. **L. 2006:** (1) amended and (3) repealed, pp. 83, 97, §§ 9, 67, effective August 7.

Editor's note: This section is similar to former §§ 12-8-116, 12-8-211, 12-17-209, and 12-17-128 as they existed prior to 1977.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (1), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-8-127.5. 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 licensee or registrant 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 license or registration, the director may issue an order to cease and desist such activity. 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 unlicensed or unregistered practices immediately cease.

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

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

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

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

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (2) does not appear at the hearing, the director may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (2) and such other evidence related to the matter as the director deems appropriate. The director shall issue the order within ten days after the director's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(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 license or registration or has or is about to engage in acts or practices constituting violations of this article, a final cease-and-desist order may be issued directing such person to cease and desist from further unlawful acts or unlicensed or unregistered practices.

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

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

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

(5) A person aggrieved by the final cease-and-desist order may seek judicial review of the director's determination or of the director's final order as provided in section 12-8-131 (7).

Source: L. 90: Entire section added, p. 767, § 22, effective July 1. **L. 2000:** (1) and (2) amended, p. 2023, § 24, effective July 1. **L. 2006:** Entire section amended, p. 774, § 10, effective July 1.

12-8-128. Enforcement. It is the duty of the district attorneys of each judicial district of this state and the attorney general of this state to prosecute all persons charged with the violation of any of the provisions of this article. It is the duty of the director to aid said attorneys in the enforcement of this article.

Source: L. 77: Entire article R&RE, p. 621, § 1, effective July 1. **L. 90:** Entire section amended, p. 769, § 23, effective July 1. **L. 2000:** Entire section amended, p. 2023, § 25, effective July 1.

Editor's note: This section is similar to former § 12-17-129 as it existed prior to 1977.

12-8-129. Investigations. The practice and procedure of the director with respect to any investigation by the director authorized by this article shall be in accordance with rules and regulations promulgated by the director, which rules and regulations shall provide for, but need not be limited to, investigation powers, including the right to enter the premises of any place of business registered or subject to registration under this article at any time said business is open or has members of the public present on the premises.

Source: L. 77: Entire article R&RE, p. 621, § 1, effective July 1. **L. 90:** Entire section amended, p. 769, § 24, effective July 1. **L. 2000:** Entire section amended, p. 2024, § 26, effective July 1.

Editor's note: This section is similar to former §§ 12-8-206 and 12-17-206 as they existed prior to 1977.

12-8-129.1. Immunity. The director, the director's staff, any person acting as a witness or 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 liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as director, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this article shall be immune from any civil or criminal liability that may result from such participation.

Source: L. 90: Entire section added, p. 769, § 25, effective July 1. **L. 2001:** Entire section amended, p. 1269, § 11, effective June 5. **L. 2004:** Entire section amended, p. 1803, § 23, effective August 4.

12-8-130. Persons licensed or registered under previous law. (Repealed)

Source: L. 77: Entire article R&RE, p. 622, § 1, effective July 1. **L. 90:** Entire section repealed, p. 771, § 32, effective July 1.

12-8-131. Disciplinary proceedings - administrative law judges - judicial review. (1) The director may, through the department of regulatory agencies, employ administrative law judges to conduct hearings as provided by this section or on any matter within the director's jurisdiction upon such conditions and terms as the director may determine.

(2) A proceeding for discipline of a licensee or registrant shall be commenced when the director has reasonable grounds to believe that a licensee or registrant has committed acts that may violate the provisions of this article. The grounds may be established by an investigation

begun by the director on the director's own motion or by an investigation pursuant to a written complaint.

(3) Notice of the commencement of disciplinary proceedings pursuant to this section shall be given to the licensee, registrant, or applicant in the manner prescribed by section 24-4-105, C.R.S.

(4) Any hearing on the revocation or suspension of a license, or on the denial of an application for a new license, or for renewal of a previously issued license shall be conducted by an administrative law judge, and such administrative law judge shall be vested with all powers and authority prescribed by article 4 of title 24, C.R.S.

(5) The administrative law judge shall make an initial decision, which shall include a statement of findings and conclusions upon all the material issues of fact and law presented by the record and the appropriate order, sanction, or relief. In the absence of an appeal to the director or a review upon motion of the director within thirty days after service of the initial decision of the administrative law judge, the initial decision shall become the decision of the director.

(6) Review by the director of the initial decision of the administrative law judge upon appeal or upon the director's own motion shall be conducted in accordance with section 24-4-105, C.R.S. The findings of fact made by the administrative law judge shall not be set aside by the director on review unless such findings are contrary to the weight of the evidence. The director may remand the matter to the administrative law judge for such further proceedings as the director may direct, or the director may affirm, set aside, or modify the order, sanction, or relief entered, in conformity with the facts and the law. Each decision shall be served as prescribed by section 24-4-105, C.R.S.

(7) Final action by the director may be judicially reviewed. The court of appeals shall have initial jurisdiction to review all final actions and orders that are subject to judicial review. Such proceedings shall be conducted in accordance with section 24-4-106 (11), C.R.S.

(8) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the director, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

Source: L. 77: Entire article R&RE, p. 622, § 1, effective July 1. **L. 87:** (1) and (4) to (6) amended, p. 944, § 27, effective March 13. **L. 90:** (2) and (7) amended, p. 770, § 26, effective July 1. **L. 2000:** (1), (2), and (5) to (7) amended, p. 2024, § 27, effective July 1. **L. 2004:** (8) added, p. 1804, § 24, effective August 4. **L. 2015:** (2) and (3) amended, (SB 15-106), ch. 122, p. 383, § 16, effective May 1.

12-8-132. Grounds for denial, revocation, or suspension of license. (1) The director may deny, revoke, suspend, or make probationary any license or registration issued under the director's authority pursuant to this article upon proof that the licensee:

(a) Has been convicted of or has entered a plea of nolo contendere to a felony. In considering the conviction of or such plea to any such crime, the director shall be governed by the provisions of section 24-5-101, C.R.S.

(b) Made any misstatement on his or her application for licensure to practice as a barber, hairstylist, cosmetologist, esthetician, or nail technician or attempted to obtain a license to practice by fraud, deception, or misrepresentation;

(c) Committed an act or failed to perform an act necessary to meet the generally accepted standards to practice a profession licensed under this article, which shall include performing services outside of the person's area of training, experience, or competence;

(d) Excessively or habitually uses or abuses alcohol or controlled substances;

(e) Has violated any of the provisions of this article or any valid order of the director;

(f) Is guilty of unprofessional or dishonest conduct;

(g) Advertises by means of false or deceptive statement;

(h) Fails to display the license as provided in section 12-8-119;

(i) Fails to comply with the rules promulgated by the director as provided in section 12-8-108 (1)(a);

(j) Is guilty of willful misrepresentation;

(k) Fails to disclose to the director within forty-five days a conviction for a felony or any crime that is related to the practice as a barber, cosmetologist, esthetician, hairstylist, or nail technician;

(l) Aids or abets the unlicensed practice of barbering, hairstyling, or cosmetology or the unlicensed provision of esthetician or nail technician services; or

(m) Fails to timely respond to a complaint sent by the director pursuant to section 12-8-131.

Source: L. 77: Entire article R&RE, p. 622, § 1, effective July 1. **L. 82:** (1)(d) amended, p. 252, § 1, effective May 3. **L. 90:** IP(1), (1)(c), (1)(e), and (1)(i) amended, p. 770, § 27, effective July 1. **L. 2000:** IP(1), (1)(a), (1)(e), and (1)(i) amended, p. 2025, § 28, effective July 1. **L. 2005:** (1)(b) and (1)(d) amended, p. 566, § 15, effective July 1. **L. 2015:** IP(1), (1)(b), (1)(c), and (1)(i) amended and (1)(k) to (1)(m) added, (SB 15-106), ch. 122, p. 383, § 17, effective May 1.

Editor's note: This section is similar to former §§ 12-8-207, 12-8-114, and 12-17-207 as they existed prior to 1977.

Cross references: For an alternative disciplinary action for persons licensed pursuant to this article, see § 24-34-106.

12-8-133. Repeal of article. This article is repealed, effective September 1, 2026. Prior to such repeal, the functions of the director and the advisory committee created in section 12-8-108 shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: L. 77: Entire article R&RE, p. 623, § 1, effective July 1. **L. 91:** Entire section amended, p. 679, § 12, effective April 20. **L. 2000:** Entire section amended, p. 2025, § 29, effective July 1. **L. 2005:** Entire section amended, p. 566, § 17, effective July 1. **L. 2015:** Entire section amended, (SB 15-106), ch. 122, p. 384, § 18, effective May 1.

ARTICLE 9

Bingo and Raffles Law

12-9-101 to 12-9-301. (Repealed)

Source: L. 2017: Entire article repealed, (SB 17-232), ch. 233, p. 944, § 3, effective May 23.

Editor's note: (1) This article 9 was numbered as article 3 of chapter 129, C.R.S. 1963. For amendments to this article 9 prior to its repeal in 2017, consult the 2016 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume. This article 9 was relocated to part 6 of article 21 of title 24 by SB 17-232. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article 9, see the comparative tables located in the back of the index.

(2) Section 12-9-102 IP and (19.3) were amended in HB 18-1027 (L. 2018, p. 362), effective October 1, 2018. However, those amendments were superseded by the repeal of this article 9 by SB 17-232, effective May 23, 2017.

ARTICLE 10

Boxing

Editor's note: This article was numbered as article 1 of chapter 129, C.R.S. 1963. The provisions of this article were repealed and reenacted in 2000, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 2000, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

12-10-101. Short title. This article shall be known and may be cited as the "Colorado Professional Boxing Safety Act".

Source: L. 2000: Entire article R&RE, p. 1940, § 1, effective July 1.

12-10-102. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that the federal "Professional Boxing Safety Act of 1996" requires the state of Colorado to establish a state boxing commission. Because there is no state boxing commission, any professional boxing match held in Colorado has to be supervised by another state's boxing commission, using safety guidelines and procedures implemented by that state.

(2) The general assembly further finds and declares that it is in the best interests of the residents of Colorado, professional boxing participants, and the future of the sport of boxing in Colorado that the conduct of the sport be subject to an effective and efficient system of strict control designed by the general assembly. Such system shall, at a minimum:

(a) Protect the safety of the participants; and

(b) Promote the public trust and confidence in the conduct of professional boxing.

(3) To further public confidence and trust, this article and rules promulgated pursuant to this article shall regulate all persons, practices, and associations that relate to the operation of live professional boxing events, performances, or contests held in Colorado.

Source: L. 2000: Entire article R&RE, p. 1940, § 1, effective July 1. **L. 2010:** Entire section amended, (HB 10-1245), ch. 131, p. 432, § 4, effective July 1.

12-10-103. Definitions. As used in this article 10, unless the context otherwise requires:

(1) "Boxer" means an individual who participates in a boxing match.

(2) "Boxing" means fighting, striking, forcing an opponent to submit, or disabling an opponent, including the disciplines of kickboxing, mixed martial arts, and martial arts.

(3) "Commission" means the Colorado combative sports commission created in section 12-10-105.

(4) "Contest" means a match in which the participants strive earnestly to win.

(5) "Department" means the department of regulatory agencies.

(6) "Director", "director of the division", or "director of the division of professions and occupations" means the director of the division of professions and occupations within the department or his or her designee.

(6.5) "Division" means the division of professions and occupations within the department.

(7) "Exhibition" means a match in which the participants display their boxing skills and techniques without striving earnestly to win.

(8) (Deleted by amendment, L. 2010, (HB 10-1245), ch. 131, p. 432, § 5, effective July 1, 2010.)

(9) "Kickboxing" means engaging in martial arts fighting techniques using the hands and feet, the object of which is to win by a decision, knockout, or technical knockout.

(9.5) "Martial arts" means any of several arts of combat or self-defense that are widely practiced as sport.

(10) "Match" means a professional boxing contest or exhibition, the object of which is to win by a decision, knockout, or technical knockout, and includes an event, engagement, sparring or practice session, show, or program where the public is admitted and there is intended to be physical contact. "Match" does not include a training or practice session when no admission is charged.

(10.5) "Mixed martial arts" means the combined techniques of boxing and martial arts disciplines such as grappling, kicking, and striking, including the use of full, unrestrained physical force.

(11) "Office" means the office of combative sports created in section 12-10-104.

(11.5) "Office director" means the director of the office of combative sports created in section 12-10-104.

(12) "Participant" means a person who engages in a match as a boxing contestant.

(13) "Physician" means an individual licensed to practice medicine pursuant to article 36 of this title.

(13.5) "Place of training" means a facility where alcohol beverages are not permitted, an admission fee is not charged for nonstudents, instructors of particular disciplines train students in the art of boxing, and students pay a fee to be enrolled in classes and receive instruction.

(14) "Professional" means a participant who has received or competed for a purse or any other thing of value for participating in a match.

(15) (a) "Toughperson fighting" means:

(I) A physical contest, match, tournament, exhibition, or bout, or any activity that involves physical contact between two or more individuals engaging in combative skills using the hands, feet, or body, whether or not prizes or purses are awarded at the event or promised in future events or spectator admission fees are charged or received; and

(II) A contest, match, tournament, exhibition, bout, or activity, as described in subsection (15)(a)(I) of this section, that is not recognized by and not sanctioned by any state, regional, or national boxing sanctioning authority that is recognized by the director.

(b) "Toughperson fighting" does not mean:

(I) Activities occurring under a martial arts instructor at a place of training or other types of instructor-student or student-student contact occurring under the supervision of an instructor at a place of training; or

(II) A sanctioned boxing event approved by the commission.

Source: L. 2000: Entire article R&RE, p. 1941, § 1, effective July 1. **L. 2004:** (13.5) and (15) added, p. 1071, § 1, effective May 21. **L. 2010:** (2), (7), (8), (10), (12), and (15) amended and (6.5) and (10.5) added, (HB 10-1245), ch. 131, p. 432, § 5, effective July 1. **L. 2017:** IP, (2), (3), (6), (11), (13.5), and (15) amended and (9.5) and (11.5) added, (SB 17-148), ch. 183, p. 667, § 1, effective May 3.

12-10-104. Office of combative sports - creation. There is hereby created, within the division of professions and occupations in the department of regulatory agencies, the office of combative sports. The office of combative sports and the Colorado combative sports commission, created in section 12-10-105, shall exercise their respective powers and perform their respective duties and functions as specified in this article 10 under the department of regulatory agencies as if the powers, duties, and functions were transferred to the department by a **type 2** transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of title 24.

Source: L. 2000: Entire article R&RE, p. 1942, § 1, effective July 1. **L. 2002:** Entire section amended, p. 371, § 1, effective July 1. **L. 2017:** Entire section amended, (SB 17-148), ch. 183, p. 668, § 2, effective May 3.

12-10-105. Colorado combative sports commission - creation. (1) There is hereby created, within the office of combative sports, the Colorado combative sports commission. The commission shall regulate matches in Colorado.

(2) (a) The commission consists of five voting members and two nonvoting advisory members. All members must be residents of Colorado, be of good character and not have been convicted of any felony or match-related offense, notwithstanding section 24-5-101, and be appointed as follows:

(I) The governor shall appoint three voting members.

(II) The president of the senate shall appoint one voting member.

(III) The speaker of the house of representatives shall appoint one voting member.

(IV) (A) Two nonvoting advisory members who are licensed physicians shall be appointed, one by the speaker of the house of representatives and one by the president of the senate.

(B) The two nonvoting advisory members shall advise the commission on matters concerning the health and physical condition of boxers and health issues relating to the conduct of matches. The nonvoting members may prepare and submit to the commission for its consideration and approval any rules that in their judgment will safeguard the physical welfare of the participants engaged in boxing.

(b) Members' terms are four years.

(c) The commission shall designate by majority vote which member is to serve as chair. Any member may be removed from office by the person making the appointment for misfeasance, malfeasance, willful neglect of duty, or other cause.

(d) Members shall serve until their successors are appointed and have been qualified. Any vacancy in the membership of the commission shall be filled in the same manner as the original appointment. A vacancy in the membership of the commission other than by expiration of term shall be filled for the remainder of the unexpired term only.

(3) Meetings of the commission shall be held at least annually and shall be called by the chair or by any two members of the commission and shall be open to the public. Any three voting members shall constitute a quorum at any meeting. Action may be taken and motions and resolutions may be adopted at any meeting at which a quorum exists by the affirmative vote of a majority of the voting members present. Members may participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all members participating may simultaneously hear one another at all times during the meeting. A member participating in a meeting by this means is deemed to be present in person at the meeting.

Source: L. 2000: Entire article R&RE, p. 1942, § 1, effective July 1. **L. 2010:** (2)(a)(IV)(B), (2)(c), and (3) amended, (HB 10-1245), ch. 131, p. 433, § 6, effective July 1. **L. 2017:** (1), (2)(a), and (2)(b) amended, (SB 17-148), ch. 183, p. 668, § 3, effective May 3.

12-10-106. General powers and duties of the commission - rules. (1) In addition to any other powers specifically granted to the commission in this article 10, the commission shall issue rules as necessary for the regulation of the conduct, promotion, and performance of live boxing matches in this state. The rules must be consistent with this article 10, the federal "Professional Boxing Safety Act of 1996", 15 U.S.C. sec. 6301 et seq., and any other applicable federal law. The commission's rules must include:

(a) Requirements for issuance of licenses and permits for boxers, seconds, inspectors, promoters, judges, and referees;

(b) Regulation of ticket sales;

(c) Physical requirements for participants, including classification by weight and skill;

(d) Provisions for supervision of contests and exhibitions by referees and licensed physicians;

(e) Requirements for insurance covering participants and bonding of promoters;

(f) Guidelines for compensation of licensees;

(g) Guidelines for contracts and financial arrangements between promoters and participants;

(h) Prohibition of dishonest, unethical, and injurious practices;

(i) Guidelines for reports of fraud;

(j) Responsibilities of participants;

(k) Regulation of facilities; and

(l) Procedures to:

(I) Allow the director to deny or suspend a participant license for a nondisciplinary reason, such as a medical or administrative reason, including the following reasons listed in the federal "Professional Boxing Safety Act of 1996", 15 U.S.C. sec. 6301 et seq.:

(A) A recent knockout or series of consecutive losses;

(B) An injury;

(C) A required medical procedure; or

(D) A physician's denial of certification;

(II) Authorize the director to lift a license denial or suspension imposed for a nondisciplinary reason if the participant or a representative of the participant sufficiently demonstrates:

(A) That the participant's medical or physical condition has improved to a degree that the nondisciplinary license denial or suspension is no longer warranted; or

(B) That the nondisciplinary license denial or suspension was never warranted; and

(III) Allow the director to report a nondisciplinary participant license suspension to a national record keeper approved by the director.

(2) No member shall receive compensation for serving on the commission; however, a member may be reimbursed for expenses incurred in the performance of such services.

(3) to (5) (Deleted by amendment, L. 2010, (HB 10-1245), ch. 131, p. 434, § 7, effective July 1, 2010.)

Source: L. 2000: Entire article R&RE, p. 1943, § 1, effective July 1. **L. 2002:** (1)(a), (4), and (5) amended, p. 371, § 2, effective July 1. **L. 2010:** IP(1), (1)(b), (1)(e), (1)(g), (1)(j), (3), (4), and (5) amended, (HB 10-1245), ch. 131, p. 434, § 7, effective July 1. **L. 2017:** IP(1), (1)(f), (1)(j), and (1)(k) amended and (1)(l) added, (SB 17-148), ch. 183, p. 669, § 4, effective May 3.

12-10-106.3. License required. No person shall participate, officiate, judge, referee, promote, or second a professional boxing arts contest unless the person is licensed pursuant to this article.

Source: L. 2010: Entire section added, (HB 10-1245), ch. 131, p. 434, § 8, effective July 1.

12-10-106.5. Renewal and reinstatement of licenses. All licenses shall expire pursuant to a schedule established by the director of the division of professions and occupations within the department of regulatory agencies and shall be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director of the division of professions and occupations within the department of regulatory agencies may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license pursuant to the

schedule established by the director of the division of professions and occupations, such license shall expire. Any person whose license has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

Source: L. 2004: Entire section added, p. 1804, § 25, effective August 4.

12-10-107. Office director - appointment - qualification - powers and duties - director of division's powers and duties. (1) The office director is appointed by, and serves under the supervision of, the director of the division.

(2) The office director must:

(a) Be of good character and not have been convicted of any felony or match-related offense, notwithstanding section 24-5-101; and

(b) Not be engaged in any other profession or occupation that could present a conflict of interest with the duties of office director.

(3) (a) In addition to the duties imposed upon the office director elsewhere in this article 10, the office director shall, in accordance with this article 10 and the rules of the commission:

(I) Direct and supervise the administrative and technical activities of the commission;

(II) Supervise and administer the operation of matches; and

(III) As deemed necessary by the director of the division, advise and make recommendations to the director of the division with regard to the director of the division's functions.

(b) In addition to the duties imposed upon the director of the division elsewhere in this article 10, the director of the division shall:

(I) Attend meetings of the commission or appoint a designee to attend in the director's place;

(II) Advise and recommend to the commission rules and other procedures as the director deems necessary and advisable to improve the conduct of boxing;

(III) Furnish any documents of the commission that may be required by the state auditor in the performance of audits performed in conformance with part 1 of article 3 of title 2; and

(IV) Enforce this article 10 and investigate allegations of activity that might violate this article 10.

Source: L. 2000: Entire article R&RE, p. 1944, § 1, effective July 1. **L. 2002:** (3)(c), (3)(e), (3)(g), and (3)(i) to (3)(k) repealed, p. 372, § 3, effective July 1. **L. 2010:** (1) and (3)(d) amended and (3)(l) added, (HB 10-1245), ch. 131, p. 434, § 9, effective July 1. **L. 2017:** Entire section amended, (SB 17-148), ch. 183, p. 670, § 5, effective May 3.

12-10-107.1. Grounds for discipline. (1) The director may deny, suspend, revoke, place on probation, or issue a letter of admonition against a license or an application for a license if the applicant or licensee:

(a) Violates any order of the commission or the director or any provision of this article or the rules established under this article;

(b) Fails to meet the requirements of this article or the rules of the commission;

(c) Is convicted of or has entered a plea of nolo contendere or guilty to a felony; except that the director shall be governed by the provisions of section 24-5-101, C.R.S., in considering such conviction or plea;

(d) Has an alcohol use disorder, as defined in section 27-81-102, or a substance use disorder, as defined in section 27-82-102, or is an excessive or a habitual user or abuser of alcohol or habit-forming drugs or is a habitual user of a controlled substance, as defined in section 18-18-102 (5), if the use, disorder, or dependency is a danger to other licensees;

(e) Has incurred disciplinary action related to professional boxing in another jurisdiction. Evidence of disciplinary action is prima facie evidence for denial of a license or other disciplinary action if the violation would be grounds for disciplinary action in this state.

(f) Provides false information in any application or attempts to obtain a license by fraud, deception, misrepresentation, or concealment;

(g) Is guilty of conduct, or is incompetent or negligent in a manner, that:

(I) Is detrimental to a contest or exhibition of boxing, including unsportsmanlike conduct engaged in before, during, or after a contest or exhibition of boxing; or

(II) Results in injury, or creates an unreasonable risk of harm, to a person; or

(h) Fails to comply with a limitation, restriction, or condition that the director or any other state or national regulatory authority responsible for regulating boxing places on the licensee or applicant.

(2) (a) Any proceeding to deny, suspend, revoke, or place on probation a license shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(b) Upon completing an investigation, the director shall make one of the following findings:

(I) The complaint is without merit and no further action need be taken.

(II) There is no reasonable cause to warrant further action.

(III) The investigation discloses an instance of conduct that does not warrant formal action and should be dismissed, but the director notices indications of possible errant conduct that could lead to serious consequences if not corrected. If this finding is made, the director shall send a confidential letter of concern to the licensee.

(IV) The investigation discloses an instance of conduct that does not warrant formal action but should not be dismissed as being without merit. If this finding is made, the director may send a letter of admonition to the licensee by certified mail.

(V) The investigation discloses facts that warrant further proceedings by formal complaint. If this finding is made, the director shall refer the complaint to the attorney general for preparation and filing of a formal complaint.

(c) (I) The director shall send a letter of admonition by first-class mail to a licensee and shall include in the letter a notice that the licensee has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(II) If the request for adjudication is timely made, the letter of admonition is vacated and the director shall proceed by means of formal disciplinary proceedings.

(d) (Deleted by amendment, L. 2010, (HB 10-1245), ch. 131, p. 435, § 10, effective July 1, 2010.)

(e) The director shall conduct all proceedings pursuant to this subsection (2) expeditiously and informally so that no licensee is subjected to unfair and unjust charges and that no complainant is deprived of the right to a timely, fair, and proper investigation of a complaint.

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

(b) Upon failure of any witness to comply with such subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or 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 to obey the order of the court may be punished by the court as a contempt of court.

(4) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the director, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(5) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a 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 license, the director may issue an order to cease and desist such activity. 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 unlicensed practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (5), the respondent may request a hearing on the question of whether acts or practices in violation of this article have occurred. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

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

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (6) shall be promptly notified by the director of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the director for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order is issued. Personal service or mailing of an order or document pursuant to this subsection (6) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the director as provided in paragraph (b) of this subsection (6). The hearing may

be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (6) does not appear at the hearing, the director may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (6) and such other evidence related to the matter as the director deems appropriate. The director shall issue the order within ten days after the director's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(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 license or has or is about to engage in acts or practices constituting violations of this article, a final cease-and-desist order may be issued directing such person to cease and desist from further unlawful acts or unlicensed practices.

(IV) The director shall provide notice, in the manner set forth in paragraph (b) of this subsection (6), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

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

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

Source: L. 2002: Entire section added, p. 372, § 4, effective July 1. **L. 2004:** IP(1) and (2) amended and (3) and (4) added, p. 1804, § 26, effective August 4. **L. 2006:** (2)(e) and (5) to (8) added, p. 776, §§ 11, 12, effective July 1; (2)(a) amended, p. 97, § 66, effective August 7. **L. 2010:** IP(1), (1)(b), (1)(d), (1)(e), (2)(b) to (2)(e), and (3)(b) amended and (1)(f) added, (HB 10-1245), ch. 131, p. 435, § 10, effective July 1. **L. 2012:** (1)(d) amended, (HB 12-1311), ch. 281, p. 1610, § 10, effective July 1. **L. 2017:** (1)(d), (1)(e), (1)(f), and (2)(c)(I) amended and (1)(g) and (1)(h) added, (SB 17-148), ch. 183, p. 671, § 6, effective May 3; (1)(d) amended, (SB 17-242), ch. 263, p. 1267, § 41, effective May 25. **L. 2018:** (1)(d) amended, (SB 18-091), ch. 35, p. 381, § 4, effective August 8.

Editor's note: Amendments to subsection (1)(d) by SB 17-148 and SB 17-242 were harmonized.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017. For the legislative declaration in SB 18-091, see section 1 of chapter 35, Session Laws of Colorado 2018.

12-10-107.5. Toughperson fighting prohibited. (1) Toughperson fighting is prohibited in the state of Colorado. No person or entity shall promote, advertise, conduct, or compete or participate in toughperson fighting. No license or permit shall be issued for toughperson fighting or for any contests or exhibitions of a similar nature.

(2) Any violation of this section is a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 2004: Entire section added, p. 1072, § 2, effective May 21.

12-10-108. Immunity. Any member of the commission; the director; the office director; the commission's staff; the director's staff; the office director's staff; any person acting as a witness or consultant to the commission, director, or office director; any witness testifying in a proceeding authorized under this article 10; and any person who lodges a complaint pursuant to this article 10 is immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as commission member, director, office director, staff, consultant, or witness, respectively, if the individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this article 10 is immune from any civil or criminal liability that may result from such participation.

Source: L. 2000: Entire article R&RE, p. 1945, § 1, effective July 1. **L. 2004:** Entire section amended, p. 1805, § 27, effective August 4. **L. 2017:** Entire section amended, (SB 17-148), ch. 183, p. 672, § 7, effective May 3.

12-10-109. Fees - boxing cash fund - created. (1) The director of the division shall establish and collect nonrefundable license fees and may establish and collect surcharges and other moneys as the director of the division deems necessary; except that such fees and surcharges shall not exceed the amount necessary to implement this article.

(2) Moneys collected under this article other than civil penalties shall be transmitted to the state treasurer, who shall credit the same to the division of professions and occupations cash fund created in section 24-34-105, C.R.S., and the general assembly shall make annual appropriations pursuant to said section for expenditures of the office incurred in the performance of its duties under this article. Such expenditures shall be made from such appropriations upon vouchers and warrants drawn pursuant to law. Civil penalties collected under this article shall be transferred to the state treasurer and credited to the general fund.

Source: L. 2000: Entire article R&RE, p. 1946, § 1, effective July 1. **L. 2002:** Entire section amended, p. 373, § 5, effective July 1. **L. 2010:** Entire section amended, (HB 10-1245), ch. 131, p. 436, § 11, effective July 1.

12-10-110. Violations. (1) **Civil penalties.** The director may issue an order against any person who willfully violates this article, after providing prior notice and an opportunity for a hearing pursuant to section 24-4-105, C.R.S. The director may impose a civil penalty in an amount up to five thousand dollars for a single violation or twenty-five thousand dollars for multiple violations in a proceeding or a series of related proceedings.

(2) **Criminal penalties.** Any person who engages in or offers or attempts to engage in the conduct, promotion, or performance of live boxing matches without an active license or permit 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 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(3) **Injunction.** Whenever it appears to the director that a person has engaged or is about to engage in an act or practice that violates this article or a rule or order issued under this article, the director may bring an action to enjoin the acts or practices and to enforce compliance with this article or any rule or order.

(4) **Enforcement.** The commission and director may assist local law enforcement agencies in their investigations of violations of this article and may initiate and carry out such investigations in coordination with local law enforcement agencies.

(5) **Judicial review.** Final director actions and orders appropriate for judicial review may be judicially reviewed in the court of appeals in accordance with section 24-4-106 (11), C.R.S.

Source: L. 2000: Entire article R&RE, p. 1946, § 1, effective July 1. **L. 2002:** (2) amended, p. 1473, § 51, effective October 1. **L. 2006:** (2) amended, p. 83, § 10, effective August 7. **L. 2010:** (1), (2), (3), and (5) amended, (HB 10-1245), ch. 131, p. 437, § 12, effective July 1.

Editor's note: This section is similar to former § 12-10-123 as it existed prior to 2000.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-10-111. Repeal of article. This article 10 is repealed, effective September 1, 2026. Before its repeal, the department of regulatory agencies shall review the office and the commission in accordance with section 24-34-104.

Source: L. 2000: Entire article R&RE, p. 1947, § 1, effective July 1. **L. 2010:** (1) amended, (HB 10-1245), ch. 131, p. 431, § 3, effective July 1. **L. 2017:** Entire section amended, (SB 17-148), ch. 183, p. 672, § 8, effective May 3.

ARTICLE 11

Slaughterers

12-11-101 to 12-11-114. (Repealed)

Source: L. 2009: Entire article repealed, (SB 09-151), ch. 89, p. 347, §§ 8, 7, effective July 1.

Editor's note: This article was numbered as article 15 of chapter 8 of article 15, C.R.S. 1963. For amendments to this article prior to its repeal in 2009, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. The provisions of this article were relocated to part 2 of article 43 of title 35. For the location of specific provisions, see the editor's note following each section in said part 2 and the comparative tables located in the back of the index.

Cross references: For meat processing and processing of inedible meat, see article 33 of title 35.

ARTICLE 12

Cemeteries

12-12-101 to 12-12-116. (Repealed)

Source: L. 2017: Entire article repealed, (HB 17-1244), ch. 239, p. 983, § 4, effective August 9.

Editor's note: (1) This article 12 was numbered as article 3 of chapter 61, C.R.S. 1963. For amendments to this article 12 prior to its repeal in 2017, consult the 2016 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume. This article 12 was relocated to article 24 of title 6. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article 12, see the comparative tables located in the back of the index.

(2) Changes to § 12-12-109 (7) and (8) by HB 17-1096 were harmonized with HB 17-1244 and relocated to § 6-24-106 (7) and (8), respectively.

ARTICLE 13

Life Care Institutions

12-13-101 to 12-13-119. (Repealed)

Source: L. 2017: Entire article repealed, (SB 17-226), ch. 159, p. 591, § 12, effective August 9.

Editor's note: This article 13 was numbered as article 11 of chapter 91, C.R.S. 1963. For amendments to this article 13 prior to its repeal in 2017, consult the 2016 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume. This article 13 was relocated to article 49 of title 11. Former C.R.S. section

numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article 13, see the comparative tables located in the back of the index.

ARTICLE 14

Colorado Fair Debt Collection Practices Act

12-14-101 to 12-14-137. (Repealed)

Source: L. 2017: Entire article repealed, (HB 17-1238), ch. 260, p. 1176, § 25, effective August 9.

Editor's note: (1) This article 14 was numbered as article 1 of chapter 27, C.R.S. 1963. For amendments to this article 14 prior to its repeal in 2017, consult the 2016 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume. This article 14 was relocated to article 16 of title 5. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article 14, see the comparative tables located in the back of the index.

(2) The introductory portion to this section was amended in SB 17-216. Those amendments were superseded by the repeal of this article 14 in HB 17-1238.

(3) Changes by SB 17-216 to §§ 12-14-103 (1.5) and (6.5); 12-14-111 (2), (3), and (4); 12-14-113 (3) and (4); 12-14-116; 12-14-117 (1) and (6) to (9); 12-14-124 (12); 12-14-128.5; 12-14-130 (12); 12-14-136.5; and 12-14-137 were harmonized with HB 17-1238 and relocated to §§ 5-16-103 (2) and (8.5); 5-16-111 (2), (3), and (4); 5-16-113 (4) and (5); 5-16-116; 5-16-117 (1) and (5) to (8); 5-16-124 (12); 5-16-125.5; 5-16-127 (12); 5-16-134.5; and 5-16-135, respectively.

(4) 12-14-103 introductory portion and (2)(b)(IX) were amended in SB 18-035 (L. 2018, p. 258), effective October 1, 2018. However, those amendments were superseded by the repeal of the article by HB 17-1238, effective August 9, 2017.

ARTICLE 14.1

Colorado Child Support Collection
Consumer Protection Act

12-14.1-101 to 12-14.1-113. (Repealed)

Source: L. 2017: Entire article repealed, (HB 17-1238), ch. 260, p. 1176, § 25, effective August 9.

Editor's note: This article 14.1 was added in 2006 and was not amended prior to its repeal in 2017. For the text of this article 14.1 prior to 2017, consult the 2016 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume. This article 14.1 was relocated to article 17 of title 5. Former C.R.S. section

numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article 14.1, see the comparative tables located in the back of the index.

ARTICLE 14.3

Colorado Consumer Credit Reporting Act

12-14.3-101 to 12-14.3-109. (Repealed)

Source: L. 2017: Entire article repealed, (HB 17-1238), ch. 260, p. 1176, § 25, effective August 9.

Editor's note: This article 14.3 was added in 1995. For amendments to this article 14.3 prior to its repeal in 2017, consult the 2016 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume. This article 14.3 was relocated to article 18 of title 5. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article 14.3, see the comparative tables located in the back of the index.

ARTICLE 14.5

Debt-management Services

12-14.5-101 to 12-14.5-242. (Repealed)

Source: L. 2017: Entire article repealed, (HB 17-1238), ch. 260, p. 1176, § 25, effective August 9.

Editor's note: This article 14.5 was added in 1990. For amendments to this article 14.5 prior to its repeal in 2017, consult the 2016 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume. This article 14.5 was relocated to article 19 of title 5. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article 14.5, see the comparative tables located in the back of the index.

ARTICLE 15

Commercial Driving Schools

12-15-101 to 12-15-121. (Repealed)

Source: L. 2017: Entire article repealed, (SB 17-224), ch. 179, p. 659, § 4, effective August 9.

Editor's note: This article 15 was numbered as article 24 of chapter 13, C.R.S. 1963. For amendments to this article 15 prior to its repeal in 2017, consult the 2016 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume. This article 15 was relocated to part 6 of article 2 of title 42. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article 15, see the comparative tables located in the back of the index.

ARTICLE 15.5

Fantasy Contests

12-15.5-101. Short title. The short title of this article is the "Fantasy Contests Act".

Source: L. 2016: Entire article added, (HB 16-1404), ch. 358, p. 1488, § 1, effective August 10.

12-15.5-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Confidential information" means information related to the play of a fantasy contest by fantasy contest players obtained as a result of or by virtue of a person's employment.

(2) "Director" means the director of the division of professions and occupations within the department of regulatory agencies or his or her designee.

(3) "Entry fee" means cash or cash equivalents that are required to be paid by a fantasy contest player to a fantasy contest operator in order to participate in a fantasy contest.

(4) "Fantasy contest" means a fantasy or simulated game or contest in which:

(a) The value of all prizes and awards offered to winning participants is established and made known to the participants in advance of the contest;

(b) All winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of athletes in fully completed sporting events; except that a sporting event that has been called or suspended due to weather or any other natural or unforseen event is considered fully completed; and

(c) Winning outcomes are not based on randomized or historical events or on the score, point spread, or any performance of any single actual sports team or combination of such teams or solely on any single performance of an individual athlete in any single actual sporting event.

(5) "Fantasy contest operator" means a person or entity that offers fantasy contests with an entry fee for a cash prize to members of the public.

(6) "Fantasy contest player" means a person who participates in a fantasy contest with an entry fee offered by a fantasy contest operator.

(7) "Small fantasy contest operator" means a fantasy contest operator that has no more than seven thousand five hundred fantasy contest players in Colorado with active accounts who participate in fantasy contests with an entry fee.

Source: L. 2016: Entire article added, (HB 16-1404), ch. 358, p. 1488, § 1, effective August 10.

12-15.5-103. Fantasy contests - director - rules. (1) The director shall promulgate reasonable rules for the identification, licensing, and fingerprinting of applicants for licensure.

(2) The director may administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the director pursuant to this article. The director may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings.

Source: L. 2016: Entire article added, (HB 16-1404), ch. 358, p. 1489, § 1, effective August 10.

12-15.5-104. Registration. (1) On and after July 1, 2017, an entity shall not operate as a small fantasy contest operator unless the entity is registered with the director. On and after July 1, 2017, an individual who is not operating through an entity shall not operate as a small fantasy contest operator unless the individual is registered with the director.

(2) A small fantasy contest operator is subject to all of the provisions of this article; except that:

(a) A small fantasy contest operator need only be registered, not licensed, in order to offer fantasy contests for a fee, a small fantasy contest operator is not subject to the requirements of section 12-15.5-106 (2) regarding an annual audit, and a small fantasy operator is subject to section 12-15.5-105 (3); and

(b) The director shall:

(I) Establish a registration process for small fantasy contest operators; and

(II) Not initiate an investigation of a potential violation of this article by a small fantasy contest operator except upon the filing of a complaint with the director that the director reasonably believes warrants investigation.

Source: L. 2016: Entire article added, (HB 16-1404), ch. 358, p. 1489, § 1, effective August 10.

12-15.5-105. Licensing. (1) On and after July 1, 2017, an entity shall not operate as a fantasy contest operator unless the entity is licensed by the director. On and after July 1, 2017, an individual who is not operating through an entity shall not operate as a fantasy contest operator unless the individual is licensed as a fantasy contest operator by the director. An applicant for licensure must pay license, renewal, and reinstatement fees established by the director consistent with section 24-34-105, C.R.S., and other authorities. The fees must be sufficient to cover the division's direct and indirect costs in administering this article. A licensee must renew the license in accordance with a schedule established by the director pursuant to section 24-34-102 (8), C.R.S. If a licensee fails to renew the license pursuant to the schedule established by the director, the license expires and the entity shall not practice under this article until the reinstatement fees are paid and the director reinstates the license. A person that continues to practice once a license has expired is subject to the penalties provided in this article and section 24-34-102 (8), C.R.S.

(2) Applications for licensure as a fantasy contest operator must:

(a) Be verified by the oath or affirmation of such person or persons as the director may prescribe;

(b) Be made to the director on forms prepared and furnished by the director; and

(c) Set forth such information as the director may require to enable the director to determine whether an applicant meets the requirements for licensure under this article. The information must include:

(I) The name and address of the applicant;

(II) If a partnership, the names and addresses of all of the partners, and if a corporation, association, or other organization, the names and addresses of the president, vice president, secretary, and managing officer, together with all other information deemed necessary by the director; and

(III) A designation of the responsible party who is the agent for the licensee for all communications with the director.

(3) (a) An applicant may not be eligible for licensure or registration as a fantasy contest operator or licensure renewal if the applicant or any of its officers, directors, or general partners has been convicted of or has entered a plea of nolo contendere or guilty to a felony.

(b) The director is governed by section 24-5-101, C.R.S., in considering the conviction or plea of nolo contendere to a felony for any individual subject to a criminal history record check pursuant to subsection (4) of this section.

(4) With the submission of an application for a license granted pursuant to this section, each applicant and its officers, directors, and general partners shall submit a complete set of his or her fingerprints to the Colorado bureau of investigation for the purpose of conducting fingerprint-based criminal history record checks. The Colorado bureau of investigation shall forward the fingerprints to the federal bureau of investigation for the purpose of conducting fingerprint-based criminal history record checks. The director may acquire a name-based criminal history record check for a person who has twice submitted to a fingerprint-based criminal history record check and whose fingerprints are unclassifiable. A person who has previously submitted fingerprints for state or local licensing purposes may request the use of the fingerprints on file. The director shall use the information resulting from the fingerprint-based criminal history record check to investigate and determine whether an applicant is qualified to hold a license pursuant to this section. The director may verify the information an applicant is required to submit. The applicant shall pay the costs associated with the fingerprint-based criminal history record check to the Colorado bureau of investigation.

(5) A fantasy contest operator shall not conduct, operate, or offer a fantasy contest that:

(a) Utilizes:

(I) Video or mechanical reels or symbols or any other depictions of slot machines, poker, blackjack, craps, or roulette; or

(II) Any device that qualifies as or replicates games that constitute limited gaming under section 9 of article XVIII of the Colorado constitution; or

(b) Includes a university, college, high school, or youth sporting event.

Source: L. 2016: Entire article added, (HB 16-1404), ch. 358, p. 1490, § 1, effective August 10.

12-15.5-106. Consumer protections. (1) A fantasy contest operator, including a small fantasy contest operator, shall implement commercially reasonable procedures for fantasy contests with an entry fee, which procedures are designed to:

(a) Prevent employees of the fantasy contest operator, including a small fantasy contest operator, and relatives living in the same household as such employees, from competing in any fantasy contests offered by any fantasy contest operator in which the operator offers a cash prize;

(b) Prevent sharing of confidential information that could affect such fantasy contest play with third parties until the information is made publicly available;

(c) Verify that a fantasy contest player in such a fantasy contest is eighteen years of age or older;

(d) Ensure that individuals who participate or officiate in a game or contest that is the subject of such a fantasy contest will be restricted from entering such a fantasy contest that is determined, in whole or in part, on the accumulated statistical results of a team of individuals in the game or contest in which they are a player or official;

(e) Allow individuals to restrict themselves from entering such a fantasy contest upon request and provide reasonable steps to prevent the person from entering such fantasy contests offered by the fantasy contest operator, including a small fantasy contest operator;

(f) Disclose the number of entries that a fantasy contest player may submit to each such fantasy contest, provide reasonable steps to prevent players from submitting more than the allowable number, and, in any contest involving at least one hundred one entries, not allow a player to submit more than the lesser of three percent of all entries or one hundred fifty entries;

(g) Segregate fantasy contest player funds from operational funds and maintain a reserve in the form of cash, cash equivalents, an irrevocable letter of credit, a bond, or a combination thereof, in the amount of the deposits made to the accounts of fantasy contest players for the benefit and protection of the funds held in such accounts;

(h) Distinguish highly experienced players and beginner players and ensure that highly experienced players are conspicuously identified as such to all players;

(i) Prohibit the use of scripts in fantasy contests that give a player an unfair advantage over other players and make all authorized scripts readily available to all fantasy contest players;

(j) Clearly and conspicuously disclose all rules that govern its contests, including the material terms of each promotional offer at the time the offer is advertised; and

(k) Use technologically reasonable measures to limit each fantasy contest player to one active account with that operator.

(2) A fantasy contest operator offering fantasy contests in this state shall:

(a) Contract with a third party to annually perform an independent audit, consistent with the standards established by the public company accounting oversight board, to ensure compliance with this article; and

(b) Submit the results of the audit to the director.

Source: L. 2016: Entire article added, (HB 16-1404), ch. 358, p. 1492, § 1, effective August 10.

12-15.5-107. Duty to maintain records. Each fantasy contest operator shall keep daily records of its operations and shall maintain the records for at least three years. The records must sufficiently detail all financial transactions to determine compliance with the requirements of

this article and must be available for audit and inspection by the director during the fantasy contest operator's regular business hours.

Source: L. 2016: Entire article added, (HB 16-1404), ch. 358, p. 1493, § 1, effective August 10.

12-15.5-108. Authorization to conduct fantasy contests. (1) Fantasy contests are authorized and may be conducted by a fantasy contest operator at a licensed gaming establishment, as that term is defined in section 44-30-103 (18). A gaming retailer, as that term is defined in section 44-30-103 (27), may conduct fantasy contests if the gaming retailer is licensed as a fantasy contest operator.

(2) Fantasy contests are authorized and may be conducted by a fantasy contest operator at a licensed facility at which pari-mutuel wagering, as that term is defined in section 44-32-102 (18), may occur. An operator of a class B track, as that term is defined in section 44-32-102 (3), may conduct fantasy contests if the operator is licensed as a fantasy contest operator.

(3) A fantasy contest conducted in compliance with this article does not violate article 10 or 10.5 of title 18, C.R.S.

Source: L. 2016: Entire article added, (HB 16-1404), ch. 358, p. 1493, § 1, effective August 10. **L. 2018:** (1) amended, (SB 18-034), ch. 14, p. 238, § 7, effective October 1; (2) amended, (HB 18-1024), ch. 26, p. 321, § 5, effective October 1.

12-15.5-109. Grounds for discipline. (1) The director may deny, suspend, or revoke a license or registration or place on probation or issue a letter of admonition to a licensee or registrant if the fantasy contest operator, including a small fantasy contest operator:

(a) Violates any order of the director or any provision of this article or the rules established under this article;

(b) Fails to meet the requirements for licensure under this article; or

(c) Uses fraud, misrepresentation, or deceit in applying for or attempting to apply for licensure or registration or otherwise in operating or offering to operate a fantasy contest.

(2) If it appears to the director, based upon credible evidence as presented in a written complaint, that a person is operating or offering to operate a fantasy contest without having obtained a registration or license, the director may issue an order to cease and desist the activity. The director shall set forth in the order the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unauthorized practices immediately cease. Within ten days after service of the order to cease and desist pursuant to this subsection (2), the person may request a hearing on the question of whether acts or practices in violation of this article have occurred. The hearing shall be conducted pursuant to section 24-4-105, C.R.S.

Source: L. 2016: Entire article added, (HB 16-1404), ch. 358, p. 1493, § 1, effective August 10.

12-15.5-110. Civil fines. In addition to any other remedy provided by law, a fantasy contest operator, or an employee or agent thereof, who violates this article is subject to a civil

fine of not more than one thousand dollars for each such violation, which the state treasurer shall credit to the general fund. The director may file a civil action to collect the fine.

Source: L. 2016: Entire article added, (HB 16-1404), ch. 358, p. 1494, § 1, effective August 10.

12-15.5-111. Applicability. This article applies to conduct occurring on or after July 1, 2017.

Source: L. 2016: Entire article added, (HB 16-1404), ch. 358, p. 1494, § 1, effective August 10.

12-15.5-112. Repeal of article. This article is repealed, effective September 1, 2020. Before its repeal, this article is scheduled for review in accordance with section 24-34-104, C.R.S.

Source: L. 2016: Entire article added, (HB 16-1404), ch. 358, p. 1494, § 1, effective August 10.

ARTICLE 16

Farm Products and
Farm Commodity Warehouses

12-16-101 to 12-16-223. (Repealed)

Source: L. 2017: Entire article repealed, (SB 17-225), ch. 262, p. 1247, § 10, effective August 9.

Editor's note: (1) This article 16 was numbered as article 4 of chapter 7, C.R.S. 1963. For amendments to this article 16 prior to its repeal in 2017, consult the 2016 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume. This article 16 was relocated to articles 36 and 37 of title 35. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article 16, see the comparative tables located in the back of the index.

(2) Changes to § 12-16-103 (5)(b) and (5.7) by HB 17-1197 were harmonized with SB 17-225 and relocated to § 35-37-103 (8)(b) and (9.5), respectively.

ARTICLE 17

Cosmetologists

12-17-101 to 12-17-211. (Repealed)

Source: L. 77: Entire article repealed, p. 623, § 4, effective July 1.

Editor's note: This article was numbered as article 1 of chapter 32, C.R.S. 1963. For amendments to this article prior to its repeal in 1977, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For current provisions regulating cosmetologists, see article 8 of this title.

ARTICLE 18

Dance Halls

12-18-101 to 12-18-105. (Repealed)

Source: L. 2017: Entire article repealed, (SB 17-228), ch. 246, p. 1042, § 9, effective August 9.

Editor's note: This article 18 was numbered as article 17 of chapter 36, C.R.S. 1963. For amendments to this article 18 prior to its repeal in 2017, consult the 2016 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume. This article 18 was relocated to part 5 of article 15 of title 30. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

ARTICLE 19

Dance Schools

12-19-101 to 12-19-109. (Repealed)

Source: L. 88: Entire article repealed, p. 348, § 16, effective July 1.

Editor's note: This article was numbered as article 4 of chapter 129, C.R.S. 1963. For amendments to this article prior to its repeal in 1988, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For designation of certain activities involving dance studios as deceptive trade practices under the "Colorado Consumer Protection Act", see §§ 6-1-102 and 6-1-705.

ARTICLE 20

Debt Management

12-20-101 to 12-20-116. (Repealed)

Editor's note: (1) This article was numbered as article 3 of chapter 11, C.R.S. 1963. For amendments to this article prior to its repeal in 2000, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 12-20-116 provided for the repeal of this article, effective July 1, 2000. (See L. 94, p. 765.)

ARTICLE 21

Detectives

12-21-101 to 12-21-110. (Repealed)

Source: L. 84: Entire article repealed, p. 409, § 1, effective March 5.

Editor's note: This article was numbered as article 1 of chapter 44, C.R.S. 1963. For amendments to this article prior to its repeal in 1984, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 22

Pharmaceuticals and Pharmacists

12-22-101 to 12-22-806. (Repealed)

Source: L. 2012: Entire article repealed, (HB 12-1311), ch. 281, p. 1594, § 2, effective July 1.

Editor's note: Portions of this article were numbered as articles 1, 2, 5, and 8 of chapter 48, C.R.S. 1963. For amendments to this article prior to its repeal in 2012, consult the 2011 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume. This article was relocated to article 42.5 of this title. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

ARTICLE 23

Electricians

12-23-100.2. Legislative declaration. The general assembly hereby declares that the state electrical board shall be specifically involved in the testing and licensing of electricians and

shall provide for inspections of electrical installations where local inspection authorities are not providing such service to the standards required by this article.

Source: L. 78: Entire section added, p. 318, § 1, effective July 1. **L. 2010:** Entire section amended, (HB 10-1225), ch. 198, p. 858, § 4, effective July 1.

12-23-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Apprentice" means a person who is required to be registered as such under section 12-23-110.5 (3)(a), who is in compliance with the provisions of this article, and who is working at the trade in the employment of a registered electrical contractor and is under the direct supervision of a licensed master electrician, journeyman electrician, or residential wireman.

(1.2) "Board" means the state electrical board.

(1.3) "Electric light, heat, and power" means the standard types of electricity that are supplied by an electric utility, regardless of whether the source is an electric utility or the inverter output circuit of a photovoltaic system or a similar circuit from another type of renewable energy system, and used and consumed in a real estate improvement or real estate fixture.

(1.5) "Electrical contractor" means any person, firm, copartnership, corporation, association, or combination thereof who undertakes or offers to undertake for another the planning, laying out, supervising, and installing or the making of additions, alterations, and repairs in the installation of wiring apparatus and equipment for electric light, heat, and power. A licensed professional engineer who plans or designs electrical installation shall not be classed as an electrical contractor.

(1.7) "Electrical work" means wiring for, installing, and repairing electrical apparatus and equipment for electric light, heat, and power.

(2) "Journeyman electrician" means a person having the necessary qualifications, training, experience, and technical knowledge to wire for, install, and repair electrical apparatus and equipment for electric light, heat, and power, and for other purposes, in accordance with standard rules governing such work.

(3) "Master electrician" means a person having the necessary qualifications, training, experience, and technical knowledge to properly plan, lay out, and supervise the installation and repair of wiring apparatus and equipment for electric light, heat, and power, and for other purposes, in accordance with standard rules governing such work, such as the national electrical code.

(3.2) "National electrical code" means the code for the safe installation of electrical wiring and equipment, as amended, published by the national fire protection association and approved by the American national standards institute, or successor organizations.

(3.5) "Permanent state highway tunnel facilities" means all permanent state highway tunnels, shafts, ventilation systems, and structures and includes all structures, materials, and equipment appurtenant to such facilities. Said term includes all electrical equipment, materials, and systems to be constructed, furnished, and installed as part of the final construction features specified by the applicable contract plans and specifications or by the national electrical code. For the purposes of this article and article 20 of title 34, C.R.S., such state highway tunnel facilities shall be deemed to be mines during the construction of such facilities.

(3.7) "Qualified state institution of higher education" means:

(a) One of the state institutions of higher education established under, specified in, and located upon the campuses described in sections 23-20-101 (1)(a) and 23-31-101, C.R.S., limited to the buildings owned or leased by those institutions on said campuses;

(b) The institution whose campus is established under and specified in section 23-20-101 (1)(b), C.R.S., but limited to the buildings located in Denver at 1380 Lawrence street, 1250 Fourteenth street, and 1475 Lawrence street; and

(c) The institution whose campus is established under and specified in section 23-20-101 (1)(d), C.R.S., but limited to current and future buildings owned, leased, or built on land owned on or before January 1, 2015, by the university of Colorado on the campus described in section 23-20-101 (1)(d), C.R.S.

(4) "Residential wireman" means a person having the necessary qualifications, training, experience, and technical knowledge to wire for, and install, electrical apparatus and equipment for wiring one-, two-, three-, and four-family dwellings.

(5) Repealed.

Source: L. 59: p. 416, § 1. **CRS 53:** § 107-2-1. **C.R.S. 1963:** § 142-2-1. **L. 65:** p. 1220, § 1. **L. 71:** p. 1290, § 1. **L. 75:** (5) amended, p. 438, § 1, effective July 25. **L. 77:** (5) amended, p. 648, § 1, effective July 1. **L. 78:** (1) R&RE and (1.5) added, p. 318, §§ 2, 3, effective July 1. **L. 84:** (3.5) added, p. 413, § 1, effective March 22. **L. 88:** (3.5) amended, p. 1434, § 25, effective June 11; (1) R&RE, (1.2) and (1.7) added, and (5) repealed, pp. 490, 502, §§ 1, 2, 23, effective July 1. **L. 2004:** (1.5) amended, p. 1310, § 51, effective May 28. **L. 2009:** (1.3) and (3.2) added and (1.7), (2), and (3) amended, (HB 09-1136), ch. 407, p. 2243, § 1, effective August 5. **L. 2014:** (3.7) added, (HB 14-1387), ch. 378, p. 1823, § 22, effective August 6. **L. 2015:** (3.7) amended, (HB 15-1295), ch. 118, p. 356, § 1, effective April 24.

Cross references: For the legislative declaration in HB 14-1387, see section 1 of chapter 378, Session Laws of Colorado 2014.

12-23-102. State electrical board. (1) There is hereby established a state electrical board, which shall consist of nine members appointed by the governor, with the consent of the senate, who shall be residents of the state of Colorado:

(a) Two members shall be electrical contractors who have masters' licenses;

(b) Two members shall be master or journeymen electricians who are not electrical contractors;

(c) One member shall be a representative of private, municipal, or cooperative electric utilities rendering electric service to the ultimate public;

(d) One member shall be a building official from a political subdivision of the state performing electrical inspections;

(e) One member shall be a general contractor actively engaged in the building industry; and

(f) Two members shall be appointed from the public at large.

(2) All members of the board shall serve for three-year terms and all appointees shall be limited to two full terms each. Any vacancy occurring in the membership of the board shall be filled by the governor by appointment for the unexpired term of the member. The governor may remove any member of the board for misconduct, incompetence, or neglect of duty.

Source: L. 59: p. 417, § 2. **CRS 53:** § 107-2-2. **C.R.S. 1963:** § 142-2-2. **L. 65:** p. 1220, § 2. **L. 73:** p. 1378, § 44. **L. 75:** Entire section amended, p. 444, § 1, effective July 25. **L. 78:** Entire section amended, p. 319, § 5, effective July 1. **L. 79:** Entire section amended, p. 908, § 6, effective July 1. **L. 88:** Entire section amended, p. 490, § 3, effective July 1. **L. 2003:** Entire section amended, p. 909, § 5, effective August 6. **L. 2010:** Entire section amended, (HB 10-1225), ch. 198, p. 863, § 10, effective July 1.

12-23-102.5. Repeal of article. This article is repealed, effective July 1, 2019. Prior to such repeal, the state electrical board, including provisions relating to qualified state institutions of higher education, shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: L. 76: Entire section added, p. 623, § 15, effective July 1. **L. 91:** Entire section amended, p. 681, § 20, effective April 20. **L. 98:** Entire section amended, p. 738, § 1, effective May 22. **L. 2001:** Entire section amended, p. 275, § 3, effective March 30. **L. 2010:** Entire section amended, (HB 10-1225), ch. 198, p. 857, § 3, effective July 1. **L. 2015:** Entire section amended, (HB 15-1295), ch. 118, p. 357, § 2, effective April 24.

12-23-103. Board under department of regulatory agencies. The state electrical board and its powers, duties, and functions are transferred, effective July 1, 1978, by a **type 1** transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S., to the department of regulatory agencies and allocated to the division of professions and occupations.

Source: L. 59: p. 422, § 16. **CRS 53:** § 107-2-16. **C.R.S. 1963:** § 142-2-16. **L. 68:** p. 122, § 116. **L. 73:** p. 934, § 23. **L. 75:** Entire section R&RE, p. 441, § 1, effective April 15. **L. 78:** Entire section R&RE, p. 325, § 14, effective July 1.

12-23-104. Board powers and duties - rules. (1) (a) The board, annually in the month of July, shall elect from its membership a chair and vice-chair. The board shall meet at least annually and at such other times as it deems necessary.

(b) A majority of the board shall constitute a quorum for the transaction of all business.

(2) In addition to all other powers and duties conferred or imposed upon the board by this article, the board is authorized to:

(a) Adopt, and from time to time revise, such rules and regulations not inconsistent with the law as may be necessary to enable it to carry into effect the provisions of this article. In adopting such rules and regulations, the board shall be governed when appropriate by the standards in the most current edition of the national electrical code or by any modifications to such standards made by the board after a hearing is held pursuant to the provisions of article 4 of title 24, C.R.S. These standards are adopted as the minimum standards governing the planning, laying out, and installing or the making of additions, alterations, and repairs in the installation of wiring apparatus and equipment for electric light, heat, and power in this state. A copy of such code shall be kept in the office of the board and open to public inspection. Nothing contained in this section prohibits any city, town, county, city and county, or qualified state institution of higher education from making and enforcing any such standards that are more stringent than the minimum standards adopted by the board, and any city, town, county, city and county, or

qualified state institution of higher education that adopts such more stringent standards shall furnish a copy thereof to the board. The standards adopted by the board shall be prima facie evidence of minimum approved methods of construction for safety to life and property. The affirmative vote of two-thirds of all appointed members of the board is required to set any standards that are different from those set forth in the national electrical code. If requested in writing, the board shall send a copy of newly adopted standards and rules and regulations to any interested party at least thirty days before the implementation and enforcement of such standards or rules and regulations. Such copies may be furnished for a fee established pursuant to section 24-34-105, C.R.S.

(b) Repealed.

(c) Register apprentices and register and renew the registration of qualified electrical contractors and examine, license, and renew licenses of journeymen electricians, master electricians, and residential wiremen as provided in this article;

(d) (I) Administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board. The board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the board.

(II) Upon failure of any witness to comply with such subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board or director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the commission or 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 to obey the order of the court may be punished by the court as a contempt of court.

(e) Cause the prosecution and enjoinder, in any court of competent jurisdiction, of all persons violating this article and incur necessary expenses therefor. When seeking an injunction, the board shall not be required to prove that an adequate remedy at law does not exist or that substantial or irreparable damages would result if an injunction is not granted.

(f) Inspect and approve or disapprove the installation of electrical wiring, renewable energy systems, apparatus, or equipment for electric light, heat, and power according to the minimum standards in the national electrical code or as prescribed in this article. With respect to:

(I) An inverter-based hydroelectric energy facility generating one hundred kilowatts or less, regardless of whether the facility is connected to utility or other distribution lines, an inspector shall inspect a hydroelectric energy installation in accordance with the minimum standards set forth in the edition of the National Electrical Code in effect on May 29, 2015; however, if a microhydro assembly manufactured for the purpose of generating electricity in a microhydro system uses an inverter that is listed and identified for interconnection service, the inspector shall deem the system's equipment compliant with section 705.4 of the edition of the National Electrical Code in effect on May 29, 2015. For purposes of this paragraph (f), a "microhydro system" means a hydroelectric generation system that generates one hundred kilowatts or less.

(II) An induction-based hydroelectric energy facility generating one hundred kilowatts or less, regardless of whether the facility is connected to utility or other distribution lines, the installation of a hydroelectric energy turbine, induction generator, and control panel shall be certified:

(A) To a listing standard by a field evaluation body or nationally recognized testing laboratory; or

(B) By a professional engineer, by means of signing and stamping documentation of the project, as required in a form and manner determined by the board, indicating that the installation meets design criteria set forth in the Institute of Electrical and Electronics Engineers' (IEEE) standard for interconnecting distributed resources with electric power systems.

(f.3) Apply any hydroelectric energy provisions of an updated National Electrical Code, notwithstanding any provision in paragraph (f) to the contrary, if the National Electrical Code is updated to address hydroelectric energy specifically.

(f.5) Regulate a licensed master electrician, journeyman electrician, or residential wireman who, acting within his or her scope of competence, supervises a solar photovoltaic installation pursuant to section 40-2-128, C.R.S.;

(g) Review and approve or disapprove requests for exceptions to the national electrical code in unique construction situations where a strict interpretation of the code would result in unreasonable operational conditions or unreasonable economic burdens, as long as public safety is not compromised;

(h) Conduct hearings in accordance with the provisions of section 24-4-105, C.R.S.; except that the board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to conduct such hearings;

(i) Repealed.

(j) Enter into reciprocal licensing agreements with the electrical board, or its equivalent, of another state or states where the qualifications for electrical licensing are substantially equivalent to licensure requirements in Colorado;

(k) Find, upon holding a hearing, that an incorporated town or city, county, city and county, or qualified state institution of higher education fails to meet the minimum requirements of this article if the local inspection authority, including a qualified state institution of higher education, has failed to adopt or adhere to the minimum standards required by this article within twelve months after the board has adopted the standards by rule pursuant to this subsection (2);

(l) Issue an order to cease and desist from issuing permits or performing inspections under this article to an incorporated town or city, county, city and county, or qualified state institution of higher education upon finding that the public entity or qualified state institution of higher education fails to meet the minimum requirements of this article pursuant to paragraph (k) of this subsection (2);

(m) Apply to a court to enjoin an incorporated town or city, county, city and county, or qualified state institution of higher education from violating an order issued pursuant to paragraph (l) of this subsection (2).

Source: L. 59: p. 417, § 3. **CRS 53:** § 107-2-3. **C.R.S. 1963:** § 142-2-3. **L. 65:** pp. 1221, 1222, §§ 3, 4. **L. 71:** p. 1290, § 2. **L. 73:** pp. 1503, 1505, §§ 1, 1. **L. 74:** (3)(c) amended, p. 439, § 1, effective January 24. **L. 75:** (3)(h) amended, p. 1465, § 3, effective July 18; (3)(a) amended, p. 438, § 2, effective July 25. **L. 78:** (3)(a) amended, p. 319, § 6, effective July 1. **L. 79:** (3)(a)

amended, p. 1646, § 75, effective July 19. **L. 81:** (3)(a) amended, p. 744, § 1, effective July 1. **L. 84:** (3)(a) amended, p. 415, § 1, effective July 1. **L. 87:** (3)(a) amended, p. 506, § 1, effective June 20; (3)(c) amended, p. 480, § 20, effective July 1. **L. 88:** Entire section R&RE, p. 491, § 4, effective July 1. **L. 91:** (2)(i) added, p. 1478, § 1, effective July 1. **L. 99:** (2)(j) added, p. 268, § 1, effective April 9. **L. 2001:** (1)(a) amended and (2)(b) repealed, pp. 275, 276, §§ 4, 5, effective March 30. **L. 2004:** (2)(d) amended, p. 1808, § 32, effective August 4. **L. 2009:** (2)(f) and (2)(i) amended, (HB 09-1136), ch. 407, p. 2244, § 2, effective August 5. **L. 2010:** (1)(a) and (2)(c) amended and (2)(k), (2)(l), and (2)(m) added, (HB 10-1225), ch. 198, pp. 862, 858, §§ 9, 5, effective July 1. **L. 2013:** (2)(f.5) added, (SB 13-186), ch. 159, p. 513, § 1, effective May 3. **L. 2014:** (2)(a), (2)(k), (2)(l), and (2)(m) amended, (HB 14-1387), ch. 378, p. 1823, § 23, effective June 6; (2)(f) amended, (HB 14-1030), ch. 287, p. 1177, § 1, effective August 6. **L. 2015:** (2)(f) amended and (2)(f.3) added, (HB 15-1364), ch. 244, p. 901, § 1, effective May 29.

Editor's note: Subsection (2)(i) provided for the repeal of subsection (2)(i), effective January 1, 2011. (See L. 2009, p. 2244.)

Cross references: For the legislative declaration in HB 14-1387, see section 1 of chapter 378, Session Laws of Colorado 2014.

12-23-104.5. Program director. The director of the division of professions and occupations may appoint a program director pursuant to section 13 of article XII of the state constitution to work with the board in carrying out its duties under this article.

Source: L. 88: Entire section added, p. 492, § 5, effective July 1. **L. 2010:** Entire section amended, (HB 10-1225), ch. 198, p. 864, § 13, effective July 1.

12-23-105. Electrician must have license - control and supervision. (1) No person shall engage in or work at the business, trade, or calling of a journeyman electrician, master electrician, or residential wireman in this state until the person has received a license from the division of professions and occupations upon written notice from the board or the program director, acting as the agent thereof, or a temporary permit from the board, the program director, or agent of the director.

(2) A residential wireman shall not perform electrical work of a type which is beyond the authorization of the license held.

Source: L. 59: p. 418, § 5. **CRS 53:** § 107-2-5. **C.R.S. 1963:** § 142-2-5. **L. 71:** p. 1290, § 3. **L. 73:** pp. 932, 1419, §§ 16, 17, 108. **L. 88:** (1) amended, p. 492, § 6, effective July 1. **L. 2010:** (1) amended, (HB 10-1225), ch. 198, p. 864, § 14, effective July 1.

12-23-106. License requirements - rules. (1) **Master electrician.** (a) An applicant for a master electrician's license shall furnish written evidence that:

(I) The applicant is a graduate electrical engineer of an accredited college or university and has one year of practical electrical experience in the construction industry;

(II) The applicant is a graduate of an electrical trade school or community college and has at least four years of practical experience in electrical work; or

(III) The applicant has had at least one year of practical experience in planning, laying out, supervising, and installing wiring, apparatus, or equipment for electric light, heat, and power beyond the practical experience requirements for the journeyman's license.

(b) Each applicant for a license as a master electrician shall file an application on forms prepared and furnished by the board, together with the application fee provided in section 12-23-112 (1). The board shall notify each applicant that the evidence submitted with the application is sufficient to qualify the applicant to take the written examination or that the evidence is insufficient and the application is rejected. In the event that the application is rejected, the board shall set forth the reasons for the rejection in the notice to the applicant.

(2) **Journeyman electrician.** (a) An applicant for a journeyman electrician's license shall furnish written evidence that the applicant has had the following:

(I) At least four years' apprenticeship in the electrical trade or four years' practical experience in wiring for, installing, and repairing electrical apparatus and equipment for electric light, heat, and power;

(II) At least two of the applicant's years' experience required by subparagraph (I) of this paragraph (a) has been in commercial, industrial, or substantially similar work; and

(III) Effective January 1, 2011, during the last four years of training, apprenticeship, or practical experience in wiring for, installing, and repairing electrical apparatus and equipment for electric light, heat, and power, at least two hundred eighty-eight hours of training in safety, the national electrical code and its applications, and any other training required by the board that is provided by an accredited college or university, an established industry training program, or any other provider whose training is conducted in compliance with rules promulgated by the board, in collaboration with established industry training programs and industry representatives.

(b) Any applicant for such license shall be permitted to substitute for required practical experience evidence of academic training or practical experience in the electrical field, which shall be credited as follows:

(I) If the applicant is a graduate electrical engineer of an accredited college or university or the graduate of a community college or trade school program approved by the board, the applicant shall receive one year of work experience credit.

(II) If the applicant has academic training, including military training, that does not qualify under subparagraph (I) of this paragraph (b), the board shall provide work experience credit for such training or for substantially similar training established by rule.

(c) Any application for a license and notice to the applicant shall be made and given as provided for in the case of a master electrician's license.

(3) **Residential wireman.** (a) An applicant for a residential wireman's license shall furnish written evidence that the applicant has at least two years of accredited training or two years of practical experience in wiring one-, two-, three-, and four-family dwellings.

(b) Any applicant for such license shall be permitted to substitute for required practical experience evidence of academic training in the electrical field which shall be credited as follows:

(I) If the applicant is a graduate electrical engineer of an accredited college or university or the graduate of a community college or trade school program approved by the board, the applicant shall receive one year of work experience credit.

(II) If the applicant has academic training, including military training, which is not sufficient to qualify under subparagraph (I) of this paragraph (b), the board shall provide work experience credit for such training according to a uniform ratio established by rule.

(c) Any residential wireman's license issued under this section shall be clearly marked as such across its face.

(4) (a) The board shall provide for licensing examinations. Any examination that is given for master electricians, journeymen electricians, and residential wiremen shall be subject to board approval. The board, or its designee, shall conduct and grade the examination and shall set the passing score to reflect a minimum level of competency. If it is determined that the applicant has passed the examination, the division of professions and occupations, upon written notice from the board or the program director, acting as an agent thereof, and upon payment by the applicant of the fee provided in section 12-23-112, shall issue to the applicant a license that authorizes him or her to engage in the business, trade, or calling of a master electrician, journeyman electrician, or residential wireman.

(b) All license and registration expiration and renewal schedules shall be in accord with the provisions of section 24-34-102, C.R.S. Fees in regard to such renewals shall be those set forth in section 12-23-112.

(c) Licenses shall be renewed or reinstated pursuant to a schedule established by the director of the division of professions and occupations within the department of regulatory agencies and shall be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director of the division of professions and occupations within the department of regulatory agencies may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license pursuant to the schedule established by the director of the division of professions and occupations, such license shall expire. Any person whose license has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

(d) (I) Repealed.

(II) **[*Editor's note: This version of subparagraph (II) is effective until January 1, 2019.*]** On or after January 1, 2018, the department shall not renew or reinstate a license unless the applicant has completed twenty-four hours of continuing education since the date of issuance of the applicant's initial license or, if the applicant's license was renewed or reinstated, the most recent renewal or reinstatement.

(II) **[*Editor's note: This version of subparagraph (II) is effective January 1, 2019.*]** (A) Except as otherwise provided in subsection (4)(d)(II)(B) of this section, on or after January 1, 2018, the department shall not renew or reinstate a license unless the applicant has completed twenty-four hours of continuing education since the date of issuance of the applicant's initial license or, if the applicant's license was renewed or reinstated, the most recent renewal or reinstatement.

(B) Subsection (4)(d)(II)(A) of this section does not apply to the first renewal or reinstatement of a license for which, as a condition of issuance, the applicant successfully completed a licensing examination pursuant to subsection (4)(a) of this section.

(III) On or before April 1, 2017, the board, in collaboration with established industry training programs and industry representatives, shall adopt rules establishing continuing education requirements and standards, which requirements and standards must include course work related to the National Electrical Code, including core competencies as determined by the

board. A renewal or reinstatement license applicant shall furnish or cause to be furnished to the board, in a form and manner required by the board, documentation to demonstrate compliance with this subparagraph (III) and rules promulgated pursuant to this subparagraph (III). To ensure consumer protection, the board's rules may include audit standards for licensee compliance with continuing education requirements and requirements pertaining to the testing of licensees by the continuing education vendor.

(5) (a) No person, firm, copartnership, association, or combination thereof shall engage in the business of an electrical contractor without having first registered with the board. The board shall register such contractor upon payment of the fee as provided in section 12-23-112, presentation of evidence that the applicant has complied with the applicable workers' compensation and unemployment compensation laws of this state, and satisfaction of the requirements of paragraph (b) or (c) of this subsection (5).

(b) If either the owner or the part owner of any firm, copartnership, corporation, association, or combination thereof has been issued a master electrician's license by the division of professions and occupations and is in charge of the supervision of all electrical work performed by such contractor, upon written notice from the board or the program director, acting as the agent thereof, the division shall promptly, upon payment of the fee as provided in section 12-23-112, register such licensee as an electrical contractor.

(c) If any person, firm, copartnership, corporation, association, or combination thereof engages in the business of an electrical contractor and does not comply with paragraph (b) of this subsection (5), it shall employ at least one licensed master electrician, who shall be in charge of the supervision of all electrical work performed by such contractor.

(d) No holder of a master's license shall be named as the master electrician, under paragraphs (b) and (c) of this subsection (5), for more than one contractor, and a master name shall be actively engaged in a full-time capacity with that contracting company. The qualifying master license holder shall be required to notify the board within fifteen days after his or her termination as a qualifying master license holder. The master license holder is responsible for all electrical work performed by the electrical contracting company. Failure to comply with a notification may lead to discipline of the master license holder as provided in section 12-23-118.

Source: L. 59: p. 418, § 6. **CRS 53:** § 107-2-6. **C.R.S. 1963:** § 142-2-6. **L. 65:** p. 1222, § 5. **L. 71:** p. 1291, § 4. **L. 73:** pp. 932, 1503, §§ 18, 2. **L. 74:** (5)(e) and (5)(f) repealed, p. 439, § 1, effective January 24. **L. 75:** (1)(a), (4), and (5)(b) amended, p. 439, § 3, effective July 25. **L. 76:** (3) amended, p. 300, § 23, effective May 20. **L. 77:** (3) and (4) amended, p. 650, § 1, effective June 2. **L. 78:** (1)(a), (3), and (6)(c) amended, p. 320, § 7, effective July 1. **L. 79:** (4) amended, p. 1647, § 76, effective July 19. **L. 83:** (4) amended, p. 525, § 1, effective May 4. **L. 84:** (3) amended, p. 1117, § 5, effective June 7. **L. 88:** Entire section R&RE, p. 493, § 7, effective July 1. **L. 89:** (2) and (3) R&RE, p. 651, § 1, effective June 7. **L. 90:** (5) amended, p. 563, § 31, effective July 1. **L. 91:** (4)(b) amended, p. 1478, § 2, effective July 1. **L. 2001:** (2)(a) and (2)(b) amended, p. 276, § 6, effective March 30. **L. 2004:** (4)(c) amended, p. 1808, § 33, effective August 4. **L. 2009:** (1) and (2)(a) amended and (4)(d) added, (HB 09-1136), ch. 407, pp. 2244, 2245, §§ 3, 4, effective August 5. **L. 2010:** (1)(b), (3)(a), (3)(b)(I), (3)(b)(II), (4)(a), (5)(b), and (5)(d) amended, (HB 10-1225), ch. 198, p. 860, § 7, effective July 1. **L. 2011:** (4)(b) amended, (HB 11-1303), ch. 264, p. 1150, § 9, effective August 10. **L. 2016:** (4)(d) amended,

(HB 16-1073), ch. 100, p. 288, § 1, effective April 15. **L. 2017:** (4)(d)(II) amended, (SB 17-247), ch. 193, p. 707, § 1, effective January 1, 2019.

Editor's note: (1) Section 3 of chapter 193 (SB 17-247), Session Laws of Colorado 2017, provides that the act changing this section applies to licenses renewed or reinstated on or after January 1, 2019.

(2) Subsection (4)(d)(I)(B) provided for the repeal of subsection (4)(d)(I), effective January 1, 2018. (See L. 2016, p. 288.)

Cross references: For the authority of the executive director of the department of regulatory agencies to change the period of validity and renewal date of any license or certificate issued by any examining or licensing board or commission in the division of professions and occupations, see § 24-34-102 (7) and (8); for hearings and determinations by state agencies, see § 24-4-105.

12-23-106.5. Credit for experience not subject to supervision of a licensed electrician. For all applicants seeking work experience credit toward licensure, the board shall give credit for electrical work that is not required to be performed by or under the supervision of a licensed electrician if the applicant can show that the particular experience received or the supervision under which the work has been performed is adequate.

Source: L. 88: Entire section added, p. 494, § 8, effective July 1. **L. 89:** Entire section R&RE, p. 652, § 2, effective June 7. **L. 2001:** Entire section amended, p. 276, § 7, effective March 30.

12-23-107. Unauthorized use of title. No person, firm, partnership, corporation, or association shall advertise in any manner or use the title or designation of master electrician, journeyman electrician, or residential wireman unless qualified and licensed under this article.

Source: L. 59: p. 420, § 7. **CRS 53:** § 107-2-7. **C.R.S. 1963:** § 142-2-7. **L. 71:** p. 1291, § 5. **L. 75:** Entire section amended, p. 440, § 4, effective July 25. **L. 2010:** Entire section amended, (HB 10-1225), ch. 198, p. 863, § 11, effective July 1.

12-23-108. License without written examination. (Repealed)

Source: L. 59: p. 420, § 10. **CRS 53:** § 107-2-10. **C.R.S. 1963:** § 142-2-10. **L. 71:** p. 1292, § 7. **L. 73:** p. 933, § 21. **L. 78:** Entire section repealed, p. 326, § 17, effective July 1.

12-23-109. License by endorsement or reciprocity. (1) The board shall issue an electrical license by endorsement in this state to any person who is licensed to practice in another jurisdiction if such person presents proof satisfactory to the board that, at the time of application for a Colorado license by endorsement, the person possesses credentials and qualifications that are substantially equivalent to requirements in Colorado for licensure.

(2) The board shall issue an electrical license by reciprocity where a reciprocal agreement for an equivalent license exists, pursuant to section 12-23-104 (2)(j), between the

board and the electrical board, or its equivalent, of the state or states where the applicant is licensed. The board shall strive to reduce barriers for Colorado licensees to be licensed by endorsement or through reciprocity in other states.

(3) The board may specify by rule what shall constitute substantially equivalent credentials and qualifications.

Source: L. 59: p. 420, § 8. **CRS 53:** § 107-2-8. **C.R.S. 1963:** § 142-2-8. **L. 73:** p. 933, § 19. **L. 88:** Entire section R&RE, p. 495, § 9, effective July 1. **L. 89:** Entire section amended, p. 652, § 3, effective June 7. **L. 99:** Entire section amended, p. 268, § 2, effective April 9. **L. 2001:** Entire section amended, p. 276, § 8, effective March 30. **L. 2009:** Entire section amended, (HB 09-1136), ch. 407, p. 2246, § 5, effective August 5.

12-23-110. Temporary permits. The board or the program director or the director's agent, as provided in the rules promulgated by the board, shall issue temporary permits to engage in the work of a master electrician in cases where an electrical contractor no longer has the services of any master electrician as required under this article and shall issue temporary permits to engage in the work of a journeyman electrician or residential wireman to any applicant who furnishes evidence satisfactory to the board that the applicant has the required experience to qualify for the examination provided in this article and who pays the fee provided in section 12-23-112 for such permits. In addition, and in a similar manner, the board or the program director or the director's agent shall issue temporary permits to any applicant who furnishes evidence satisfactory to the board that the applicant qualifies for a master electrician's license and who pays the required fee. Temporary permits shall continue in effect for no more than thirty days after issuance and may be revoked by the board at any time.

Source: L. 59: p. 420, § 9. **CRS 53:** § 107-2-9. **C.R.S. 1963:** § 142-2-9. **L. 71:** p. 1291, § 6. **L. 73:** p. 933, § 20. **L. 78:** Entire section amended, p. 321, § 8, effective July 1. **L. 88:** Entire section amended, p. 495, § 10, effective July 1. **L. 2010:** Entire section amended, (HB 10-1225), ch. 198, p. 864, § 15, effective July 1.

12-23-110.5. Apprentices - supervision - registration - discipline. (1) Any person may work as an apprentice but shall not do any electrical wiring for the installation of electrical apparatus or equipment for light, heat, or power except under the supervision of a licensed electrician. The degree of supervision required shall be no more than one licensed electrician to supervise no more than three apprentices at the jobsite.

(2) Any electrical contractor, journeyman electrician, master electrician, or residential wireman who is the employer or supervisor of any electrical apprentice working at the trade shall be responsible for the work performed by such apprentice. The board may take disciplinary action against any such contractor or any such electrician or residential wireman under the provisions of section 12-23-118 for any improper work performed by an electrical apprentice working at the trade during the time of his employment while under the supervision of such person. The registration of such apprentice may also be subject to disciplinary action under the provisions of section 12-23-118.

(3) (a) Upon employing an electrical apprentice to work at the trade, the electrical contractor, within thirty days after such initial employment, shall register such apprentice with

the board. The employer shall also notify the board within thirty days after the termination of such employment.

(b) Such apprentice shall be under the supervision of either a licensed electrician or a residential wireman as set forth in subsection (1) of this section.

Source: L. 88: Entire section added, p. 495, § 11, effective July 1. **L. 99:** (1) amended, p. 1393, § 2, effective October 15.

Cross references: For the legislative declaration contained in the 1999 act amending subsection (1), see section 1 of chapter 336, Session Laws of Colorado 1999.

12-23-111. Exemptions. (1) Employees of public service corporations, rural electrification associations, or municipal utilities generating, distributing, or selling electrical energy for light, heat, or power or for operating street railway systems, or telephone or telegraph systems, or their corporate affiliates and their employees or employees of railroad corporations, or lawfully permitted or franchised cable television companies and their employees shall not be required to hold licenses while doing electrical work for such purposes.

(2) Nothing in this article shall be construed to require any individual to hold a license before doing electrical work on his or her own property or residence if all such electrical work, except for maintenance or repair of existing facilities, is inspected as provided in this article; if, however, the property or residence is intended for sale or resale by a person engaged in the business of constructing or remodeling such facilities or structures or is rental property that is occupied or is to be occupied by tenants for lodging, either transient or permanent, or is generally open to the public, the owner shall be responsible for, and the property shall be subject to, all of the provisions of this article pertaining to inspection and licensing, unless specifically exempted therein.

(3) Nothing in this article shall be construed to require any regular employee of any firm or corporation to hold a license before doing any electrical work on the property of such firm or corporation, whether or not such property is owned, leased, or rented: If the firm or corporation employing any employee performing such work has all such electrical work installed in conformity with the minimum standards as set forth in this article and all such work is subject to inspection by the board or its inspectors by request in writing in accordance with subsection (14) of this section; and if the property of any such firm or corporation is not generally open to the public. No license for such firm or corporation, nor inspection by the board or its inspectors, nor the payment of any fees thereon shall be required, with the exception of inspection by the board or its inspectors when performed by written request. Nothing contained in this article shall be construed to require any license, any inspection by the board or its inspectors, or the payment of any fees for any electrical work performed for maintenance, repair, or alteration of existing facilities which shall be exempt as provided in this section.

(4) If the property of any person, firm, or corporation is rental property or is developed for sale, lease, or rental, or is occupied or is to be occupied by tenants for lodging, either transient or permanent, or is generally open to the public, then such property of any such person, firm, or corporation shall be subject to all the provisions of this article pertaining to inspection and licensing, except for the maintenance, repair, or alteration of existing facilities which shall be exempt as provided in this section.

(5) Nothing in this article shall be construed to cover the installation, maintenance, repair, or alteration of vertical transportation or passenger conveyors, elevators, escalators, moving walks, dumbwaiters, stage lifts, man lifts, or appurtenances thereto beyond the terminals of the controllers. Furthermore, elevator contractors or constructors performing any installation, maintenance, repair, or alteration under this exemption, or their employees, shall not be covered by the licensing requirements of this article.

(6) (a) Nothing in this article shall be construed to require an individual to hold a license before doing any maintenance or repair of existing facilities on his or her own property or residence, nor to require inspection by the board or its inspectors, nor to pay any fees connected therewith.

(b) Nothing in this article shall be construed to require any firm or corporation or its regular employees to be required to hold a license before doing maintenance or repair of existing facilities on the property of said firm or corporation, whether or not the property is generally open to the public; nor shall inspection by the board or its inspectors or the payment of any fees connected therewith be required.

(c) For the purposes of this subsection (6), "maintenance or repair of existing facilities" means to preserve or keep in good repair lawfully installed facilities by repairing or replacing components with new components that serve the same purpose.

(7) to (9) Repealed.

(10) An individual, firm, copartnership, or corporation may engage in business as an electrical contractor without an electrician's license if all electrical work performed by such individual, firm, copartnership, or corporation is under the direction and control of a licensed master electrician.

(11) Any person who plugs in any electrical appliance where approved electrical outlet is already installed shall not be considered an installer.

(12) No provision of this article shall in any manner interfere with, hamper, preclude, or prohibit any vendor of any electrical appliance from selling, delivering, and connecting any electrical appliance, if the connection of said appliance does not necessitate the installation of electrical wiring of the structure where said appliance is connected.

(13) The provisions of this article shall not be applicable to the installation or laying of metal or plastic electrical conduits in bridge or highway projects where such conduits must be laid according to specifications complying with applicable electrical codes.

(13.5) Repealed.

(14) Nothing in this article shall be construed to exempt any electrical work from inspection under the provisions of this article except that which is specifically exempted in this article, and nothing in this article shall be construed to exempt any electrical work from inspection by the board or its inspectors upon order of the board or from any required corrections connected therewith. However, no fees or charges may be charged for any such inspection except as set forth in this article, unless request for inspection has been made to the board or its inspectors in writing, in which case, unless otherwise covered in this article, the actual expenses of the board and its inspectors of the inspection involved shall be charged by and be paid to the board. The board is directed to make available and mail minimum standards pertaining to specific electrical installations on request and to charge a fee for the same, such fee not to exceed the actual cost involved, and in no case more than one dollar. Requests for copies of the national

electrical code shall be filled when available, costs thereof not to exceed the actual cost to the board.

(15) Inasmuch as electrical licensing and the examination of persons performing electrical work is a matter of statewide concern, examination, certification, licensing, or registration of electrical contractors, master electricians, journeymen electricians, residential wiremen, or apprentices who are licensed, registered, or certified under this article shall not be required by any city, town, county, city and county, or qualified state institution of higher education; however, any such local governmental authority or qualified state institution of higher education may impose reasonable registration requirements on any electrical contractor as a condition of performing services within the jurisdiction of such authority or within buildings owned or leased or on land owned by such qualified state institution of higher education. No fee shall be charged for such registration.

(16) The provisions of this article shall not be applicable to any surface or subsurface operation or property used in, around, or in conjunction with any mine which is inspected pursuant to the "Federal Mine Safety and Health Amendments Act of 1977", Pub.L. 95-164, except permanent state highway tunnel facilities, which shall conform to standards based on the national electrical code. Nothing contained in this subsection (16) shall prohibit the department of transportation from adopting more stringent standards or requirements than those provided by the minimum standards specified in the national electrical code, and the department of transportation shall furnish a copy of such more stringent standards to the board.

(17) (a) The permit and inspection provisions of this article shall not apply to:

(I) Installations under the exclusive control of electric utilities for the purpose of communication or metering or for the generation, control, transformation, transmission, or distribution of electric energy, whether such installations are located in buildings used exclusively for utilities for such purposes or located outdoors on property owned or leased by the utility or on public highways, streets, or roads or outdoors by virtue of established rights on private property; or

(II) Load control devices for electrical hot water heaters that are owned, leased, or otherwise under the control of, and are operated by, an electric utility, and are on the load side of the single-family residential meter, if such equipment was installed by a registered electrical contractor. The contractor will notify appropriate local authorities that the work has been completed in order that an inspection may be made at the expense of the utility company. The applicable permit fee imposed by the local authorities shall not exceed ten dollars.

(b) This subsection (17) does not exempt any premises wiring on buildings, structures, or other premises not owned by or under the exclusive control of the utility nor wiring in buildings used by the utility for purposes other than those listed in this subsection (17), such as office buildings, garages, warehouses, machine shops, and recreation buildings. This subsection (17) exempts all of the facilities, buildings, and the like inside the security fence of a generating station, substation, control center, or communication facility.

(18) Nothing in this article shall be construed to cover the installation, maintenance, repair, or alteration of security systems of fifty volts or less, lawn sprinkler systems, environmental controls, or remote radio-controlled systems beyond the terminals of the controllers. Furthermore, the contractors performing any installation, maintenance, repair, or alteration under this exemption, or their employees, shall not be covered by the licensing requirements of this article.

(19) Nothing in this article shall be construed to cover the installation, maintenance, repair, or alteration of electronic computer data processing equipment and systems beyond the terminals of the controllers. Furthermore, the contractors performing any installation, maintenance, repair, or alteration under this exemption, or their employees, shall not be covered by the licensing requirements of this article.

(20) Nothing in this article shall be construed to cover the installation, maintenance, repair, or alteration of communications systems, including telephone and telegraph systems not exempted as utilities in subsection (1) of this section, radio and television receiving and transmitting equipment and stations, and antenna systems other than community antenna television systems beyond the terminals of the controllers. Furthermore, the contractors performing any installation, maintenance, repair, or alteration under this exemption, or their employees, shall not be covered by the licensing requirements of this article.

(21) Nothing in this article shall be construed to cover the installation, maintenance, repair, or alteration of electric signs, cranes, hoists, electroplating, industrial machinery, and irrigation machinery beyond the terminals of the controllers. Furthermore, the contractors performing any installation, maintenance, repair, or alteration under this exemption, or their employees, shall not be covered by the licensing requirements of this article.

(22) Nothing in this article shall be construed to cover the installation, maintenance, repair, or alteration of equipment and wiring for sound recording and reproduction systems, centralized distribution of sound systems, public address and speech-input systems, or electronic organs beyond the terminals of the controllers. Furthermore, the contractors performing any installation, maintenance, repair, or alteration under this exemption, or their employees, shall not be covered by the licensing requirements of this article.

(23) Nothing in this article shall be construed to require either that employees of the federal government who perform electrical work on federal property shall be required to be licensed before doing electrical work on such property or that the electrical work performed on such property shall be regulated pursuant to this article.

(24) Nothing in this article shall be construed to require licensing that covers the installation, maintenance, repair, or alteration of fire alarm systems operating at fifty volts or less. Furthermore, the contractors performing any installation, maintenance, repair, or alteration under this exemption, or their employees, shall not be covered by the licensing requirements of this article but shall be subject to all provisions of this article pertaining to inspections and permitting.

Source: L. 59: p. 420, § 11. **CRS 53:** § 107-2-11. **L. 63:** p. 737, § 1. **C.R.S. 1963:** § 142-2-11. **L. 65:** p. 1223, § 6. **L. 71:** pp. 1292, 1294, §§ 8, 9, 1. **L. 73:** p. 934, § 22. **L. 75:** (2) and (4) amended and (15) added, pp. 440, 445, §§ 5, 2, effective July 25. **L. 77:** (7) amended, p. 648, § 2, effective May 20; (16) added, p. 417, § 3, effective June 9; (9) R&RE, p. 648, § 3, effective July 1; (13.5) added, p. 652, § 1, effective July 1. **L. 78:** (7) and (8) amended and (13.5) repealed, pp. 321, 326, §§ 9, 17, effective July 1. **L. 79:** (17) added, p. 476, § 1, effective May 25. **L. 83:** (16) amended, p. 527, § 1, effective May 10. **L. 84:** (16) amended, p. 413, § 2, effective March 22. **L. 87:** (9)(b) amended, p. 377, § 1, effective May 20. **L. 88:** (16) amended, p. 1434, § 26, effective June 11; (1), (5), and (15) amended, (7), (8), and (9) repealed, and (18) to (24) added, pp. 496, 502, §§ 12, 23, effective July 1. **L. 91:** (16) amended, p. 1057, § 11, effective July 1. **L. 97:** (17) amended, p. 143, § 1, effective March 28. **L. 2010:** (2), (6), and (18)

amended, (HB 10-1225), ch. 198, p. 862, § 8, effective July 1. **L. 2014:** (15) amended, (HB 14-1387), ch. 378, p. 1824, § 24, effective June 6. **L. 2015:** (15) amended, (HB 15-1295), ch. 118, p. 357, § 4, effective April 24.

Editor's note: In subsection (6)(a), "of existing facilities on his or her own property or residence," was inadvertently dropped from the introduced version of House Bill 10-1225 in the preparation of the engrossed version of the bill. There were no amendments to subsection (6)(a); therefore, to accurately reflect the intent of the House Bill 10-1225, this language has been restored.

Cross references: (1) For the "Federal Mine Safety and Health Amendments Act of 1977", see 91 Stat. 1290, 5 U.S.C. §§ 5314 and 5315, 29 U.S.C. § 557a, 30 U.S.C. § 801 et seq., and 43 U.S.C. § 1456.

(2) For the legislative declaration in HB 14-1387, see section 1 of chapter 378, Session Laws of Colorado 2014.

12-23-112. Fees. (1) As established pursuant to section 24-34-105, C.R.S., fees shall be charged by the state electrical board for the following:

(a) Master electrician's license or permit;

(b) Renewal of master electrician's license;

(c) Journeyman electrician's license or permit;

(d) Renewal of journeyman electrician's license;

(e) Examination for master electrician;

(f) Examination for journeyman electrician;

(g) Electrical contractor registration;

(h) Renewal of electrical contractor registration;

(i) Residential wireman's license or permit;

(j) Renewal of residential wireman's license;

(k) Examination for residential wireman;

(l) Apprentice registration.

(m) (Deleted by amendment, L. 2010, (HB 10-1225), ch. 198, p. 865, § 16, effective July 1, 2010.)

Source: L. 59: p. 422, § 14. **CRS 53:** § 107-2-14. **C.R.S. 1963:** § 142-2-14. **L. 65:** p. 1226, § 8. **L. 71:** p. 1293, § 10. **L. 75:** Entire section amended, p. 441, § 2, effective April 15. **L. 77:** (1)(l) and (1)(m) added, p. 649, § 4, effective July 1. **L. 79:** Entire section R&RE, p. 1647, § 77, effective July 19. **L. 88:** (1)(g), (1)(h), (1)(l), and (1)(m) amended, p. 497, § 13, effective July 1. **L. 2010:** (1)(b), (1)(d), (1)(h), (1)(j), and (1)(m) amended, (HB 10-1225), ch. 198, p. 865, § 16, effective July 1.

12-23-113. Disposition of fees and expenses of board. All moneys collected under this article, except for fines collected pursuant to section 12-23-118 (7)(a), shall be transmitted to the state treasurer, who shall credit the same pursuant to section 24-34-105, C.R.S., and the general assembly shall make annual appropriations pursuant to said section for expenditures of the board

incurred in the performance of its duties under this article, which expenditures shall be made from such appropriations upon vouchers and warrants drawn pursuant to law.

Source: L. 59: p. 422, § 15. **CRS 53:** § 107-2-15. **C.R.S. 1963:** § 142-2-15. **L. 73:** p. 1378, § 45. **L. 79:** Entire section amended, p. 1648, § 78, effective July 19. **L. 94:** Entire section amended, p. 35, § 1, effective July 1.

12-23-114. Publications.

(1) Repealed.

(2) Publications of the board circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136, C.R.S.

Source: L. 59: p. 418, § 4. **C.R.S. 53:** § 107-2-4. **C.R.S. 1963:** § 142-2-4. **L. 64:** p. 162, § 116. **L. 79:** (1) amended, p. 435, § 8, effective July 1. **L. 83:** Entire section amended, p. 828, § 15, effective July 1. **L. 96:** (1) repealed, p. 1227, § 39, effective August 7.

Cross references: For the legislative declaration contained in the 1996 act repealing subsection (1), see section 1 of chapter 237, Session Laws of Colorado 1996.

12-23-115. Inspectors - qualifications - repeal. (1) (a) (I) **[*Editor's note: This version of subparagraph (I) is effective until January 1, 2019.*]** The director of the division of professions and occupations is hereby authorized to appoint or employ, with the power of removal, competent persons licensed under this article as journeymen or master electricians as state electrical inspectors. The division director is also authorized to appoint or employ, with the power of removal, for the purpose of inspecting one-, two-, three-, or four-family dwellings, competent persons with the following qualifications:

(A) Persons who have passed the written residential wireman's examination described in section 12-23-106; or

(B) Persons who have been certified as residential electrical inspectors by a national certification authority approved by the board and who have furnished satisfactory evidence of at least two years' practical experience in the electrical inspection of residential dwellings.

(1) (a) (I) **[*Editor's note: This version of subparagraph (I) is effective January 1, 2019.*]** The director of the division of professions and occupations is hereby authorized to appoint or employ, with the power of removal, competent persons licensed under this article 23 as journeymen or master electricians as state electrical inspectors. The division director is also authorized to appoint or employ, with the power of removal, for the purpose of inspecting one-, two-, three-, or four-family dwellings, competent persons with the following qualifications:

(A) Persons who have passed the written residential wireman's examination described in section 12-23-106; or

(B) Persons employed by any city, town, county, or city and county on or before January 1, 2019, who have been certified as residential electrical inspectors by a national certification authority approved by the board and who have furnished satisfactory evidence of at least two years' practical experience in the electrical inspection of residential dwellings. This subsection (1)(a)(I)(B) is repealed, effective January 1, 2023.

(II) Such inspectors may be employed either on a full-time or on a part-time basis as the circumstances in each case shall warrant; except that the division director may contract with any electrical inspector regularly engaged as such and certify him to make inspections in a designated area at such compensation as shall be fixed by the division director. State electrical inspectors have the right of ingress and egress to and from all public and private premises during reasonable working hours where this law applies for the purpose of making electrical inspections or otherwise determining compliance with the provisions of this article. In order to avoid conflicts of interest, a state electrical inspector hired under this section shall not inspect any electrical work in which such inspector has any financial or other personal interest and shall not be engaged in the electrical business by contracting, supplying material, or performing electrical work as defined in this article.

(b) Any employee of a private, municipal, or cooperative electric utility rendering service to the ultimate public shall be prohibited from employment as an electrical inspector only when in the performance of any electrical work as defined in this article. Electrical inspectors performing electrical inspections who are employed by any city, town, county, city and county, or qualified state institution of higher education shall possess the same qualifications required of state electrical inspectors under this section, shall be registered with the board prior to the assumption of their duties, shall not inspect any electrical work in which such inspector has any financial or other personal interest, and shall not be engaged, within the jurisdiction employing such inspector, in the electrical business by contracting, supplying material, or performing electrical work as defined in this article. Additionally, electrical inspectors performing electrical inspections who are employed by a qualified state institution of higher education shall possess an active journeyman or master electrician license. A supervisor overseeing the work of an electrical inspector who is employed by a qualified state institution of higher education shall not direct such electrical inspector to violate any provision of this article. An electrical inspector employed by a qualified state institution of higher education shall not be coerced by a supervisor when filing a complaint with the board, or when such electrical inspector disapproves an electrical installation that violates the provisions of this article.

(c) Nothing in this article shall be construed to limit any inspector from qualifying as an inspector in other construction specialties.

(2) Repealed.

(3) State electrical inspectors appointed or employed pursuant to subsection (1) of this section may:

(a) Conduct inspections and investigations pursuant to section 12-23-118 (4) on behalf of the program director;

(b) Provide service of process for a citation served pursuant to section 12-23-118 (6)(b) in compliance with rule 4 of the Colorado rules of civil procedure.

Source: L. 65: p. 1228, § 9. **C.R.S. 1963:** § 142-2-18. **L. 71:** p. 1296, § 1. **L. 73:** p. 934, § 24. **L. 77:** Entire section amended, p. 654, § 1, effective May 26. **L. 78:** Entire section amended, p. 322, § 10, effective July 1. **L. 81:** (1) amended, p. 746, § 1, effective May 18. **L. 88:** IP(1)(a)(I) and (1)(a)(II) amended and (2) repealed, pp. 498, 502, §§ 14, 23, effective July 1. **L. 94:** (3) added, p. 35, § 2, effective July 1. **L. 2010:** (1)(a)(I)(B) and (3)(a) amended, (HB 10-1225), ch. 198, p. 865, § 17, effective July 1. **L. 2014:** (1)(b) amended, (HB 14-1387), ch. 378, p. 1824, § 25, effective June 6. **L. 2015:** (1)(b) amended, (HB 15-1295), ch. 118, p. 357, § 3,

effective April 24. **L. 2017:** (1)(a)(I) amended, (SB 17-247), ch. 193, p. 707, § 2, effective January 1, 2019.

Editor's note: Section 3 of chapter 193 (SB 17-247), Session Laws of Colorado 2017, provides that the act changing this section applies to licenses renewed or reinstated on or after January 1, 2019.

Cross references: For the legislative declaration in HB 14-1387, see section 1 of chapter 378, Session Laws of Colorado 2014.

12-23-116. Inspection - application - standard - rules. (1) (a) An individual required to have electrical inspection under this article shall apply to the board for an electrical permit, except where an incorporated town or city, county, city and county, or qualified state institution of higher education has a building department that meets the minimum standards of this article and that processes applications for building permits and inspections, in which case the individual shall apply to such building department. A qualified state institution of higher education with a building department that meets or exceeds the minimum standards adopted by the board under this article shall process applications for permits and inspections only from the institution and from contractors working for the benefit of the institution and shall conduct inspections only of work performed for the benefit of the institution. Each inspection must include a contemporaneous review to ensure that the requirements of this article, and specifically section 12-23-110.5, have been met.

(b) Upon final inspection and approval by the state electrical inspector, notice shall be issued by the board to the utility, and the office of the board shall retain one copy of the record of approval.

(c) A utility shall not provide service to any person required to have electrical inspection under this article without proof of final approval as provided in paragraph (b) of this subsection (1); except that service shall be provided in those situations determined by the local electrical inspection authority, or by the board, whichever has jurisdiction, to be emergency situations for a maximum period of seven days or until the inspection has been made.

(2) (a) The owner of an electrical installation in any new construction, other than manufactured units certified by the division of housing pursuant to section 24-32-3311, C.R.S., or remodeling or repair of an existing construction, except in any incorporated town or city, county, city and county, or qualified state institution of higher education having its own electrical code and inspection program equal to the minimum standards as are provided in this article, shall have the electrical portion of the installation, remodeling, or repair inspected by a state electrical inspector. A qualified state institution of higher education with a building department that meets or exceeds the minimum standards adopted by the board under this article shall process applications for permits and inspections only from the institution and from contractors working for the benefit of the institution and shall conduct inspections only of work performed for the benefit of the institution.

(b) A state electrical inspector shall inspect any new construction, remodeling, or repair subject to this subsection (2) within three working days after the receipt of the application for inspection. Prior to the commencement of any electrical installation, the person making the installation shall apply for an electrical permit and pay the required permit fee.

(c) A manufactured home, mobile home, or movable structure owner shall have the electrical installation for the manufactured home, mobile home, or movable structure inspected prior to obtaining electric service.

(3) A state electrical inspector shall inspect the work performed, and, if such work meets the minimum standards set forth in the national electrical code referred to in section 12-23-104 (2)(a), a certificate of approval shall be issued by the inspector. If such installation is disapproved, written notice thereof together with the reasons for such disapproval shall be given by the inspector to the applicant. If such installation is hazardous to life or property, the inspector disapproving it may order the electrical service thereto discontinued until such installation is rendered safe and shall send a copy of the notice of disapproval and order for discontinuance of service to the supplier of electricity. The applicant may appeal such disapproval to the board and shall be granted a hearing by the board within seven days after notice of appeal is filed with the board. After removal of the cause of such disapproval, the applicant shall make application for reinspection in the same manner as for the original inspection and pay the required reinspection fee.

(4) The person or inspector making an application, certificate of approval, or notice of disapproval shall include the name of the property owner, if known, the location and a brief description of the installation, the name of the electrical contractor and state registration number, the state electrical inspector, and the fee charged for the permit. The notice of disapproval and corrective actions to be taken shall be submitted to the board, and a copy of the notice shall be submitted to the electrical contractor within two working days after the date of inspection. The inspector shall post a copy of the notice at the installation site. The board shall furnish the forms. A copy of each application, certificate, and notice made or issued shall be filed with the board.

(5) Nothing in this section shall be construed to require any utility as defined in this article to collect or enforce collection or in any way handle the payment of any fee connected with such application.

(6) (a) All inspection permits issued by the board shall be valid for a period of twelve months, and the board shall cancel the permit and remove it from its files at the end of the twelve-month period, except in the following circumstances:

(I) If an applicant makes a showing at the time of application for a permit that the electrical work is substantial and is likely to take longer than twelve months, the board may issue a permit to be valid for a period longer than twelve months, but not exceeding three years.

(II) If the applicant notifies the board prior to the expiration of the twelve-month period of extenuating circumstances, as determined by the board, during the twelve-month period, the board may extend the validity of the permit for a period not to exceed six months.

(b) If an inspection is requested by an applicant after a permit has expired or has been cancelled, a new permit must be applied for and granted before an inspection is performed.

(7) Notwithstanding the fact that any incorporated town or city, any county, or any city and county in which a public school is located or is to be located has its own electrical code and inspection authority, any electrical installation in any new construction or remodeling or repair of a public school shall be inspected by a state electrical inspector.

(8) (a) In the event that any incorporated town or city, county, city and county, or qualified state institution of higher education intends to commence or cease performing electrical inspections in its respective jurisdiction or, in the case of a qualified state institution of higher education, for buildings owned, leased, or on its land, such public entity or institution shall

commence or cease the same only as of July 1 of any year, and written notice of such intent must be given to the board on or before October 1 of the preceding calendar year. If such notice is not given and the use of state electrical inspectors is required within such notice requirement, the respective local government or qualified state institution of higher education of the respective jurisdiction or building requiring such inspections shall reimburse the state electrical board for any expenses incurred in performing such inspections, in addition to transmitting the required permit fees.

(b) Repealed.

(9) (a) A person claiming to be aggrieved by the failure of a state electrical inspector to inspect property after proper application or by notice of disapproval without setting forth the reasons for rejecting the inspection may request the program director to review the actions of the state electrical inspector or the manner of the inspection. The request may be made by an authorized representative and shall be in writing.

(b) Upon the filing of such a request, the program director shall cause a copy to be served upon the state electrical inspector complained of, together with an order requiring the inspector to answer the allegations of said request within a time fixed by the program director.

(c) If the request is not granted within ten days after it is filed, it may be treated as rejected. Any person aggrieved by the action of the program director in refusing the review requested or in failing or refusing to grant all or part of the relief requested may file a written complaint and request for a hearing with the board, specifying the grounds relied upon.

(d) Any hearing before the board shall be held pursuant to the provisions of section 24-4-105, C.R.S.

(10) An inspector performing an inspection for the state, an incorporated town or city, a county, a city and county, or a qualified state institution of higher education may verify compliance with this article; however, for each project, inspections performed by the state, an incorporated town or city, a county, a city and county, or a qualified state institution of higher education must include a contemporaneous review to ensure that the specific requirements of sections 12-23-105 and 12-23-110.5 have been met. A contemporaneous review may include a full or partial review of the electricians and apprentices working on a job site being inspected. To ensure that enforcement is consistent, timely, and efficient, each entity, including the state, as described in this subsection (10), shall develop standard procedures to advise its inspectors how to conduct a contemporaneous review. Each entity's standard procedures need not require a contemporaneous review for each and every inspection of a project, but the procedures must preserve an inspector's ability to verify compliance with sections 12-23-105 and 12-23-110.5 at any time. Each entity, including the state, shall post its current procedures regarding contemporaneous reviews in a prominent location on its public website. An inspector may file a complaint with the board for any violation of this article.

Source: L. 65: p. 1227, § 9. **C.R.S. 1963:** § 142-2-17. **L. 71:** p. 1295, § 1. **L. 73:** p. 242, § 27. **L. 75:** (2) amended, p. 1465, § 3, effective July 18; (1) and (2) amended, p. 445, § 4, effective July 25. **L. 77:** (6) added, p. 656, § 1, effective May 18; (2) amended, p. 636, § 3, effective July 1; (7) and (8) added, p. 658, § 1, effective July 1. **L. 78:** (1), (2), and (4) amended and (9) added, pp. 323, 324, §§ 11, 12, effective July 1. **L. 81:** (2) amended, p. 748, § 1, effective April 24. **L. 88:** (2) and (9)(a) to (9)(c) amended, p. 498, § 15, effective July 1. **L. 98:** (3) amended, p. 817, § 10, effective August 5. **L. 2003:** (2) amended, p. 551, § 6, effective March 5.

L. 2010: (1), (2), (4), (9)(a), (9)(b), and (9)(c) amended and (10) added, (HB 10-1225), ch. 198, p. 858, § 6, effective July 1. **L. 2014:** (1)(a), (2)(a), (8), and (10) amended, (HB 14-1387), ch. 378, p. 1825, § 26, effective June 6. **L. 2015:** (1)(a), (2)(a), and (8) amended, (HB 15-1295), ch. 118, p. 357, § 5, effective April 24. **L. 2016:** (10) amended, (HB 16-1073), ch. 100, p. 289, § 2, effective April 15.

Editor's note: (1) Amendments to subsection (2) by House Bill 75-1508 and Senate Bill 75-305 were harmonized.

(2) Subsection (8)(b)(II) provided for the repeal of subsection (8)(b), effective July 1, 2016. (See L. 2015, p. 357.)

Cross references: For the legislative declaration in HB 14-1387, see section 1 of chapter 378, Session Laws of Colorado 2014.

12-23-117. Permit fees. (1) As established pursuant to section 24-34-105, C.R.S., inspection fees shall be charged by the board and shall be set and categorized based upon the actual expense of inspecting each type of electrical installation.

(2) Because electrical inspections are matters of statewide concern, the maximum fees, established annually, chargeable for electrical inspections by any city, town, county, city and county, or qualified state institution of higher education shall not be more than fifteen percent above those provided for in this section, and no such local government or qualified state institution of higher education shall impose or collect any other fee or charge related to electrical inspections or permits. A qualified state institution of higher education may choose not to require fees as part of the permitting process. A documented permitting and inspection system must be instituted by each qualified state institution of higher education as a tracking system that is available to the board for the purpose of investigating any alleged violation of this article. The permitting and inspection system must include information specifying the project, the name of the inspector, the date of the inspection, the job site address, the scope of the project, the type of the inspection, the result of the inspection, the reason and applicable code sections for partially passed or failed inspections, and the names of the contractors on the project who are subject to inspection.

(3) If an application is not filed in advance of the commencement of an installation, the inspection fee shall be twice the amount of the inspection fee set by the board pursuant to subsection (1) of this section.

Source: L. 65: p. 1228, § 9. **C.R.S. 1963:** § 142-2-19. **L. 71:** p. 1298, § 1. **L. 73:** pp. 242, 1506, §§ 28, 1. **L. 75:** (1)(a) and (1)(b) amended, p. 442, § 3, effective April 15; (1)(b) and (1)(c) amended, p. 1465, § 5, effective July 18; (1)(b) amended, p. 446, § 4, effective July 25. **L. 77:** (1)(a) and (1)(b) amended, p. 636, § 4, effective July 1; (1)(b) amended, p. 652, § 2, effective July 1; (1)(d) amended, p. 658, § 2, effective July 1. **L. 79:** Entire section R&RE, p. 1648, § 79, effective July 19. **L. 81:** (2) amended, p. 747, § 2, effective May 18. **L. 83:** Entire section R&RE, p. 525, § 2, effective May 4. **L. 2010:** (1) and (3) amended, (HB 10-1225), ch. 198, p. 863, § 12, effective July 1. **L. 2014:** (2) amended, (HB 14-1387), ch. 378, p. 1826, § 27, effective June 6.

Cross references: For the legislative declaration in HB 14-1387, see section 1 of chapter 378, Session Laws of Colorado 2014.

12-23-118. Violations - citations - settlement agreements - hearings - fines. (1) The board may deny, suspend, revoke, refuse to renew, or issue a letter of admonition in regard to any license or registration issued or applied for under the provisions of this article, may place a licensee or registrant on probation, or may issue a citation to a licensee, registrant, or applicant for licensure for any of the following reasons:

(a) Violation of or aiding or abetting in the violation of any of the provisions of this article;

(b) Violation of the rules and regulations or orders promulgated by the board in conformity with the provisions of this article or aiding or abetting in such violation;

(c) Failure or refusal to remove within a reasonable time the cause of the disapproval of any electrical installation as reported on the notice of disapproval, but such reasonable time shall include time for appeal to and a hearing before the board;

(d) Failure or refusal to maintain or adhere to the minimum standards set forth in rules and regulations adopted by the board pursuant to section 12-23-104 (2)(a);

(e) Any cause for which the issuance of the license could have been refused had it then existed and been known to the board;

(f) Commitment of one or more acts or omissions that do not meet generally accepted standards of electrical practice;

(g) Conviction of or acceptance of a plea of guilty or nolo contendere by a court to a felony. In considering the disciplinary action, the board shall be governed by the provisions of section 24-5-101, C.R.S.

(h) Advertising by any licensee or registrant which is false or misleading;

(i) Deception, misrepresentation, or fraud in obtaining or attempting to obtain a license;

(j) Failure of a master electrician who is charged with supervising all electrical work performed by a contractor pursuant to section 12-23-106 (5)(c) to adequately supervise such work or failure of any licensee to adequately supervise an apprentice who is working at the trade pursuant to section 12-23-110.5;

(k) Employment of any person required by this article to be licensed or registered or to obtain a permit who has not obtained such license, registration, or permit;

(l) Disciplinary action against an electrician's license or registration in another jurisdiction. Evidence of such disciplinary action shall be prima facie evidence for denial of licensure or registration or other disciplinary action if the violation would be grounds for such disciplinary action in this state.

(m) Providing false information to the board during an investigation with the intent to deceive or mislead the board;

(n) Practicing as a residential wireman, journeyman, master, contractor, or apprentice during a period when the licensee's license or the registrant's registration has been suspended or revoked;

(o) Selling or fraudulently obtaining or furnishing a license to practice as a residential wireman, journeyman, or master or aiding or abetting therein;

(p) In conjunction with any construction or building project requiring the services of any person regulated by this article, willfully disregarding or violating:

(I) Any building or construction law of this state or any of its political subdivisions;

(II) Any safety or labor law;

(III) Any health law;

(IV) Any workers' compensation insurance law;

(V) Any state or federal law governing withholdings from employee income, including but not limited to income taxes, unemployment taxes, or social security taxes; or

(VI) Any reporting, notification, or filing law of this state or the federal government.

(2) and (3) (Deleted by amendment, L. 94, p. 36, § 3, effective July 1, 1994.)

(4) (a) If, pursuant to an inspection or investigation by a state electrical inspector, the board concludes that any licensee, registrant, or applicant for licensure has violated any provision of subsection (1) of this section and that disciplinary action is appropriate, the program director or the program director's designee may issue a citation in accordance with subsection (6) of this section to such licensee, registrant, or applicant.

(b) (I) The licensee, registrant, or applicant to whom a citation has been issued may make a request to negotiate a stipulated settlement agreement with the program director or the program director's designee, if such request is made in writing within ten working days after issuance of the citation that is the subject of the settlement agreement.

(II) All stipulated settlement agreements shall be conducted pursuant to rules adopted by the board pursuant to section 12-23-104 (2)(a). The board shall adopt a rule to allow any licensee, registrant, or applicant unable, in good faith, to settle with the program director to request an administrative hearing pursuant to paragraph (c) of this subsection (4).

(III) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(c) (I) The licensee, registrant, or applicant to whom a citation has been issued may request an administrative hearing to determine the propriety of such citation if such request is made in writing within ten working days after issuance of the citation that is the subject of the hearing or within a reasonable period after negotiations for a stipulated settlement agreement pursuant to paragraph (b) of this subsection (4) have been deemed futile by the program director.

(II) For good cause the board may extend the period of time in which a person who has been cited may request a hearing.

(III) All hearings conducted pursuant to subparagraph (I) of this paragraph (c) shall be conducted in compliance with section 24-4-105, C.R.S.

(d) Any action taken by the board pursuant to this section shall be deemed final after the period of time extended to the licensee, registrant, or applicant to contest such action pursuant to this subsection (4) has expired.

(5) (a) The board shall adopt a schedule of fines pursuant to paragraph (b) of this subsection (5) as penalties for violating subsection (1) of this section. Such fines shall be assessed in conjunction with the issuance of a citation, pursuant to a stipulated settlement agreement, or following an administrative hearing. Such schedule shall be adopted by rule in accordance with section 12-23-104 (2)(a).

(b) In developing the schedule of fines, the board shall:

(I) Provide that a first offense may carry a fine of up to one thousand dollars;

(II) Provide that a second offense may carry a fine of up to two thousand dollars;

(III) Provide that any subsequent offense may carry a fine of up to two thousand dollars for each day that subsection (1) of this section is violated;

(IV) Consider how the violation impacts the public, including any health and safety considerations;

(V) Consider whether to provide for a range of fines for any particular violation or type of violation; and

(VI) Provide uniformity in the fine schedule.

(c) Repealed.

(6) (a) (I) Any citation issued pursuant to this section shall be in writing, shall adequately describe the nature of the violation, and shall reference the statutory or regulatory provision or order alleged to have been violated.

(II) Any citation issued pursuant to this section shall clearly state whether a fine is imposed, the amount of such fine, and that payment for such fine must be remitted within the time specified in such citation if such citation is not contested pursuant to subsection (4) of this section.

(III) Any citation issued pursuant to this section shall clearly set forth how such citation may be contested pursuant to subsection (4) of this section, including any time limitations.

(b) A citation or copy of a citation issued pursuant to this section may be served by certified mail or in person by a state electrical inspector or the program director's designee upon a person or the person's agent in accordance with rule 4 of the Colorado rules of civil procedure.

(c) If the recipient fails to give written notice to the board that the recipient intends to contest such citation or to negotiate a stipulated settlement agreement within ten working days after service of a citation by the board, such citation shall be deemed a final order of the board.

(d) (I) The board may suspend or revoke a license or registration or may refuse to renew any license or registration issued or may place on probation any licensee or registrant if the licensee or registrant fails to comply with the requirements set forth in a citation deemed final pursuant to paragraph (c) of this subsection (6).

(II) Upon completing an investigation, the board shall make one of the following findings:

(A) The complaint is without merit and no further action need be taken.

(B) There is no reasonable cause to warrant further action.

(C) The investigation discloses an instance of conduct that does not warrant formal action and should be dismissed, but the investigation also discloses indications of possible errant conduct that could lead to serious consequences if not corrected. If this finding is made, the board shall send a confidential letter of concern to the licensee or registrant.

(D) The investigation discloses an instance of conduct that does not warrant formal action but should not be dismissed as being without merit. If this finding is made, the board may send a letter of admonition to the licensee or registrant by certified mail.

(E) The investigation discloses facts that warrant further proceedings by formal complaint. If this finding is made, the board shall refer the complaint to the attorney general for preparation and filing of a formal complaint.

(III) (A) When a letter of admonition is sent by certified mail to a licensee or registrant, the board shall include in the letter a notice that the licensee or registrant has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(B) If the request for adjudication is timely made, the letter of admonition is vacated and the board shall proceed by means of formal disciplinary proceedings.

(IV) (Deleted by amendment, L. 2010, (HB 10-1225), ch. 198, p. 866, § 18, effective July 1, 2010.)

(V) The board shall conduct all proceedings pursuant to this subsection (6) expeditiously and informally so that no licensee or registrant is subjected to unfair and unjust charges and that no complainant is deprived of the right to a timely, fair, and proper investigation of a complaint.

(e) The failure of an applicant for licensure to comply with a citation deemed final pursuant to paragraph (c) of this subsection (6) is grounds for denial of a license.

(f) No citation may be issued under this section unless the citation is issued within the six-month period following the occurrence of the violation.

(7) (a) Any fine collected pursuant to this section shall be transmitted to the state treasurer, who shall credit one-half of the amount of any such fine to the general fund, and one-half of the amount of any such fine shall be shared with the appropriate city, town, county, or city and county, which amounts shall be transmitted to any such entity on an annual basis.

(b) Any fine assessed in a citation or an administrative hearing or any amount due pursuant to a stipulated settlement agreement that is not paid may be collected by the program director through a collection agency or in an action in the district court of the county in which the person against whom the fine is imposed resides or in the county in which the office of the program director is located.

(c) The attorney general shall provide legal assistance and advice to the program director in any action to collect an unpaid fine.

(d) In any action brought to enforce this subsection (7), reasonable attorney fees and costs shall be awarded.

(8) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a 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 license, the board may issue an order to cease and desist such activity. 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 unlicensed practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (8), the respondent may request a hearing on the question of whether acts or practices in violation of this article have occurred. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(9) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this article, then, in addition to any specific powers granted pursuant to this article, the board may issue to such person an order to show cause as to why the board should not issue a final order directing such person to cease and desist from the unlawful act or unlicensed practice.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (9) shall be promptly notified by the board of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the board for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against

whom such order is issued. Personal service or mailing of an order or document pursuant to this subsection (9) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the board as provided in paragraph (b) of this subsection (9). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (9) does not appear at the hearing, the board may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (9) and such other evidence related to the matter as the board deems appropriate. The board shall issue the order within ten days after the board's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

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

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

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

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

(12) A person aggrieved by the final cease-and-desist order may seek judicial review of the board's determination or of the board's final order in a court of competent jurisdiction.

Source: L. 65: p. 1229, § 9. **C.R.S. 1963:** § 142-2-20. **L. 71:** p. 1293, § 11. **L. 73:** p. 1504, § 3. **L. 74:** (1)(h) repealed, p. 439, § 2, effective January 24. **L. 78:** IP(1), (1)(e), and (1)(g) amended, p. 325, § 13, effective July 1. **L. 88:** Entire section R&RE, p. 499, § 16, effective July 1. **L. 91:** (1)(i) amended, p. 1478, § 3, effective July 1. **L. 94:** Entire section amended, p. 36, § 3, effective July 1. **L. 2001:** (1)(m) added, p. 277, § 9, effective March 30. **L. 2002:** (5)(c) amended, p. 1475, § 59, effective October 1. **L. 2004:** IP(1) and (6)(d) amended and (4)(b)(III)

added, p. 1809, §§ 35, 34, effective August 4. **L. 2006:** (6)(d)(V) and (8) to (12) added, p. 780, §§ 14, 15, effective July 1; (1)(n) to (1)(p) added with relocated provisions and (5)(c) repealed, pp. 83, 84, §§ 12, 14, effective August 7. **L. 2010:** (1)(l), (4)(a), (4)(b)(I), (4)(b)(II), (4)(c)(I), (6)(b), (6)(d)(II) to (6)(d)(V), (7)(b), and (7)(c) amended, (HB 10-1225), ch. 198, p. 866, § 18, effective July 1.

Editor's note: Subsections (1)(n), (1)(o), and (1)(p) are similar to former § 12-23-119 (1)(b), (1)(c), and (1)(d) as they existed prior to 2006.

Cross references: (1) For an alternative disciplinary action for persons licensed or registered pursuant to this article, see § 24-34-106.

(2) For the legislative declaration contained in the 2002 act amending subsection (5)(c), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-23-118.1. Reapplication after revocation of licensure. No person whose license has been revoked shall be allowed to reapply for licensure earlier than two years from the effective date of the revocation.

Source: L. 88: Entire section added, p. 501, § 17, effective July 1.

12-23-118.2. Reconsideration and review of board action. (Repealed)

Source: L. 88: Entire section added, p. 501, § 17, effective July 1. **L. 94:** Entire section repealed, p. 40, § 4, effective July 1.

12-23-118.3. Immunity. Any member of the board, any member of the board's staff, any person acting as a witness or consultant to the board, 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 liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as board member, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this article shall be immune from any civil or criminal liability that may result from such participation.

Source: L. 88: Entire section added, p. 501, § 17, effective July 1. **L. 2004:** Entire section amended, p. 1809, § 36, effective August 4.

12-23-119. Unauthorized practice - penalties.

(1) Repealed.

(2) Any person who practices or offers or attempts to practice the profession of an electrician 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 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: L. 59: p. 421, § 12. **CRS 53:** § 107-2-12. **C.R.S. 1963:** § 142-2-12. **L. 65:** p. 1226, § 7. **L. 75:** Entire section amended, p. 446, § 5, effective July 25. **L. 85:** Entire section amended, p. 406, § 3, effective July 1. **L. 88:** Entire section R&RE, p. 501, § 18, effective July 1. **L. 94:** Entire section amended, p. 40, § 5, effective July 1. **L. 2002:** (2) amended, p. 1475, § 60, effective October 1. **L. 2006:** (1) repealed and (2) amended, p. 84, §§ 14, 15, 13, effective August 7.

Editor's note: Subsections (1)(b), (1)(c), and (1)(d) were relocated to § 12-23-118 (1)(n), (1)(o), and (1)(p) in 2006.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-23-120. Judicial review. The court of appeals shall have initial jurisdiction to review all final actions and orders of the board that are subject to judicial review. Such proceedings shall be conducted in accordance with section 24-4-106 (11), C.R.S.

Source: L. 59: p. 421, § 13. **CRS 53:** § 107-2-13. **C.R.S. 1963:** § 142-2-13. **L. 88:** Entire section R&RE, p. 501, § 19, effective July 1.

ARTICLE 24

Employment Agencies

12-24-101 to 12-24-214. (Repealed)

Source: L. 83: Entire article repealed, p. 701, § 5, effective June 10.

Editor's note: This article was numbered as articles 9 and 10 of chapter 80, C.R.S. 1963. For amendments to this article prior to its repeal in 1983, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 25

Engineers, Surveyors, and Architects

Editor's note: This article was numbered as articles 1 and 2 of chapter 51, C.R.S. 1963. This article was repealed and reenacted in 1981 and was subsequently repealed and reenacted in 1985, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1985, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of

C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers prior to 1985 are shown in editor's notes following those sections that were relocated.

Cross references: For public policy concerning accurate land boundaries and public records relating thereto, see § 38-53-101; for surveys and boundaries, see articles 50 to 53 of title 38; for provisions regarding geology and the definition of "professional geologist", see part 2 of article 41 of title 23; for the responsibilities of engineers concerning the obtaining of underground facilities information prior to excavation, see § 9-1.5-103; for the statute of limitations for actions against engineers and architects, see § 13-80-104; for the statute of limitations for actions against land surveyors, see § 13-80-105.

PART 1

ENGINEERS

12-25-101. General provisions. In order to safeguard life, health, and property and to promote the public welfare, the practice of engineering is declared to be subject to regulation in the public interest. It shall be deemed that the right to engage in the practice of engineering is a privilege granted by the state through the state board of licensure for architects, professional engineers, and professional land surveyors, created in section 12-25-106; that the profession involves personal skill and presupposes a period of intensive preparation, internship, due examination, and admission; and that a professional engineer's license is solely such professional engineer's own and is nontransferable.

Source: L. 85: Entire article R&RE, p. 461, § 1, effective July 1. **L. 94:** Entire section amended, p. 1481, § 1, effective July 1. **L. 2004:** Entire section amended, p. 1292, § 7, effective May 28. **L. 2006:** Entire section amended, p. 741, § 4, effective July 1.

Editor's note: This section is similar to former § 12-25-101 as it existed prior to 1985.

12-25-102. Definitions. As used in this part 1, unless the context otherwise requires:

(1) "Board" means the state board of licensure for architects, professional engineers, and professional land surveyors, created in section 12-25-106.

(2) "Certificate" means the media issued by the board to evidence licensing of a professional engineer.

(3) "Engineer" means a person who, by reason of intensive preparation in the use of mathematics, chemistry, physics, and engineering sciences, including the principles and methods of engineering analysis and design, is qualified to perform engineering work as defined in this part 1.

(4) "Engineering" means analysis or design work requiring intensive preparation and experience in the use of mathematics, chemistry, and physics and the engineering sciences.

(5) "Engineering experience", in addition to the practice of engineering as defined in subsection (10) of this section, may include:

(a) Up to four years of undergraduate engineering study, as approved by the board, in mathematics, basic science, engineering science, engineering design, and engineering practice;

(b) Up to two years of graduate engineering study as approved by the board if the study results in the award of an advanced degree;

(c) Teaching at the instructor level, or at a higher level, of courses in engineering science, design, or engineering practice at a college or university offering an engineering curriculum of four or more years which is approved by the board or at a college offering courses transferable to a board-approved college. This experience must result from a full-time position in teaching or teaching and research.

(d) Engineering research, including that performed by a teacher at the instructor level or at a higher level. The research done by the teacher must be part of his assigned duties in a full-time position in teaching and research.

(6) "Engineer-intern" means a person who has complied with the requirements of sections 12-25-111 and 12-25-112 and is duly enrolled as an "engineer-intern".

(7) (Deleted by amendment, L. 2004, p. 1293, § 8, effective May 28, 2004.)

(8) "License" means the formal legal permission to practice engineering granted by the board.

(9) Repealed.

(10) (a) "Practice of engineering" means the performance for others of any professional service or creative work requiring engineering education, training, and experience and the application of special knowledge of the mathematical and engineering sciences to such professional services or creative work, including consultation, investigation, evaluation, planning, design, and the observation of construction to evaluate compliance with plans and specifications in connection with the utilization of the forces, energies, and materials of nature in the development, production, and functioning of engineering processes, apparatus, machines, equipment, facilities, structures, buildings, works, or utilities, or any combination or aggregations thereof, employed in or devoted to public or private enterprise or uses.

(b) An individual practices or offers to practice "professional engineering" within the meaning and intent of this section if the individual, by oral claim, sign, advertisement, letterhead, card, or in any other way, represents himself or herself to be a professional engineer, through the use of any other means implies that the individual is licensed under this part 1, or performs engineering services.

(11) "Professional engineer" means an engineer duly licensed pursuant to this part 1.

(12) and (13) (Deleted by amendment, L. 2004, p. 1293, § 8, effective May 28, 2004.)

(14) "Responsible charge" means personal responsibility for the control and direction of engineering work within a professional engineer's scope of competence. Experience may only be classified as "responsible charge" if the engineer is licensed pursuant to this part 1, unless the work involves an activity exempted pursuant to section 12-25-103.

Source: L. 85: Entire article R&RE, p. 461, § 1, effective July 1. **L. 88:** (9) repealed, p. 519, § 34, effective July 1. **L. 94:** (1), (2), (6), and (10) to (14) amended, p. 1481, § 2, effective July 1. **L. 2004:** (1), (2), (7), and (10) to (14) amended, p. 1293, § 8, effective May 28. **L. 2006:** (1) amended, p. 741, § 5, effective July 1. **L. 2013:** (10)(b) amended, (SB 13-161), ch. 356, p. 2079, § 3, effective July 1.

Editor's note: This section is similar to former § 12-25-102 as it existed prior to 1985.

12-25-103. Exemptions. (1) This part 1 does not affect any of the following:

(a) Individuals who normally operate and maintain machinery or equipment;

(b) Individuals who perform engineering services for themselves;

(c) Partnerships, professional associations, joint stock companies, limited liability companies, or corporations, or the employees of any such organizations, who perform engineering services for themselves or their affiliates;

(d) Individuals who perform engineering services under the responsible charge of a professional engineer;

(e) Work of a strictly agricultural nature which is not required to be of public record;

(f) Professional land surveying as defined in section 12-25-202 (6);

(g) Individuals who are employed by and perform engineering services solely for a county, city and county, or municipality;

(h) (Deleted by amendment, L. 94, p. 1482, § 3, effective July 1, 1994.)

(i) Individuals who are employed by and perform engineering services solely for the federal government;

(j) Individuals who practice architecture as defined in section 12-25-302 (6);

(k) Utilities or their employees or contractors when performing services for another utility during times of natural disasters or emergency situations; or

(l) Individuals who practice landscape architecture as defined in section 12-45-103 (8).

Source: L. 85: Entire article R&RE, p. 463, § 1, effective July 1. **L. 88:** (1)(g) and (1)(h) amended and (1)(i) added, p. 503, § 1, effective July 1. **L. 94:** Entire section amended, p. 1482, § 3, effective July 1. **L. 2004:** (1)(d) amended, p. 1293, § 9, effective May 28. **L. 2006:** (1)(j) amended, p. 761, § 18, effective July 1. **L. 2013:** IP(1), (1)(j), and (1)(k) amended and (1)(l) added, (SB 13-161), ch. 356, p. 2079, § 4, effective July 1.

Editor's note: This section is similar to former § 12-25-115 as it existed prior to 1985.

12-25-104. Forms of organizations permitted to practice. A partnership, corporation, limited liability company, joint stock association, or other entity is not eligible for licensure under this part 1. An entity may practice or offer to practice engineering in Colorado only if the individual in responsible charge of the entity's engineering activities performed in Colorado is a professional engineer licensed in Colorado. All engineering documents, plats, and reports issued by or for the entity in connection with engineering work performed in this state must bear the seal and signature of the Colorado-licensed professional engineer who is in responsible charge of and directly responsible for the engineering work.

Source: L. 85: Entire article R&RE, p. 464, § 1, effective July 1. **L. 94:** Entire section amended, p. 1483, § 4, effective July 1. **L. 95:** (1)(a) amended, p. 811, § 29, effective May 24. **L. 2004:** IP(1), (1)(b), and (1)(c) amended, p. 1294, § 10, effective May 28. **L. 2013:** Entire section amended, (SB 13-161), ch. 356, p. 2079, § 5, effective July 1.

Editor's note: This section is similar to former § 12-25-103 as it existed prior to 1985.

12-25-105. Unlawful practice - penalties - enforcement. (1) It is unlawful for any individual to hold himself or herself out to the public as a professional engineer unless such individual has complied with the provisions contained in this part 1.

(2) It is unlawful for any individual, partnership, professional association, joint stock company, limited liability company, or corporation to practice, or offer to practice, engineering in this state unless the individual in responsible charge has complied with the provisions of this part 1.

(3) Unless licensed or exempted pursuant to this part 1, it is unlawful for any individual, partnership, professional association, joint stock company, limited liability company, or corporation to use any of the following titles: Civil engineer, structural engineer, chemical engineer, petroleum engineer, mining engineer, mechanical engineer, or electrical engineer. In addition, unless licensed pursuant to this part 1, it is unlawful for any individual, partnership, professional association, joint stock company, limited liability company, or corporation to use the words "engineer", "engineered", or "engineering" in any offer to the public to perform the services set forth in section 12-25-102 (10). Nothing in this subsection (3) shall prohibit the general use of the words "engineer", "engineered", and "engineering" so long as such words are not being used in an offer to the public to perform the services set forth in section 12-25-102 (10).

(4) Repealed.

(5) It is unlawful for any individual to use in any manner a certificate or certificate number which has not been issued to such individual by the board.

(6) The practice of professional engineering in violation of any of the provisions of this part 1 shall be either:

(a) Restrained by injunction in an action brought by the attorney general or by the district attorney of the proper district in the county in which the violation occurs; or

(b) (I) Ceased by order of the board pursuant to section 12-25-109 (8.2) to (8.9).

(II) (Deleted by amendment, L. 2006, p. 782, § 16, effective July 1, 2006.)

(7) Any person who practices or offers or attempts to practice professional engineering without an active license issued under this part 1 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 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(8) Repealed.

(9) After finding that an individual, partnership, professional association, joint stock company, limited liability company, or corporation has unlawfully engaged in the practice of engineering, the board may jointly and severally assess a fine against such unlawfully engaged party in an amount not less than fifty dollars and not more than five thousand dollars for each violation proven by the board. Any moneys collected as an administrative fine pursuant to this subsection (9) shall be transmitted to the state treasurer, who shall credit such moneys to the general fund.

(10) An individual practicing professional engineering who is not licensed or exempt shall not collect compensation of any kind for such practice, and, if compensation has been paid, the compensation shall be refunded in full.

Source: L. 85: Entire article R&RE, p. 464, § 1, effective July 1. **L. 88:** (8) repealed, p. 519, § 34, effective July 1. **L. 94:** Entire section amended, p. 1484, § 5, effective July 1. **L. 2002:** (7) amended, p. 1475, § 61, effective October 1. **L. 2004:** (4), IP(6), and (9) amended and (10) added, pp. 1307, 1303, §§ 40, 34, effective May 28; (9) amended, p. 1815, § 47, effective August 4. **L. 2006:** (6)(b) amended, p. 782, § 16, effective July 1; (4) repealed and IP(6) and (7) amended, pp. 85, 84, §§ 18, 16, effective August 7.

Editor's note: (1) This section is similar to former §§ 12-25-104 and 12-25-120 as they existed prior to 1985.

(2) Subsection (4) was relocated to § 12-25-108 (1)(n) in 2006.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (7), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-25-106. State board of licensure - subject to termination - repeal of article. (1) A state board of licensure for architects, professional engineers, and professional land surveyors is hereby created, the duty of which shall be to administer the provisions of this article. Duties of the board shall include those provided in sections 12-25-107, 12-25-207, and 12-25-307.

(2) (a) The provisions of section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state, unless extended as provided in that section, are applicable to the board created by this section.

(b) This article is repealed, effective September 1, 2024.

(3) The board shall consist of thirteen members. Four members shall be professional engineers, with no more than two of the four engaged in the same discipline of engineering service or practice; three members shall be practicing professional land surveyors; three members shall be practicing licensed architects; and three members shall be citizens of the United States and residents of this state for at least one year who have not practiced architecture, engineering, or land surveying.

(4) Each professional engineer member of the board shall be a citizen of the United States and a resident of this state for at least one year and shall have been licensed as a professional engineer and practicing as such for at least five years. Professional land surveyor members of the board shall have the qualifications outlined in section 12-25-206.

(5) Appointments to the board shall be made by the governor and shall be made to provide for staggering of terms of members so that not more than three members' terms expire each year. Thereafter appointments shall be for terms of four years. Each board member shall hold office until the expiration of the term for which such member is appointed or until a successor has been duly appointed and qualified. Appointees shall be limited to two full terms. The governor may remove any member of the board for misconduct, incompetence, or neglect of duty.

(6) Each appointee shall receive a certificate of his appointment from the governor.

(7) The director of the division of professions and occupations shall appoint a program director for the board and such other personnel as are deemed necessary for the board to perform its statutory duties, pursuant to section 13 of article XII of the state constitution.

Source: L. 85: Entire article R&RE, p. 465, § 1, effective July 1. **L. 88:** (3) to (7) amended, p. 503, § 2, effective July 1. **L. 91:** (2) amended, p. 681, § 21, effective April 20. **L. 94:** (2)(b) and (5) amended, p. 1485, § 6, effective July 1. **L. 2004:** (1), (2)(a), (2)(b), (3), (4), and (7) amended, pp. 1292, 1291, 1294, 1307, §§ 6, 1, 4, 11, 41, effective May 28. **L. 2006:** (1) and (3) amended, p. 741, § 6, effective July 1. **L. 2013:** (2)(b) amended, (SB 13-161), ch. 356, p. 2078, § 1, effective July 1.

Editor's note: This section is similar to former §§ 12-25-105, 12-25-107, and 12-25-108 as they existed prior to 1985.

Cross references: For additional duties of the board in relation to land surveying, see § 12-25-207.

12-25-107. Powers and duties of the board. (1) In order to carry into effect the provisions of this part 1, the board shall:

(a) Adopt and promulgate, under the provisions of section 24-4-103, C.R.S., such rules and regulations as it may deem necessary or proper to carry out the provisions of this article;

(b) Adopt rules of professional conduct for professional engineers under the provisions of section 24-4-103, C.R.S., which rules shall be published. Such publication shall constitute due notice to all professional engineers.

(c) Keep a record of its proceedings and of all applications. The application record for each applicant shall include:

(I) Name, age, and residence of the applicant;

(II) Date of application;

(III) Place of business of the applicant;

(IV) Education of the applicant;

(V) Engineering experience of the applicant;

(VI) Date and type of action taken by the board;

(VII) Such other information as may be deemed necessary by the board;

(d) (Deleted by amendment, L. 2004, p. 1294, § 12, effective May 28, 2004.)

(e) (I) (Deleted by amendment, L. 2003, p. 1305, § 1, effective April 22, 2003.)

(II) Make available through printed or electronic means the following:

(A) (Deleted by amendment, L. 2004, p. 1294, § 12, effective May 28, 2004.)

(B) Statutes administered by the board;

(C) A list of the names and addresses, of record, of all professional engineers;

(D) (Deleted by amendment, L. 2003, p. 1305, § 1, effective April 22, 2003.)

(E) Rules of the board;

(F) Such other pertinent information as the board deems necessary;

(G) The rules of professional conduct adopted pursuant to paragraph (b) of this subsection (1);

(f) Provide information to the public regarding the requirements for compliance with this part 1;

(g) Provide for examinations in the "fundamentals of engineering" and the "principles and practice of engineering". Examinations shall be given as often as practicable. The board

shall ensure that the passing score for any examination is set to measure the level of minimum competency. An applicant who fails to pass the prescribed examination may be reexamined.

(h) Adopt and have an official seal;

(i) Hold at least six regular meetings each year. Special meetings shall be held at such times as the bylaws of the board may provide. The board shall elect annually a chair, a vice-chair, and a secretary. A quorum of the board shall consist of not less than seven members.

(j) Participate in the affairs of the national council of examiners for engineering and surveying and send a minimum of one delegate to the national meeting annually.

(2) The division of professions and occupations in the department of regulatory agencies may employ at least one investigator qualified to investigate complaints relative to the provisions of this part 1.

Source: L. 85: Entire article R&RE, p. 466, § 1, effective July 1. **L. 88:** (1)(g) and (1)(i) amended, p. 504, § 3, effective July 1. **L. 94:** (1)(e) amended, p. 1485, § 7, effective July 1. **L. 2003:** (1)(b) and (1)(e) amended, p. 1305, § 1, effective April 22. **L. 2004:** (1)(b), (1)(d), (1)(e)(II)(A), (1)(g), and (2) amended, pp. 1294, 1308, §§ 12, 44, effective May 28. **L. 2013:** (1)(g), (1)(i), and (1)(j) amended, (SB 13-161), ch. 356, p. 2080, § 6, effective July 1.

Editor's note: This section is similar to former § 12-25-106 as it existed prior to 1985.

Cross references: For additional powers and duties of the board in relation to land surveying, see § 12-25-207.

12-25-108. Disciplinary actions - grounds for discipline. (1) The board has the power to deny, suspend, revoke, or refuse to renew the license and certificate of licensure or enrollment of, limit the scope of practice of, or place on probation, any professional engineer or engineer-intern for:

(a) Engaging in fraud, misrepresentation, or deceit in obtaining or attempting to obtain a license or enrollment;

(b) Failing to meet the generally accepted standards of engineering practice whether through act or omission;

(c) A felony that is related to the ability to practice engineering; except that the board shall be governed by the provisions of section 24-5-101, C.R.S., in considering such conviction or plea. A certified copy of the judgment of a court of competent jurisdiction of such conviction or plea shall be presumptive evidence of such conviction or plea for the purposes of any hearing under this part 1. A plea of nolo contendere, or its equivalent, accepted by the court shall be considered as a conviction.

(d) (Deleted by amendment, L. 88, p. 504, § 4, effective July 1, 1988.)

(e) Violating, or aiding or abetting in the violation of, the provisions of this part 1, any rule or regulation adopted by the board in conformance with the provisions of this part 1, or any order of the board issued in conformance with the provisions of this part 1;

(f) Using false, deceptive, or misleading advertising;

(g) Performing services beyond one's competency, training, or education;

(h) Failing to report to the board any professional engineer known to have violated any provision of this part 1 or any board order or rule;

(i) Habitual or excessive use or abuse of alcohol, controlled substances, or any habit-forming drug;

(j) Using any schedule I controlled substance, as set forth in section 18-18-203, C.R.S.;

(k) Failing to report to the board any malpractice claim against such professional engineer or any partnership, corporation, limited liability company, or joint stock association of which such professional engineer is a member, that is settled or in which judgment is rendered, within sixty days of the effective date of such settlement or judgment, if such claim concerned engineering services performed or supervised by such engineer;

(l) Failing to pay any fine assessed pursuant to this article;

(m) Violating any law or regulation governing the practice of engineering in another state or jurisdiction. A plea of nolo contendere or its equivalent accepted by the board of another state or jurisdiction may be considered to be the same as a finding of guilty for purposes of any hearing under this part 1.

(n) Using in any manner an expired, suspended, or revoked license, certificate, or seal, practicing or offering to practice when not qualified, or falsely claiming that the individual is licensed.

(2) (a) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the board, does not warrant formal action by the board but that should not be dismissed as being without merit, the board may issue and send a letter of admonition by first-class mail to the professional engineer or engineer-intern at his or her last-known address.

(b) When the board sends a letter of admonition to a professional engineer or engineer-intern, the board shall advise the professional engineer or engineer-intern that he or she has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(c) If the request for adjudication is timely made, the letter of admonition shall be deemed vacated and the matter shall be processed by means of formal disciplinary proceedings.

(3) (Deleted by amendment, L. 94, p. 1486, § 8, effective July 1, 1994.)

(4) (a) In addition to any other penalty that may be imposed pursuant to this article, the board may fine any professional engineer violating any provision of this article or any rule promulgated pursuant to this article not less than fifty dollars and not more than five thousand dollars for each violation proven by the board.

(b) All fines collected pursuant to this subsection (4) shall be credited to the general fund.

(5) The board may issue a letter of concern to a professional engineer or an engineer-intern based on any of the grounds specified in subsection (1) of this section without conducting a hearing as specified in section 12-25-109 (4) when an instance of potentially unsatisfactory conduct comes to the board's attention but, in the board's judgment, does not warrant formal action by the board. Letters of concern shall be confidential and shall not be disclosed to members of the public or in any court action unless the board is a party.

Source: L. 85: Entire article R&RE, L. 85 p. 467, § 1, effective July 1. **L. 88:** Entire section amended, p. 504, § 4, effective July 1. **L. 92:** (1)(j) amended, p. 390, § 12, effective July 1. **L. 94:** Entire section amended, p. 1486, § 8, effective July 1. **L. 2004:** IP(1), (1)(a), (1)(c), (1)(h), (1)(k), (2), and (4)(a) amended and (5) added, pp. 1308, 1306, 1304, §§ 45, 38, 35,

effective May 28; (2) amended, p. 1815, § 48, effective August 4. **L. 2006:** (1)(n) added with relocated provision, p. 85, § 17, effective August 7. **L. 2013:** IP(1), (1)(a), (1)(i), (2)(a), (2)(b), and (4)(a) amended, (SB 13-161), ch. 356, p. 2080, § 7, effective July 1.

Editor's note: (1) This section is similar to former § 12-25-106 as it existed prior to 1985.

(2) Subsection (1)(n) is similar to former § 12-25-105 (4) as it existed prior to 2006.

Cross references: For an alternative disciplinary action for persons licensed pursuant to this part 1, see § 24-34-106.

12-25-109. Disciplinary proceedings - injunctive relief procedure. (1) The board upon its own motion may, and upon the receipt of a signed complaint in writing from any person shall, investigate the activities of any professional engineer, engineer-intern, or other person who presents grounds for disciplinary action as specified in this part 1.

(2) Repealed.

(3) All charges, unless dismissed by the board, shall be referred to an administrative hearing by the board within five years after the date on which they were filed.

(4) Disciplinary hearings shall be conducted by the board or by an administrative law judge appointed pursuant to part 10 of article 30 of title 24, C.R.S., and shall be held in the manner prescribed in article 4 of title 24, C.R.S.

(5) and (6) Repealed.

(7) (a) The board or an administrative law judge shall have the power to administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board pursuant to this part 1.

(b) Upon failure of any witness to comply with such subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board or director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the board or 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 to obey the order of the court may be punished by the court as a contempt of court.

(8) (a) The board is authorized to apply for injunctive relief, in the manner provided by the Colorado rules of civil procedure, to enforce the provisions of this part 1 or to restrain any violation thereof. In such proceedings, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist or that substantial or irreparable damage would result from the continued violation thereof. The members of the board, its staff, and the attorney general shall not be held personally liable in any such proceeding.

(b) (I) If the board has reason to believe that any individual has engaged in, or is engaging in, any act or practice which constitutes a violation of any provision of this article, the board may initiate proceedings to determine if such a violation has occurred. Hearings shall be conducted in accordance with the provisions of article 4 of title 24, C.R.S.

(II) (Deleted by amendment, L. 2006, p. 782, § 17, effective July 1, 2006.)

(c) In any action brought pursuant to this subsection (8), evidence of the commission of a single act prohibited by this article shall be sufficient to justify the issuance of an injunction or a cease-and-desist order.

(8.2) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a 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 license, the board may issue an order to cease and desist such activity. 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 unlicensed practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (8.2), the respondent may request a hearing on the question of whether acts or practices in violation of this part 1 have occurred. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(8.4) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this part 1, then, in addition to any specific powers granted pursuant to this part 1, the board may issue to such person an order to show cause as to why the board should not issue a final order directing such person to cease and desist from the unlawful act or unlicensed practice.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (8.4) shall be promptly notified by the board of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the board for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order is issued. Personal service or mailing of an order or document pursuant to this subsection (8.4) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the board as provided in paragraph (b) of this subsection (8.4). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (8.4) does not appear at the hearing, the board may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (8.4) and such other evidence related to the matter as the board deems appropriate. The board shall issue the order within ten days after the board's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the board reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required license or has or is about to engage in acts or practices constituting violations of this part 1, a final cease-and-desist order may be issued directing such person to cease and desist from further unlawful acts or unlicensed practice.

(IV) The board shall provide notice, in the manner set forth in paragraph (b) of this subsection (8.4), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has been issued. The final order issued pursuant to subparagraph (III) of paragraph (c) of this subsection (8.4) shall be effective when issued and shall be a final order for purposes of judicial review.

(8.5) If it appears to the board, based upon credible evidence presented to the board, that a person has engaged in or is about to engage in any unlicensed act or practice, any act or practice constituting a violation of this part 1, any rule promulgated pursuant to this part 1, any order issued pursuant to this part 1, or any act or practice constituting grounds for administrative sanction pursuant to this part 1, the board may enter into a stipulation with such person.

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

(8.9) A person aggrieved by the final cease-and-desist order may seek judicial review of the board's determination or of the board's final order as provided in subsection (10) of this section.

(9) Repealed.

(10) The court of appeals shall have initial jurisdiction to review all final actions and orders that are subject to judicial review of the board. Such proceedings shall be conducted in accordance with section 24-4-106 (11), C.R.S.

(11) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(12) When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the board and, in the opinion of the board, the complaint should be dismissed, but the board has noticed indications of possible errant conduct by the licensee that could lead to serious consequences if not corrected, a confidential letter of concern may be issued and sent to the licensee.

Source: L. 85: Entire article R&RE, p. 468, § 1, effective July 1. **L. 87:** (4) and (7) amended, p. 945, § 30, effective July 1. **L. 88:** (2) and (3) amended and (5), (6), and (9) repealed, pp. 506, 519, §§ 5, 34, effective July 1. **L. 94:** (1), (2), and (8) amended, p. 1488, § 9, effective July 1. **L. 2004:** (7) amended, p. 1307, § 42, effective May 28; (7) amended and (11) added, p. 1816, §§ 49, 50, effective August 4. **L. 2006:** (2) repealed, p. 761, § 16, effective July 1; (8)(b)(II) amended and (8.2), (8.4), (8.5), (8.7), (8.9), and (12) added, p. 782, § 17, effective July 1. **L. 2013:** (8.2)(a), (8.4)(a), (8.4)(c)(III), (8.5), and (12) amended, (SB 13-161), ch. 356, p. 2081, § 8, effective July 1.

Editor's note: This section is similar to former § 12-25-106 as it existed prior to 1985.

Cross references: For the Colorado rules of civil procedure concerning subpoenas, injunctions, and civil contempt, see C.R.C.P. 45, 65, and 107.

12-25-109.5. Reconsideration and review of board action. The board, on its own motion or upon application, at any time after the imposition of any discipline as provided in section 12-25-109, may reconsider its prior action and reinstate or restore such license or terminate probation or reduce the severity of its prior disciplinary action. The taking of any such further action, or the holding of a hearing with respect thereto, shall rest in the sole discretion of the board.

Source: L. 88: Entire section added, p. 506, § 6, effective July 1.

12-25-110. Application for license. (1) The board shall prescribe and furnish the means by which a person may apply for licensure. All applications must be made under oath and accompanied by the appropriate fee. Each application must contain a statement indicating whether the applicant has ever been convicted of a felony in this or any other state, or has ever had a license to practice engineering revoked or suspended in this or any other state. Applications that are not complete are defective and may not be accepted by the board. The board shall take no action on defective applications, except to give notice to the applicant of defects. The board shall retain all fees submitted with applications, whether or not the applications are acted upon.

(2) No new application shall be required of any individual requiring reexamination by the board, and any such individual shall be notified when the next examination will be held.

(3) When considering applications, personal interviews may be required by the board only if the application fails to demonstrate that the applicant possesses the minimum qualifications necessary to qualify to take the written examination.

(4) Whenever the board is reviewing or considering the conviction of a crime, it shall be governed by the provisions of section 24-5-101, C.R.S.

(5) No individual whose license or enrollment has been revoked shall be allowed to reapply for licensure or enrollment earlier than two years after the effective date of the revocation.

Source: L. 85: Entire article R&RE, p. 469, § 1, effective July 1. **L. 88:** (3) and (4) amended and (5) added, p. 507, § 7, effective July 1. **L. 94:** (2) and (5) amended, p. 1489, § 10, effective July 1. **L. 2004:** (1) and (5) amended, p. 1309, § 46, effective May 28. **L. 2013:** (1) amended, (SB 13-161), ch. 356, p. 2082, § 9, effective July 1.

Editor's note: This section is similar to former § 12-25-106 as it existed prior to 1985.

12-25-111. Eligibility for engineer-intern. To be eligible for enrollment as an engineer-intern, an applicant shall provide documentation of such applicant's technical competence.

Source: L. 85: Entire article R&RE, p. 469, § 1, effective July 1. **L. 88:** Entire section amended, p. 507, § 8, effective July 1. **L. 94:** Entire section amended, p. 1489, § 11, effective July 1.

Editor's note: This section is similar to former § 12-25-111 as it existed prior to 1985.

12-25-112. Qualifications for engineer-intern. (1) (a) An applicant may qualify for enrollment as an engineer-intern by endorsement if such applicant is enrolled in good standing in another jurisdiction requiring qualifications substantially equivalent to those currently required of applicants under this part 1 or if, at the time of initial enrollment in such jurisdiction, such applicant met the requirements for enrollment then in existence under Colorado law.

(b) Upon completion of the application and approval by the board, the applicant shall be enrolled as an engineer-intern if the applicant is otherwise qualified pursuant to section 12-25-111.

(2) (a) An applicant may qualify for enrollment as an engineer-intern by graduation and examination if such applicant passes the fundamentals of engineering examination.

(b) In order to be admitted to the examination pursuant to paragraph (a) of this subsection (2), the applicant must:

(I) Have graduated from a board-approved engineering or engineering technology curriculum of four or more years; or

(II) Have senior status in a board-approved engineering or engineering technology curriculum of four or more years.

(c) Upon passing the examination and the submission of official transcripts verifying graduation or impending graduation, the applicant shall be enrolled as an engineer-intern if the applicant is otherwise qualified pursuant to section 12-25-111.

(3) (a) An applicant may qualify for enrollment as an engineer-intern by graduation, experience, and examination if such applicant passes the fundamentals of engineering examination and possesses a total of six years of progressive engineering experience, of which educational study may be a part.

(b) In order to be admitted to the examination pursuant to paragraph (a) of this subsection (3), the applicant must:

(I) (Deleted by amendment, L. 2004, p. 1295, § 13, effective May 28, 2004.)

(II) (A) Have graduated from an engineering curriculum of four or more years not approved by the board or from a related science curriculum of four or more years; and

(B) Have four years of progressive engineering experience, of which educational study may be a part.

(c) Upon passing the examination and the submission of evidence of experience satisfactory to the board, the applicant shall be enrolled as an engineer-intern if the applicant is otherwise qualified pursuant to section 12-25-111.

(4) (a) An applicant may qualify for enrollment as an engineer-intern by experience and examination if such applicant passes the fundamentals of engineering examination.

(b) In order to be admitted to the examination pursuant to paragraph (a) of this subsection (4), the applicant must:

(I) Have graduated from high school or its equivalent; and

(II) Have six years of progressive engineering experience, of which educational study may be a part.

(c) Upon passing the examination and the submission of evidence of experience satisfactory to the board, the applicant shall be enrolled as an engineer-intern if the applicant is otherwise qualified pursuant to section 12-25-111.

Source: L. 85: Entire article R&RE, p. 469, § 1, effective July 1. **L. 88:** (1)(a) amended, p. 507, § 9, effective July 1. **L. 94:** Entire section amended, p. 1489, § 12, effective July 1. **L. 2004:** (2)(b) and (3)(b)(I) amended, p. 1295, § 13, effective May 28.

Editor's note: This section is similar to former § 12-25-112 as it existed prior to 1985.

12-25-113. Eligibility for professional engineer. To be eligible for licensing as a professional engineer, an applicant shall provide documentation of such applicant's technical competence.

Source: L. 85: Entire article R&RE, p. 470, § 1, effective July 1. **L. 88:** Entire section amended, p. 507, § 10, effective July 1. **L. 94:** Entire section amended, p. 1491, § 13, effective July 1. **L. 2004:** Entire section amended, p. 1295, § 14, effective May 28.

Editor's note: This section is similar to former § 12-25-109 as it existed prior to 1985.

12-25-114. Qualifications for professional engineer. (1) (a) An applicant may qualify for licensing as a professional engineer by endorsement if such applicant is licensed in good standing in another jurisdiction requiring qualifications substantially equivalent to those currently required of applicants under this part 1 or if, at the time of initial licensure in such jurisdiction, such applicant met the requirements for licensure then in existence under Colorado law.

(b) Upon completion of the application and approval by the board, the applicant shall be licensed as a professional engineer if the applicant is otherwise qualified pursuant to section 12-25-113.

(2) (a) An applicant may qualify for licensing as a professional engineer by graduation, experience, and examination if such applicant passes the principles and practice of engineering examination.

(b) In order to be admitted to the examination pursuant to paragraph (a) of this subsection (2), the applicant must:

(I) (A) Have graduated from a board-approved engineering curriculum of four or more years; and

(B) Have eight years of progressive engineering experience, of which educational study may be a part; and

(C) Have been enrolled as an engineer-intern in this state; or

(II) (A) Have graduated from a board-approved engineering technology curriculum of four or more years; and

(B) Have ten years of progressive engineering experience, of which educational study may be a part; and

(C) Have been enrolled as an engineer-intern in this state; or

(III) (A) Have graduated from an engineering curriculum of four or more years not approved by the board or from a related science curriculum of four or more years; and

(B) Have ten years of progressive engineering experience, of which educational study may be a part; and

(C) Have been enrolled as an engineer-intern in this state; or

(IV) (A) Have graduated from an engineering curriculum of four or more years or from a related science curriculum of four or more years; and

(B) Have twenty years of progressive engineering experience, of which educational study may be a part.

(c) Upon passing the examination and the submission of evidence of experience satisfactory to the board, the applicant shall be licensed as a professional engineer if the applicant is otherwise qualified pursuant to section 12-25-113.

(3) (a) An applicant may qualify for licensing as a professional engineer by experience and examination if such applicant passes the principles and practice of engineering examination.

(b) In order to be admitted to the examination pursuant to paragraph (a) of this subsection (3), the applicant must:

(I) Have twelve years of progressive engineering experience, of which educational study may be a part; and

(II) Have been enrolled as an engineer-intern in this state.

(c) Upon passing the examination and the submission of evidence of experience satisfactory to the board, the applicant shall be licensed as a professional engineer if the applicant is otherwise qualified pursuant to section 12-25-113.

(4) (a) A professional engineer who has been duly licensed to practice engineering in this state and who is over sixty-five years of age, upon application, may be classified as a retired professional engineer. Individuals who are so classified shall lose their licensure and shall not practice engineering and shall pay a fee to retain retired professional engineer status.

(b) (I) A retired professional engineer shall be reinstated to the status of a professional engineer upon payment of the renewal fee. No other fee shall be assessed against such retired professional engineer as a penalty.

(II) For any professional engineer who has been retired for two or more years, the board may require reexamination unless the board is satisfied of such retired professional engineer's continued competence.

Source: L. 85: Entire article R&RE, p. 470, § 1, effective July 1. **L. 88:** (1)(a), (2)(a)(IV)(B), and (4) amended, p. 508, § 11, effective July 1. **L. 94:** Entire section amended, p. 1491, § 14, effective July 1. **L. 2004:** (1), (2)(a), (2)(c), (3)(a), (3)(c), (4)(a), and (4)(b)(I) amended, p. 1295, § 15, effective May 28. **L. 2013:** (4)(b)(II) amended, (SB 13-161), ch. 356, p. 2082, § 10, effective July 1.

Editor's note: This section is similar to former § 12-25-110 as it existed prior to 1985.

12-25-115. Licenses - certificates. (1) The board, upon acceptance of an applicant who has demonstrated competence in professional engineering and upon receipt of payment of the required fee, shall license and issue a unique license number to said applicant.

(2) The board, upon acceptance of a qualified engineer-intern and upon receipt of payment of the required fee, shall enroll the applicant.

(3) A license may be issued at any time but shall expire in conformance with section 24-34-102 (8), C.R.S. A license shall be renewed at the time of such expiration.

(4) Licenses shall be renewed or reinstated pursuant to a schedule established by the director of the division of professions and occupations within the department of regulatory

agencies and shall be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director of the division of professions and occupations within the department of regulatory agencies may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license pursuant to the schedule established by the director of the division of professions and occupations, such license shall expire. Any person whose license has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

(5) and (6) Repealed.

(7) A professional engineer shall give notice to the board, in writing, of any change of address within thirty days after the change.

Source: L. 85: Entire article R&RE, p. 472, § 1, effective July 1. **L. 88:** (1) to (3) amended and (5) and (6) repealed, pp. 508, 519, §§ 12, 34, effective July 1. **L. 94:** (2) and (4) amended, p. 1493, § 15, effective July 1. **L. 2004:** (1) and (7) amended, p. 1296, § 16, effective May 28; (3) and (4) amended, p. 1811, § 40, effective August 4. **L. 2013:** (1), (2), (4), and (7) amended, (SB 13-161), ch. 356, p. 2082, § 11, effective July 1.

Cross references: For the authority of the executive director of the department of regulatory agencies to change the period of validity and renewal date of any license or certificate issued by any examining or licensing board or commission in the division of professions and occupations, see § 24-34-102 (7) and (8).

12-25-116. Fees - disposition. (1) Pursuant to section 24-34-105, C.R.S., the board shall charge and collect fees for the following:

(a) With respect to professional engineers:

(I) Renewal of a license;

(II) Replacement of a physical certificate of licensure, if requested by the licensee;

(III) Application for licensure by endorsement;

(IV) Application for the principles and practice of engineering examination;

(V) Issuance of a physical certificate of licensure, if requested by the licensee;

(VI) Late renewal of a license;

(VII) Reexamination for the principles and practice of engineering examination;

(VIII) Renewal of an expired license;

(IX) Listing as a retired professional engineer;

(b) With respect to engineer-interns:

(I) (Deleted by amendment, L. 2004, p. 1296, § 17, effective May 28, 2004.)

(II) (Deleted by amendment, L. 94, p. 1493, § 16, effective July 1, 1994.)

(III) Application for the fundamentals of engineering examination;

(IV) Reexamination for the fundamentals of engineering examination;

(V) Application for enrollment by endorsement.

(2) All moneys collected by the board shall be transmitted to the state treasurer, who shall credit the same pursuant to section 24-34-105, C.R.S., and the general assembly shall make annual appropriations pursuant to said section for expenditures of the board required to perform its duties under this part 1, which expenditures shall be made from such appropriations upon vouchers and warrants drawn pursuant to law. The division shall employ, subject to section 13 of

article XII of the state constitution, such clerical or other assistants as are necessary for the proper performance of its work.

(3) and (4) Repealed.

Source: L. 85: Entire article R&RE, p. 472, § 1, effective July 1. **L. 88:** (3) and (4) repealed, p. 519, § 34, effective July 1. **L. 94:** (1)(b) amended, p. 1493, § 16, effective July 1. **L. 2004:** (1)(a)(II), (1)(a)(III), (1)(a)(V), (1)(a)(IX), (1)(b)(I), and (2) amended, p. 1296, § 17, effective May 28. **L. 2013:** (1)(a)(II) and (1)(a)(V) amended, (SB 13-161), ch. 356, p. 2083, § 12, effective July 1.

Editor's note: This section is similar to former §§ 12-25-116 and 12-25-119 as they existed prior to 1985.

12-25-117. Professional engineer's seal - rules. (1) Upon receiving a license from the board, a professional engineer may obtain a crimp type seal, a rubber stamp type seal, or an electronic type seal of a design approved by the board. The seal must contain the licensed professional engineer's name and license number and the designation "Colorado licensed professional engineer". Colorado professional engineers licensed before July 1, 2004, may continue to use their prior existing seals.

(2) Repealed.

(3) A professional engineer shall use a seal and signature only when the work to which the seal is applied was prepared under the engineer's responsible charge.

(4) (Deleted by amendment, L. 94, p. 1493, § 17, effective July 1, 1994.)

(5) The board shall adopt rules governing use of the seal and the retention, use, and distribution of sealed documents and copies thereof.

Source: L. 85: Entire article R&RE, p. 473, § 1, effective July 1. **L. 88:** (2) repealed and (4) added, pp. 519, 508, §§ 34, 13, effective July 1. **L. 94:** (3) and (4) amended, p. 1493, § 17, effective July 1. **L. 2004:** (1) amended, p. 1309, § 47, effective May 28. **L. 2013:** (1) and (3) amended and (5) added, (SB 13-161), ch. 356, p. 2083, § 13, effective July 1.

Editor's note: This section is similar to former § 12-25-118 as it existed prior to 1985.

12-25-118. Immunity in professional review. Any member of the board, any member of the board's staff, any person acting as a witness or consultant to the board, any witness testifying in a proceeding authorized under this part 1, and any person who lodges a complaint pursuant to this part 1 shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as board member, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this part 1 shall be immune from any civil or criminal liability that may result from such participation pursuant to this part 1.

Source: L. 85: Entire article R&RE, p. 474, § 1, effective July 1. **L. 94:** Entire section amended, p. 1494, § 18, effective July 1. **L. 2004:** Entire section amended, p. 1812, § 41, effective August 4.

Editor's note: This section is similar to former § 12-25-121 as it existed prior to 1985.

12-25-119. Prior actions. (1) The board shall take over, assume, and continue all actions and requirements regarding engineers from its predecessor, the state board of registration for professional engineers and land surveyors. There shall be no legal discontinuity, and previously licensed engineers shall continue their licensure as professional engineers.

(2) The name change from the state board of licensure for professional engineers and professional land surveyors to the state board of licensure for architects, professional engineers, and professional land surveyors shall not be construed to change the entity. There shall be no legal discontinuity, and previously licensed engineers shall continue their licensure as professional engineers, and any obligations of the board or of persons to the board shall not be affected by the name change.

Source: L. 85: Entire article R&RE, p. 474, § 1, effective July 1. **L. 2004:** Entire section amended, p. 1297, § 18, effective May 28. **L. 2006:** Entire section amended, p. 742, § 7, effective July 1.

Editor's note: This section is similar to former § 12-25-117 as it existed prior to 1985.

PART 2

SURVEYORS

12-25-201. General provisions. In order to safeguard life, health, and property and to promote the public welfare, the practice of professional land surveying in Colorado is hereby declared to be subject to regulation. It shall be unlawful for any individual to practice professional land surveying in Colorado or to use in connection with such individual's name, or to otherwise assume, or to advertise any title or description tending to convey the impression that such individual is a professional land surveyor, unless such individual has been duly licensed or is exempted under the provisions of this part 2. The practice of professional land surveying shall be deemed a privilege granted by the state of Colorado based on the qualifications of the individual as evidenced by such individual's licensing.

Source: L. 85: Entire article R&RE, p. 474, § 1, effective July 1. **L. 94:** Entire section amended, p. 1494, § 19, effective July 1. **L. 2004:** Entire section amended, p. 1297, § 19, effective May 28.

Editor's note: This section is similar to former § 12-25-201 as it existed prior to 1985.

12-25-202. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Basic control for engineering projects" means survey markers set on or in the vicinity of a construction project to enable all components of the project to be built in compliance with plans and specifications with respect to the project location, orientation, elevation, and relationship to property, easement, or right-of-way boundaries.

(1.5) "Board" means the state board of licensure for architects, professional engineers, and professional land surveyors, created by section 12-25-106.

(2) (Deleted by amendment, L. 2004, p. 1297, § 20, effective May 28, 2004.)

(3) "Certificate" means the media issued by the board to evidence licensing or enrollment.

(3.3) "Geodetic surveying" means the performance of surveys in which measure or account is taken of the shape, size, and gravitational forces of the earth to determine or predetermine the horizontal or vertical positions of points, monuments, or stations for use in the practice of professional land surveying or for stating the geodetic position of control points, monuments, or stations by using a coordinate system or derivative thereof recognized by the national geodetic survey.

(3.5) "Land surveyor-intern" means an individual enrolled by the board after demonstrating such individual's competency, as required by section 12-25-212.

(4) "License" means the formal legal permission to practice land surveying granted by the board.

(5) Repealed.

(6) (a) "Professional land surveying" means the application of special knowledge of principles of mathematics, methods of measurement, and law for the determination and preservation of land boundaries. "Professional land surveying" specifically includes:

(I) Restoration and rehabilitation of corners and boundaries in the United States public land survey system;

(II) Obtaining and evaluating boundary evidence;

(III) Determination of the areas and elevations of land parcels;

(IV) Subdivision of land parcels into smaller parcels and layout of alignment and grades for streets or roads to serve such smaller parcels;

(V) Measuring and platting underground mine workings;

(VI) Preparation of the boundary control portions of geographic information systems and land information systems except as allowed otherwise by section 38-51-109.3, C.R.S.;

(VII) Establishment, restoration, and rehabilitation of land survey monuments and bench marks;

(VIII) Preparation of land survey plats, condominium plats, monument records, property descriptions that result from the practice of professional land surveying, and survey reports;

(IX) Surveying, monumenting, and platting of easements and rights-of-way;

(X) Geodetic surveying;

(X.5) Basic control for engineering projects; and

(XI) Any other activities incidental to and necessary for the adequate performance of the services described in this paragraph (a).

(b) An individual practices or offers to practice "professional land surveying" within the meaning and intent of this part 2 if the individual engages therein or, by oral claim, sign, letterhead, or card or in any other way holds himself or herself out to be a professional land

surveyor or as being able to perform any professional land surveying service or if the individual performs any professional land surveying service or work.

(c) Professional land surveying may include other types of surveying.

(7) "Professional land surveyor" means an individual who practices professional land surveying and who is currently licensed with the board after demonstrating competency to practice, as required by section 12-25-214.

(8) and (9) (Deleted by amendment, L. 2004, p. 1297, § 20, effective May 28, 2004.)

(10) "Responsible charge" means personal responsibility for the control and direction of professional land surveying work.

(11) (Deleted by amendment, L. 94, p. 1495, § 20, effective July 1, 1994.)

(12) "Surveyor quorum of the board" means not less than the three professional land surveyor members of the board and one of the nonengineering, non-land surveyor members of the board.

Source: L. 85: Entire article R&RE, p. 474, § 1, effective July 1. **L. 88:** (5) repealed and (12) amended, pp. 519, 509, §§ 34, 14, effective July 1. **L. 94:** (2), (3), (6), (7), (8), (9), and (11) amended and (3.5) added, p. 1495, § 20, effective July 1. **L. 97:** (6) amended, p. 1627, §1, effective July 1. **L. 2004:** (1) to (3), (6)(a)(VIII), (6)(a)(X), (7) to (9), and (12) amended, pp. 1297, 1292, §§ 20, 5, effective May 28. **L. 2006:** (1) amended, p. 742, § 8, effective July 1. **L. 2007:** (1) and (6)(a)(X) amended and (1.5), (3.3), and (6)(a)(X.5) added, pp. 292, 293, §§ 1, 2, effective August 3. **L. 2013:** (3), (3.5), and (6)(b) amended, (SB 13-161), ch. 356, p. 2083, § 14, effective July 1.

Editor's note: This section is similar to former § 12-25-202 as it existed prior to 1985.

12-25-203. Exemptions. (1) This part 2 shall not be construed to prevent or to affect:

(a) The work of an employee or subordinate of a professional land surveyor if such work is performed under the responsible charge of the professional land surveyor;

(b) The practice of employees of the federal government duly authorized under 43 U.S.C. sec. 772 and 43 CFR 9180.0-3, while engaged in the practice of surveying within the course of their federal employment in the state of Colorado; or

(c) The rights of any other legally recognized profession.

Source: L. 85: Entire article R&RE, p. 475, § 1, effective July 1. **L. 88:** (1)(b) amended, p. 509, § 15, effective July 1. **L. 94:** (1)(a) and (1)(b) amended, p. 1496, § 21, effective July 1. **L. 2004:** (1)(a) amended, p. 1298, § 21, effective May 28.

Editor's note: This section is similar to former § 12-25-220 as it existed prior to 1985.

12-25-204. Forms of organizations permitted to practice. (1) A partnership, corporation, limited liability company, joint stock association, or other entity is not eligible for licensure under this part 2.

(2) An entity may practice or offer to practice land surveying in this state only if the individual in responsible charge of the entity's land surveying activities in this state is a professional land surveyor. All professional land surveying documents, plats, and reports issued

by or for the entity must bear the seal and signature of the professional land surveyor who is in responsible charge of and directly responsible for the land surveying work.

Source: L. 85: Entire article R&RE, p. 476, § 1, effective July 1. **L. 94:** Entire section amended, p. 1496, § 22, effective July 1. **L. 2004:** Entire section amended, p. 1298, § 22, effective May 28. **L. 2013:** Entire section amended, (SB 13-161), ch. 356, p. 2084, § 15, effective July 1.

12-25-205. Unlawful practice - penalties - enforcement. (1) It is unlawful for any individual to practice or offer to practice professional land surveying in Colorado without being licensed in accordance with the provisions of this part 2, or for any individual or entity to use or employ the words "land surveyor", "land surveying", or "professional land surveyor" or words of similar meaning or any modification or derivative except as authorized in this part 2.

(2) It is unlawful for any individual, partnership, professional association, joint stock company, limited liability company, or corporation to practice, or offer to practice, land surveying in this state unless the individual in responsible charge has complied with the provisions of this part 2.

(3) Repealed.

(3.5) The practice of professional land surveying in violation of any of the provisions of this part 2 shall be either:

(a) Restrained by injunction in an action brought by the attorney general or by the district attorney of the proper district in the county in which the violation occurs; or

(b) (I) Ceased by order of the board pursuant to section 12-25-209 (8.2) to (8.9).

(II) (Deleted by amendment, L. 2006, p. 784, § 18, effective July 1, 2006.)

(4) Any person who practices or offers or attempts to practice professional land surveying without an active license issued under this part 2 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 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(5) It is the duty of all duly constituted officers of the law of Colorado, or any political subdivision thereof, to enforce the provisions of this part 2 and to prosecute any person violating this part 2.

(6) The attorney general or the attorney general's assistant shall act as legal advisor to the board and render such timely legal assistance as may be necessary in carrying out the provisions of this part 2. With the concurrence of the attorney general, the board may employ counsel and assistance necessary to aid in the enforcement of this part 2, and the compensation and expenses therefor shall be paid from the funds of the board.

(7) Any individual practicing professional land surveying, as defined in this part 2, who is not licensed or exempt shall not collect compensation of any kind for such practice, and, if compensation has been paid, such compensation shall be refunded in full.

(8) After finding that an individual has unlawfully engaged in the practice of professional land surveying, the board may assess a fine against such unlawfully engaged individual in an amount not less than fifty dollars and not more than five thousand dollars for each violation proven by the board. Any moneys collected as an administrative fine pursuant to

this subsection (8) shall be transmitted to the state treasurer, who shall credit such moneys to the general fund.

Source: L. 85: Entire article R&RE, p. 476, § 1, effective July 1. **L. 94:** Entire section amended, p. 1496, § 23, effective July 1. **L. 2002:** (4) amended, p. 1475, § 62, effective October 1. **L. 2004:** (1) to (3), (7), and (8) amended, p. 1304, § 36, effective May 28; (8) amended, p. 1817, § 51, effective August 4. **L. 2006:** (3.5)(b) amended, p. 784, § 18, effective July 1; (3) repealed and IP(3.5) and (4) amended, pp. 86, 85, §§ 21, 19, effective August 7.

Editor's note: (1) This section is similar to former § 12-25-219 as it existed prior to 1985.

(2) Subsection (3) was relocated to § 12-25-208 (1)(n) in 2006.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (4), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-25-206. Board - composition - appointments - terms. (1) A professional land surveyor who is a member of the board shall be a citizen of the United States and a resident of Colorado for at least one year.

(2) A professional land surveyor who is designated as a land surveyor member of the board shall have been licensed as a land surveyor for at least five years.

(3) The board shall have a surveyor quorum of the board, as defined in section 12-25-202 (12). The surveyor quorum shall advise the board concerning issues relating to land surveyors.

(4) The governor, in making appointments of professional land surveyors to the board, shall endeavor to select the highest qualified members of the profession willing to serve on the board. Staggered appointments shall be made so that not more than one member's term expires in any one year, and thereafter appointments shall be for terms of four years each. Appointees shall be limited to two full terms each. Each board member shall hold office until the expiration of the term for which such member is appointed or until a successor has been duly appointed.

(5) In the event of a professional land surveyor vacancy on the board due to resignation, death, or any cause resulting in an unexpired term, the governor shall fill such vacancy promptly to allow the surveyor quorum of the board to function.

(6) The governor may remove any professional land surveyor member of the board for official misconduct, incompetence, or neglect of duty.

(7) The surveyor quorum of the board shall elect or appoint annually a chairman, a vice-chairman, and a secretary.

Source: L. 85: Entire article R&RE, p. 477, § 1, effective July 1. **L. 88:** (1) to (4) amended, p. 509, § 16, effective July 1. **L. 94:** (4) amended, p. 1498, § 24, effective July 1. **L. 2004:** (2) and (3) amended, p. 1298, § 23, effective May 28.

Editor's note: This section is similar to former §§ 12-25-203, 12-25-204, and 12-25-205 as they existed prior to 1985.

12-25-207. Powers and duties of the board. (1) In order to carry into effect this part 2, the board shall:

(a) Promulgate under the provisions of section 24-4-103, C.R.S., such rules as it may deem necessary and proper;

(b) Require each applicant for licensing to demonstrate competence by means of examination and education and may require work examples as it deems necessary and sufficient for licensing;

(c) Keep a record of its proceedings and of all applications for licensing under this part 2. The application record for each applicant shall include:

(I) Name, age, and residence of the applicant;

(II) Date of application;

(III) Place of business;

(IV) Education of the applicant;

(V) Surveying and other applicable experience of the applicant;

(VI) Type of examination required;

(VII) Date and type of action by the board;

(VIII) Repealed.

(IX) Such other information as may be deemed necessary by the board.

(d) (I) (Deleted by amendment, L. 2003, p. 1306, § 2, effective April 22, 2003.)

(II) Make available through printed or electronic means the following:

(A) The surveying statutes administered by the board;

(B) A list of the names and addresses of record of all currently licensed professional land surveyors;

(C) A list containing the license numbers in numerical sequence and the names of all current and previously licensed professional land surveyors;

(D) The rules of conduct for professional land surveyors adopted pursuant to paragraph (a) of this subsection (1); and

(E) The rules of the board and such other pertinent information as the board deems necessary.

(e) Provide for and administer examinations to be given as often as practicable. Examinations must be identified only by numbers and anonymously graded. After reviewing and approving the examination results, the board shall record and communicate each examinee's examination results to the examinee. The board shall ensure that the passing score on surveying examinations is set to measure the level of minimum competency. The board shall publish and make available to interested applicants a list of the subjects included in the surveying examinations that are developed by the board, such subjects being consistent with and related to the various aspects of surveying.

(f) Adopt and have an official seal.

(2) The division of professions and occupations in the department of regulatory agencies may employ at least one investigator to investigate complaints relative to the provisions of this part 2.

Source: L. 85: Entire article R&RE, p. 477, § 1, effective July 1. **L. 88:** IP(1) and (1)(e) amended and (1)(c)(VIII) repealed, pp. 510, 519, §§ 17, 34, effective July 1. **L. 94:** (1)(d) and (1)(e) amended, p. 1498, § 25, effective July 1. **L. 2003:** (1)(a) and (1)(d) amended, p. 1306, § 2,

effective April 22. **L. 2004:** IP(1), (1)(a), (1)(b), IP(1)(c), (1)(d)(II)(B), (1)(d)(II)(C), (1)(d)(II)(E), (1)(e), and (2) amended, p. 1299, § 24, effective May 28. **L. 2013:** (1)(b), IP(1)(c), and (1)(e) amended, (SB 13-161), ch. 356, p. 2084, § 16, effective July 1.

Editor's note: This section is similar to former §§ 12-25-206, 12-25-208, 12-25-209, and 12-25-213 as they existed prior to 1985.

Cross references: For additional powers and duties of the board in relation to engineering, see § 12-25-107.

12-25-208. Disciplinary actions - grounds for discipline. (1) The board has the power to deny, suspend, revoke, or refuse to renew the license of, or place on probation, limit the scope of practice of, or require additional training of any professional land surveyor or land surveyor-intern for:

(a) Engaging in fraud, misrepresentation, or deceit in obtaining or attempting to obtain a license or enrollment;

(b) Failing to meet the generally accepted standards of the practice of land surveying through act or omission;

(c) A felony that is related to the ability to practice land surveying. A certified copy of the judgment of a court of competent jurisdiction of such conviction or plea shall be presumptive evidence of such conviction or plea for the purposes of any hearing under this part 2. A plea of nolo contendere, or its equivalent, accepted by the court shall be considered as a conviction.

(d) (Deleted by amendment, L. 88, p. 510, § 18, effective July 1, 1988.)

(e) Violating, attempting to violate, or aiding or abetting the violation or attempted violation of:

(I) Any provision of this part 2 or article 50, 51, 52, or 53 of title 38, C.R.S.;

(II) Any rule adopted by the board in conformance with the provisions of this part 2; or

(III) Any order of the board issued in conformance with the provisions of this part 2;

(f) Using false, deceptive, or misleading advertising;

(g) Performing services beyond one's competency, training, or education;

(h) Failing to report to the board any professional land surveyor known to have violated any provision of this part 2 or any board order or rule;

(i) Habitual or excessive use or abuse of alcohol, controlled substances, or any habit-forming drug;

(j) Using any schedule I controlled substance, as set forth in section 18-18-203, C.R.S.;

(k) Failing to report to the board any malpractice claim against such professional land surveyor or any partnership, limited liability company, corporation, or joint stock association of which such professional land surveyor is a member, which claim is settled or in which judgment is rendered, within sixty days after the effective date of such settlement or judgment, if such claim concerned surveying services performed or supervised by such land surveyor;

(l) Failing to pay any fine assessed pursuant to this article;

(m) Violating any law or regulation governing the practice of professional land surveying in another state or jurisdiction. A plea of nolo contendere or its equivalent accepted by the board of another state or jurisdiction may be considered to be the same as a finding of guilty for purposes of any hearing under this part 2.

(n) Attempting to use an expired, revoked, suspended, or nonexistent license, practicing or offering to practice when not qualified, or falsely claiming that the individual is licensed; or

(o) Using in any manner a license, license number, or certificate that has not been issued to the individual by the board.

(2) (a) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the board, does not warrant formal action by the board but that should not be dismissed as being without merit, the board may issue and send a letter of admonition by first-class mail to the professional land surveyor or land surveyor-intern at his or her last-known address.

(b) When the board sends a letter of admonition to a professional land surveyor or land surveyor-intern, the board shall advise the professional land surveyor or land surveyor-intern that he or she has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(c) If the request for adjudication is timely made, the letter of admonition shall be deemed vacated and the matter shall be processed by means of formal disciplinary proceedings.

(3) (Deleted by amendment, L. 94, p. 1499, § 26, effective July 1, 1994.)

(4) (a) In addition to any other penalty that may be imposed pursuant to this section, the board may fine any professional land surveyor violating any provision of this article or any rule promulgated pursuant to this article not less than fifty dollars and not more than five thousand dollars for each violation proven by the board.

(b) All fines collected pursuant to this subsection (4) shall be credited to the general fund.

(5) The board may issue a letter of concern to a professional land surveyor or land surveyor-intern based on any of the grounds specified in subsection (1) of this section without conducting a hearing as specified in section 12-25-209 (4) when an instance of potentially unsatisfactory conduct comes to the board's attention but, in the board's judgment, does not warrant formal action by the board. Letters of concern shall be confidential and shall not be disclosed to members of the public or in any court action unless the board is a party.

Source: L. 85: Entire article R&RE, p. 478, § 1, effective July 1. **L. 88:** Entire section amended, p. 510, § 18, effective July 1. **L. 92:** (1)(j) amended, p. 390, § 13, effective July 1. **L. 94:** Entire section amended, p. 1499, § 26, effective July 1. **L. 2004:** (IP)(1), (1)(a), (1)(e)(II), (1)(h), (1)(k), (2), and (4)(a) amended and (5) added, pp. 1305, 1306, §§ 37, 39, effective May 28; (2) amended, p. 1817, § 52, effective August 4. **L. 2006:** (1)(n) added with relocated provision and (1)(o) added, p. 85, § 20, effective August 7. **L. 2013:** IP(1), (1)(i), (1)(o), (2)(a), (2)(b), and (4)(a) amended, (SB 13-161), ch. 356, p. 2085, § 17, effective July 1.

Editor's note: (1) This section is similar to former § 12-25-217 as it existed prior to 1985.

(2) Subsection (1)(n) is similar to former § 12-25-205 (3) as it existed prior to 2006.

Cross references: For an alternative disciplinary action for persons registered pursuant to this part 2, see § 24-34-106.

12-25-209. Disciplinary proceedings - injunctive relief procedure. (1) The board upon its own motion may, and upon the receipt of a signed complaint in writing from any person shall, investigate the activities of any professional land surveyor, land surveyor-intern, or other person who presents grounds for disciplinary action as specified in this part 2.

(2) Repealed.

(3) All charges, unless dismissed by the board, shall be referred to administrative hearing by the board within five years after the date on which said charges were filed.

(4) Disciplinary hearings shall be conducted by the board or by an administrative law judge appointed pursuant to part 10 of article 30 of title 24, C.R.S., and shall be held in the manner prescribed in article 4 of title 24, C.R.S.

(5) and (6) Repealed.

(7) (a) The board or an administrative law judge shall have the power to administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board pursuant to this part 2.

(b) Upon failure of any witness to comply with such subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board or director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the board or 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 to obey the order of the court may be punished by the court as a contempt of court.

(8) (a) The board is authorized to apply for injunctive relief, in the manner provided by the Colorado rules of civil procedure, to enforce the provisions of this part 2, or to restrain any violation thereof. In such proceedings, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist or that substantial or irreparable damage would result from the continued violation thereof. The members of the board, its staff, and the attorney general shall not be held personally liable in any such proceeding.

(b) (I) If the board has reason to believe that any individual has engaged in, or is engaging in, any act or practice which constitutes a violation of any provision of this article, the board may initiate proceedings to determine if such a violation has occurred. Hearings shall be conducted in accordance with the provisions of article 4 of title 24, C.R.S.

(II) (Deleted by amendment, L. 2006, p. 785, § 19, effective July 1, 2006.)

(c) In any action brought pursuant to this subsection (8), evidence of the commission of a single act prohibited by this article shall be sufficient to justify the issuance of an injunction or a cease-and-desist order.

(8.2) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a 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 license, the board may issue an order to cease and desist such activity. 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 unlicensed practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (8.2), the respondent may request a hearing on the question of whether acts or practices in violation of this part 2 have occurred. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(8.4) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this part 2, then, in addition to any specific powers granted pursuant to this part 2, the board may issue to such person an order to show cause as to why the board should not issue a final order directing such person to cease and desist from the unlawful act or unlicensed practice.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (8.4) shall be promptly notified by the board of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the board for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order is issued. Personal service or mailing of an order or document pursuant to this subsection (8.4) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the board as provided in paragraph (b) of this subsection (8.4). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (8.4) does not appear at the hearing, the board may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (8.4) and such other evidence related to the matter as the board deems appropriate. The board shall issue the order within ten days after the board's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the board reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required license or has or is about to engage in acts or practices constituting violations of this part 2, a final cease-and-desist order may be issued directing such person to cease and desist from further unlawful acts or unlicensed practices.

(IV) The board shall provide notice, in the manner set forth in paragraph (b) of this subsection (8.4), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

(8.5) If it appears to the board, based upon credible evidence presented to the board, that a person has engaged in or is about to engage in any unlicensed act or practice, any act or practice constituting a violation of this part 2, any rule promulgated pursuant to this part 2, any order issued pursuant to this part 2, or any act or practice constituting grounds for administrative sanction pursuant to this part 2, the board may enter into a stipulation with such person.

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

(8.9) A person aggrieved by the final cease-and-desist order may seek judicial review of the board's determination or of the board's final order as provided in subsection (10) of this section.

(9) Repealed.

(10) The court of appeals shall have initial jurisdiction to review all final actions and orders that are subject to judicial review of the board. Such proceedings shall be conducted in accordance with section 24-4-106 (11), C.R.S.

(11) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(12) When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the board and, in the opinion of the board, the complaint should be dismissed, but the board has noticed indications of possible errant conduct by the licensee that could lead to serious consequences if not corrected, a confidential letter of concern may be issued and sent to the licensee.

Source: L. 85: Entire article R&RE, p. 479, § 1, effective July 1. **L. 87:** (4) and (7) amended, p. 945, § 31, effective March 13. **L. 88:** (2) and (3) amended and (5), (6), and (9) repealed, pp. 512, 519, §§ 19, 34, effective July 1. **L. 94:** (1) and (8) amended, p. 1501, § 27, effective July 1. **L. 97:** (7) amended, p. 1628, § 2, effective July 1. **L. 2004:** (2) and (7) amended and (10) added, p. 1307, § 43, effective May 28; (7) amended and (11) added, pp. 1817, 1818, §§ 53, 54, effective August 4. **L. 2006:** (2) repealed, p. 761, § 17, effective July 1; (8)(b)(II) amended and (8.2), (8.4), (8.5), (8.7), (8.9), and (12) added, p. 785, § 19, effective July 1. **L. 2013:** (8.2)(a), (8.4)(a), (8.4)(c)(III), (8.5), and (12) amended, (SB 13-161), ch. 356, p. 2086, § 18, effective July 1.

Editor's note: This section is similar to former § 12-25-218 as it existed prior to 1985.

Cross references: For the Colorado rules of civil procedure concerning subpoenas, injunctions, and civil contempt, see C.R.C.P. 45, 65, and 107.

12-25-209.5. Reconsideration and review of board actions. The board, on its own motion or upon application, at any time after the imposition of any discipline as provided in section 12-25-209, may reconsider its prior action and reinstate or restore such license or terminate probation or reduce the severity of its prior disciplinary action. The taking of any such further action, or the holding of a hearing with respect thereto, shall rest in the sole discretion of the board. The professional land surveyor or land surveyor-intern in any action before the board shall have the right to appeal any decision of the board to a court of competent jurisdiction.

Source: L. 88: Entire section added, p. 512, § 20, effective July 1. **L. 97:** Entire section amended, p. 1629, § 3, effective July 1. **L. 2004:** Entire section amended, p. 1300, § 25, effective May 28.

12-25-210. Application for licensing. (1) Each application for licensing shall be in a form specified by the board and shall contain statements made under oath showing the applicant's education and showing a detailed summary of the applicant's surveying experience. Each application must contain a statement indicating whether the applicant has ever been convicted of a felony in this or in any other state, or has ever had a surveyor's license revoked, suspended, or not renewed, or has been reprimanded or fined relative to surveying in this or any other state. Applications that are not complete are defective, and the board shall take no action on defective applications except to give notice to the applicant of the defects. A nonrefundable application fee in an amount set by the board shall accompany each application.

(2) No new application shall be required of an individual requiring reexamination by the board, and such individual shall be notified when the next examination will be held.

(3) Whenever the board is reviewing or considering the conviction of a crime, it shall be governed by the provisions of section 24-5-101, C.R.S.

(4) No individual whose license or enrollment has been revoked shall be allowed to reapply for licensure or enrollment earlier than two years after the effective date of the revocation.

Source: L. 85: Entire article R&RE, p. 480, § 1, effective July 1. **L. 88:** (2) and(3) amended and (4) added, p. 512, § 21, effective July 1. **L. 94:** (1) and (4) amended, p. 1501, § 28, effective July 1. **L. 2004:** (1), (2), and (4) amended, p. 1300, § 26, effective May 28. **L. 2013:** (1) amended, (SB 13-161), ch. 356, p. 2086, § 19, effective July 1.

Editor's note: This section is similar to former § 12-25-212 as it existed prior to 1985.

12-25-211. Eligibility for land surveyor-intern. To be eligible for enrollment as a land surveyor-intern, an applicant shall provide documentation of the applicant's technical competence.

Source: L. 85: Entire article R&RE, p. 480, § 1, effective July 1. **L. 88:** Entire section amended, p. 513, § 22, effective July 1. **L. 94:** Entire section amended, p. 1502, § 29, effective July 1. **L. 2004:** Entire section amended, p. 1301, § 27, effective May 28.

12-25-212. Qualifications for land surveyor-interns. (1) (a) An applicant may qualify for enrollment as a land surveyor-intern by endorsement if the applicant is enrolled in good standing in another jurisdiction requiring qualifications substantially equivalent to those currently required of applicants under this part 2 or if, at the time of initial enrollment in such jurisdiction, the applicant met the requirements for enrollment then in existence under Colorado law.

(b) Upon completion of the application and approval by the board, the applicant shall be enrolled as a land surveyor-intern if the applicant is otherwise qualified pursuant to section 12-25-211.

(2) (a) An applicant may qualify for enrollment as a land surveyor-intern by graduation and examination if the applicant passes the fundamentals of surveying examination.

(b) In order to be admitted to the examination pursuant to paragraph (a) of this subsection (2), the applicant must have satisfied either of the following requirements:

(I) The applicant graduated from a board-approved surveying or surveying technology curriculum that is at least four years.

(II) The applicant has senior status in a board-approved surveying or surveying technology curriculum that is at least four years.

(c) Upon passing the examination and upon submission of official transcripts to the board verifying graduation or impending graduation, the applicant shall be enrolled as a land surveyor-intern if the applicant is otherwise qualified pursuant to section 12-25-211.

(3) (a) An applicant may qualify for enrollment as a land surveyor-intern by education, experience, and examination if such applicant passes the fundamentals of surveying examination.

(b) In order to be admitted to the examination pursuant to paragraph (a) of this subsection (3), the applicant must:

(I) (A) Have graduated from high school or the equivalent; and

(B) Have a cumulative record of four years or more of progressive land surveying experience, of which a maximum of one year of educational credit may be substituted; or

(II) (A) Have graduated from a board-approved two-year surveying curriculum; and

(B) Have a cumulative record of two years or more of progressive land surveying experience.

(c) Upon passing the examination and the submission of evidence of experience satisfactory to the board, the applicant shall be enrolled as a land surveyor-intern if the applicant is otherwise qualified pursuant to section 12-25-211.

Source: L. 85: Entire article R&RE, p. 480, § 1, effective July 1. **L. 88:** (1)(a) amended, p. 513, § 23, effective July 1. **L. 94:** Entire section amended, p. 1502, § 30, effective July 1. **L. 2004:** (1)(a), (1)(b), (2)(a), (2)(c), (3)(b), and (3)(c) amended, p. 1301, § 28, effective May 28. **L. 2007:** (2)(b) and (2)(c) amended, p. 293, § 3, effective August 3.

Editor's note: This section is similar to former § 12-25-210 as it existed prior to 1985.

12-25-213. Eligibility for professional land surveyor. To be eligible for licensing as a professional land surveyor, an applicant shall provide documentation of technical competence.

Source: L. 85: Entire article R&RE, p. 481, § 1, effective July 1. **L. 88:** Entire section amended, p. 513, § 24, effective July 1. **L. 94:** Entire section amended, p. 1503, § 31, effective July 1. **L. 2004:** Entire section amended, p. 1301, § 29, effective May 28.

12-25-214. Qualifications for professional land surveyor - repeal. (1) (a) An applicant may qualify for licensing as a professional land surveyor by endorsement and examination if such applicant passes the required examination or examinations pertaining to Colorado law.

(b) In order to be admitted to the examination pursuant to paragraph (a) of this subsection (1), the applicant shall be licensed in good standing in another jurisdiction requiring qualifications substantially equivalent to those currently required of applicants under this part 2 or, at the time of initial licensure in such jurisdiction, have met the requirements for licensure then in existence under Colorado law.

(c) Upon passing the examination, the applicant shall be licensed as a professional land surveyor if the applicant is otherwise qualified pursuant to section 12-25-213.

(2) (a) An applicant may qualify for licensing as a professional land surveyor by education, experience, and examination if such applicant passes the principle and practice of surveying examination and the examination pertaining to Colorado law.

(b) To be admitted to an examination pursuant to paragraph (a) of this subsection (2), the applicant shall meet the requirements stated in at least one of the following:

(I) (A) Have graduated from a board-approved surveying curriculum of four or more years; and

(B) Have two years of progressive land surveying experience under the supervision of a professional land surveyor or an exempted federal employee defined in section 12-25-203 (1)(b); and

(C) Have been enrolled as a land surveyor-intern in this state; or

(D) Repealed.

(II) (A) Have graduated from a nonboard-approved surveying curriculum of four or more years; and

(B) Have four years of progressive land surveying experience of which at least two must be under the supervision of a professional land surveyor or an exempted federal employee as defined in section 12-25-203 (1)(b); and

(C) Have been enrolled as a land surveyor-intern in this state; or

(D) Repealed.

(III) (A) Have graduated from a board-approved two-year surveying curriculum or from a four-year engineering curriculum that included surveying course work as specified by the board by rule; and

(B) Have six years of progressive land surveying experience of which four years shall have been under the supervision of a professional land surveyor or an exempt federal employee as defined under 12-25-203 (1)(b); and

(C) Have been enrolled as a land surveyor-intern in this state; or

(IV) (A) Have obtained a bachelor's degree in a nonsurveying curriculum;

(B) Have completed surveying and other related course work, as specified by the board by rule;

(C) Have six years of progressive land surveying experience, of which four years shall have been under the supervision of a professional land surveyor or an exempted federal employee as defined in section 12-25-203; and

(D) Have been enrolled as a land surveyor-intern in this state.

(c) Upon passing the examinations and the submission of evidence of experience satisfactory to the board, the applicant shall be licensed as a professional land surveyor if such applicant is otherwise qualified pursuant to section 12-25-213.

(3) The board may allow an applicant to substitute for one year of experience the satisfactory completion of one academic year in a curriculum approved by the board. The substitution of education for experience shall not exceed three years.

(4) (a) An applicant may qualify for licensure as a professional land surveyor by experience and examination if such applicant passes the principles and practice of land surveying examination and the examination pertaining to Colorado law.

(b) In order to be admitted to an examination pursuant to paragraph (a) of this subsection (4), the applicant shall:

(I) Have graduated from high school or its equivalent;

(II) Have ten years of progressive land surveying experience of which at least six years must have been under the supervision of a professional land surveyor or an exempted federal employee as defined in section 12-25-203 (1)(b); and

(III) Have been enrolled as a land surveyor-intern in this state.

(c) Upon passage of the examination pursuant to paragraph (a) of this subsection (4), the applicant shall be licensed as a professional land surveyor if such applicant is otherwise qualified pursuant to section 12-25-213.

(d) The board may allow an applicant to substitute for one year of experience the satisfactory completion of one academic year in a curriculum approved by the board. The substitution of education for experience shall not exceed three years.

(e) This subsection (4) is repealed, effective July 1, 2020.

(5) (a) A professional land surveyor who has been duly licensed to practice professional land surveying in this state and who is over sixty-five years of age, upon application, may be classified as a retired professional land surveyor. Individuals who are so classified shall lose their licensure, shall not practice professional land surveying, and shall pay a fee to retain retired professional land surveyor status.

(b) (I) A retired professional land surveyor shall be reinstated to the status of a professional land surveyor upon payment of the renewal fee. No other fee shall be assessed against such retired professional land surveyor as a penalty.

(II) For any professional land surveyor who has been retired for two or more years, the board may require reexamination unless the board is satisfied of the retired professional land surveyor's continued competence.

(6) (Deleted by amendment, L. 2004, p. 1302, § 30, effective May 28, 2004.)

Source: L. 85: Entire article R&RE, p. 481, § 1, effective July 1. **L. 88:** (1)(a) amended and (2)(a)(I)(D) and (2)(a)(II)(D) repealed, pp. 513, 519, §§ 25, 34, effective July 1. **L. 94:** Entire section amended, p. 1503, § 32, effective July 1. **L. 2004:** (1)(a), (1)(c), (2)(a), (2)(c), (4)(c), (5)(a), (5)(b)(I), and (6) amended, p. 1302, § 30, effective May 28. **L. 2010:** (4)(e) added, (HB 10-1085), ch. 95, p. 324, § 2, effective August 11; (1)(b), IP(2)(b), (2)(b)(III)(A), and IP(4)(b) amended and (2)(b)(IV) added, (HB 10-1085), ch. 95, p. 323, § 1, effective January 1, 2011. **L. 2013:** (2)(b)(I)(C), (2)(b)(II)(C), and (5)(b)(II) amended, (SB 13-161), ch. 356, p. 2087, § 20, effective July 1.

Editor's note: This section is similar to former § 12-25-211 as it existed prior to 1985.

12-25-215. Licenses. (1) The board, upon acceptance of an applicant who has demonstrated competence in professional land surveying and upon receipt of payment of the required fee, shall license and issue a unique license number to the applicant.

(2) The board, upon acceptance of a qualified land surveyor-intern and upon receipt of payment of the required fee, shall enroll the qualified land surveyor-intern.

(3) A license may be issued at any time but shall expire in conformance with section 24-34-102, C.R.S. A license shall be renewed at the time of such expiration.

(4) All licenses shall be renewed or reinstated pursuant to a schedule established by the director of the division of professions and occupations within the department of regulatory agencies and shall be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director of the division of professions and occupations within the department of regulatory agencies may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license pursuant to the schedule established by the director of the division of professions and occupations, the license shall expire. Any person whose license has expired is subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

(5) Repealed.

(6) A professional land surveyor shall give notice to the board, in writing, of any change of address within thirty days after the change.

Source: L. 85: Entire article R&RE, p. 482, § 1, effective July 1. **L. 88:** (1) to (3) amended and (5) repealed, pp. 514, 519, §§ 26, 34, effective July 1. **L. 94:** (2) and (4) amended, p. 1506, § 33, effective July 1. **L. 2004:** (1) and (6) amended, p. 1302, § 31, effective May 28; (3) and (4) amended, p. 1814, § 45, effective August 4. **L. 2013:** (1), (2), (4), and (6) amended, (SB 13-161), ch. 356, p. 2087, § 21, effective July 1.

Editor's note: This section is similar to former §§ 12-25-214 and 12-25-215 as they existed prior to 1985.

Cross references: For the authority of the executive director of the department of regulatory agencies to change the period of validity and renewal date of any license or certificate issued by any examining or licensing board or commission in the division of professions and occupations, see § 24-34-102 (7) and (8).

12-25-216. Fees - disposition. (1) Pursuant to section 24-34-105, C.R.S., the board shall charge and collect fees for the following:

(a) With respect to professional land surveyors:

(I) Renewal of a license;

(II) Replacement of a paper certificate or renewal card, if requested by the licensee;

(III) Application for licensure by endorsement and examination;

(IV) Application for the principles and practice of surveying examination or the legal aspects of surveying examination;

(V) Issuance of a paper certificate of licensure, if requested by the licensee;

(VI) Late renewal of a license;

(VII) Reexamination for the principles and practice of surveying examination or the legal aspects of surveying examination;

(VIII) Renewal of an expired license;

(IX) Listing as a retired professional land surveyor;

(b) With respect to land surveyor-interns:

(I) (Deleted by amendment, L. 2004, p. 1303, § 32, effective May 28, 2004.)

(II) (Deleted by amendment, L. 94, p. 1506, § 34, effective July 1, 1994.)

(III) Application for the fundamentals of surveying examination;

(IV) Reexamination for the fundamentals of surveying examination;

(V) Application for enrollment as a land surveyor-intern by endorsement.

(2) All moneys collected by the board in administering this part 2 shall be transmitted to the state treasurer, who shall credit the same pursuant to section 24-34-105, C.R.S., and the general assembly shall make annual appropriations pursuant to said section for expenditures required for the administration of this part 2, which expenditures shall be made from such appropriations upon vouchers and warrants drawn pursuant to law. The division shall employ, subject to section 13 of article XII of the state constitution, such clerical or other assistants as are necessary for the performance of its duties.

(3) Repealed.

Source: L. 85: Entire article R&RE, p. 482, § 1, effective July 1. **L. 88:** (3) repealed, p. 519, § 34, effective July 1. **L. 94:** (1)(a)(III) and (1)(b) amended, p. 1506, § 34, effective July 1. **L. 2004:** (1)(a)(II), (1)(a)(III), (1)(a)(V), (1)(b)(I), (1)(b)(V), and (2) amended and (1)(a)(IX) added, p. 1303, § 32, effective May 28. **L. 2013:** (1)(a)(II) and (1)(a)(V) amended, (SB 13-161), ch. 356, p. 2087, § 22, effective July 1.

Editor's note: This section is similar to former §§ 12-25-116 and 12-25-207 as they existed prior to 1985.

12-25-217. Professional land surveyor's seal - rules. (1) Upon receiving a license from the board, a professional land surveyor may obtain a crimp type seal, a rubber stamp type seal, or an electronic type seal of a design approved by the board. The seal must contain the licensed professional land surveyor's name and license number and the designation "Colorado licensed professional land surveyor". Colorado land surveyors licensed before July 1, 2004, may continue to use their prior existing seals.

(2) All documents, plats, and reports resulting from the practice of land surveying shall be identified with and bear the seal or exact copy thereof, signature, and date of signature of the land surveyor in responsible charge.

(3) A professional land surveyor shall use a seal and signature only when the work to which the seal is applied was prepared under the professional land surveyor's responsible charge.

(4) The board shall adopt rules governing use of the seal and the retention, use, and distribution of sealed documents and copies thereof.

Source: L. 85: Entire article R&RE, p. 483, § 1, effective July 1. **L. 94:** (3) amended, p. 1506, § 35, effective July 1. **L. 2004:** (1) amended, p. 1309, § 48, effective May 28. **L. 2013:** Entire section amended, (SB 13-161), ch. 356, p. 2088, § 23, effective July 1.

Editor's note: This section is similar to former § 12-25-214 as it existed prior to 1985.

12-25-218. Immunity in professional review. Any member of the board, any member of the board's staff, any person acting as a witness or consultant to the board, any witness testifying in a proceeding authorized under this part 2, and any person who lodges a complaint pursuant to this part 2 shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as board member, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this part 2 shall be immune from any civil or criminal liability that may result from such participation.

Source: L. 85: Entire article R&RE, p. 483, § 1, effective July 1. **L. 94:** Entire section amended, p. 1506, § 36, effective July 1. **L. 2004:** Entire section amended, p. 1814, § 46, effective August 4.

Editor's note: This section is similar to former § 12-25-221 as it existed prior to 1985.

12-25-219. Prior actions. (1) The board shall take over, assume, and continue all actions and requirements regarding land surveyors from its predecessor, the state board of registration for professional engineers and professional land surveyors. There shall be no legal discontinuity, and previously licensed land surveyors shall continue their licensure as professional land surveyors.

(2) The name change from the state board of licensure for professional engineers and professional land surveyors to the state board of licensure for architects, professional engineers, and professional land surveyors shall not be construed to change the entity. There shall be no legal discontinuity, and previously licensed land surveyors shall continue their licensure as land surveyors, and any obligations of the board or of persons to the board shall not be affected by the name change.

Source: L. 85: Entire article R&RE, p. 484, § 1, effective July 1. **L. 2004:** Entire section amended, p. 1303, § 33, effective May 28. **L. 2006:** Entire section amended, p. 742, § 9, effective July 1.

PART 3

ARCHITECTS

Editor's note: This part 3 was added with relocations in 2006. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this part 3, see the comparative tables located in the back of the index.

Cross references: For the responsibilities of architects concerning the obtaining of underground facilities information prior to excavation, see § 9-1.5-103; for the statute of limitations for civil actions against architects, see § 13-80-104.

12-25-301. General provisions. The regulatory authority established by this part 3 is necessary to safeguard the life, health, property, and public welfare of the people of this state and to protect them against unauthorized, unqualified, and improper practice of architecture.

Source: L. 2006: Entire part added with relocated provisions, p. 744, § 15, effective July 1.

Editor's note: This section is similar to former § 12-4-101 as it existed prior to 2006.

12-25-302. Definitions. As used in this part 3, unless the context otherwise requires:

(1) "Architect" means a person licensed under this part 3 and entitled thereby to conduct a practice of architecture in the state of Colorado.

(2) "Board" means the state board of licensure for architects, professional engineers, and professional land surveyors, created in section 12-25-106.

(3) "Buildings" means buildings of any type for public or private use, including the structural, mechanical, and electrical systems, utility services, and other facilities required for said buildings.

(4) "Drawings" means the original documents produced to describe a project. Such original documents may be produced by computer assisted design and drafting software, commonly known as "CADD", or other means.

(5) "Dwellings" means private residences intended for permanent occupancy by one or more families but does not include apartment houses, lodging houses, hotels, or motels.

(6) (a) The "practice of architecture" means providing any of the following services in connection with the design, construction, enlargement, or alteration of a building or group of buildings and the space within and the site surrounding those buildings, which have as their principal purpose human occupancy or habitation:

(I) Predesign;

(II) Programming;

(III) Planning;

(IV) Providing designs, drawings, specifications, and other technical submissions;

(V) Administering construction contracts; and

(VI) Coordinating any elements of technical submissions prepared by others.

(b) An architect's professional services, unless performed pursuant to the exemptions set forth in section 12-25-303 by a person who is not an architect, may include any or all of the following:

(I) Investigations, evaluations, schematic and preliminary studies, designs, working drawings, and specifications for construction, or for one or more buildings, and for the space within and surrounding the buildings or structures;

(II) Coordination of the work of technical and special consultants;

(III) Compliance with generally applicable codes and regulations, and assistance in the governmental review process;

(IV) Technical assistance in the preparation of bid documents and agreements between clients and contractors;

(V) Contract administration; and

(VI) Construction observation.

(c) An individual practices or offers to practice architecture within the meaning and intent of this subsection (6) if the individual, by oral claim, sign, advertisement, letterhead, card, or in any other way, represents himself or herself to be an architect, implies that he or she is licensed under this part 3, or performs or offers to perform a service listed in paragraph (b) of this subsection (6).

(7) "Responsible control" means that amount of control over and detailed knowledge of the content of plans, designs, drawings, specifications, and reports during their preparation as is ordinarily exercised by a licensed architect applying the required standard of care.

Source: L. 2006: Entire part added with relocated provisions, p. 744, § 15, effective July 1. **L. 2013:** (6)(a) and (7) amended and (6)(c) added, (SB 13-161), ch. 356, p. 2088, § 24, effective July 1.

Editor's note: This section is similar to former § 12-4-102 as it existed prior to 2006.

12-25-303. Exemptions. (1) Nothing in this part 3 shall prevent any person, firm, corporation, or association from preparing plans and specifications for, designing, planning, or administering the construction contracts for construction, alterations, remodeling, additions to, or repair of, any of the following:

(a) One-, two-, three-, and four-family dwellings, including accessory buildings commonly associated with such dwellings;

(b) Garages, industrial buildings, offices, farm buildings, and buildings for the marketing, storage, or processing of farm products, and warehouses, that do not exceed one story in height, exclusive of a one-story basement, and, under applicable building codes, are not designed for occupancy by more than ten persons;

(c) Additions, alterations, or repairs to the buildings referred to in paragraphs (a) and (b) of this subsection (1) that do not cause the completed buildings to exceed the applicable limitations set forth in this subsection (1);

(d) Nonstructural alterations of any nature to any building if such alterations do not affect the life safety of the occupants of the building.

(2) Nothing in this part 3 shall prevent, prohibit, or limit any municipality or county of this state, home rule or otherwise, from adopting such building codes as may, in the reasonable exercise of the police power of said governmental unit, be necessary for the protection of the inhabitants of said municipality or county.

(3) Nothing in this part 3 shall be construed as curtailing or extending the rights of any other profession or craft, including the practice of landscape architecture by landscape architects pursuant to article 45 of this title.

(4) Nothing in this part 3 shall be construed as prohibiting the practice of architecture by any employee of the United States government or any bureau, division, or agency thereof while in the discharge of his or her official duties.

(5) Nothing in this part 3 shall be construed to prevent the independent employment of a licensed professional engineer practicing pursuant to part 1 of this article.

(6) (a) Except as provided in paragraph (b) of this subsection (6), nothing in this part 3 shall be construed to prevent an interior designer from preparing interior design documents and specifications for interior finishes and nonstructural elements within and surrounding interior spaces of a building or structure of any size, height, and occupancy and filing such documents and specifications for the purpose of obtaining approval for a building permit as provided by law from the appropriate city, city and county, or regional building authority, which may approve or reject any such filing in the same manner as for other professions.

(b) Interior designers shall not be engaged in the construction of the structural frame system supporting a building; mechanical, plumbing, heating, air conditioning, ventilation, or electrical vertical transportation systems; fire-rated vertical shafts in any multi-story structure; fire-related protection of structural elements; smoke evacuation and compartmentalization; emergency sprinkler systems; emergency alarm systems; or any other alteration affecting the life safety of the occupants of a building. Any interior designer shall, as a condition of filing interior design documents and specifications for the purpose of obtaining approval for a building permit, provide to the responsible building official of the jurisdiction a current copy of the interior designer's professional liability insurance coverage that is in force. No interior designer shall be subject to any of the restrictions set forth in paragraphs (b) and (d) of subsection (1) of this section.

(c) As used in this subsection (6), "interior designer" means a person who:

(I) Engages in:

(A) Consultation, study, design analysis, drawing, space planning, and specification for nonstructural or nonseismic interior construction with due concern for the life safety of the occupants of the building;

(B) Preparing and submitting interior design documents for the purpose of obtaining approval for a building permit as provided by law for nonstructural or nonseismic interior construction, materials, finishes, space planning, furnishings, fixtures, equipment, lighting, and reflected ceiling plans;

(C) Designing for fabrication nonstructural elements within and surrounding interior spaces of buildings; or

(D) The administration of design construction and contract documents, as the clients' agent, relating to the functions described in sub-subparagraphs (A) to (C) of this subparagraph (I), and collaboration with specialty consultants and licensed practitioners in other areas of technical expertise; and

(II) Possesses written documentation that he or she:

(A) Has graduated with a degree in interior design from a college or university offering such program consisting of four or more years of study and has completed two years of interior design experience; or

(B) Has graduated with a degree in interior design from a college or university offering such program consisting of two or more years of study and has completed four years of interior design experience; and

(C) Has met the education and experience requirements of, and has subsequently passed, the qualification examination promulgated by the national council for interior design qualification or its successor organization.

(d) As used in this subsection (6), "nonstructural or nonseismic" includes interior elements or components that are not load-bearing or that do not assist in the seismic design and do not require design computations for a building's structure. Common nonstructural or nonseismic elements or components include, but are not limited to, ceiling and partition systems that employ normal and typical bracing conventions and are not part of the structural integrity of the building.

(7) Nothing in this article shall prohibit a person who is licensed to practice architecture in another jurisdiction of the United States from soliciting work in Colorado. The person shall not perform the practice of architecture in this state without first having obtained a license from the board or having associated with an architect licensed in this state who is associated with the project at all stages of the project.

Source: L. 2006: Entire part added with relocated provisions, p. 745, § 15, effective July 1; (7) added with relocated provisions, p. 81, § 2, effective August 7. **L. 2013:** (3) and (6)(c)(I)(B) amended, (SB 13-161), ch. 356, p. 2089, § 25, effective July 1.

Editor's note: (1) This section is similar to former § 12-4-112 as it existed prior to 2006.

(2) Subsection (7) is similar to former § 12-4-113 (1.5). It was then renumbered as § 12-4-112 (7) in House Bill 06-1048. Due to the repeal and relocation of § 12-4-112 in House Bill 06-1196, House Bill 06-1048 was harmonized with House Bill 06-1196 and § 12-4-112 (7) was relocated to subsection (7) of this section.

12-25-304. Forms of organizations permitted to practice - requirements. (1) Except as otherwise provided in this section, no firm, partnership, entity, or group of persons shall be licensed to practice architecture; except that a partnership, entity, or group of persons may use the term "architects" in its business name if a majority of the individual officers and directors or members or partners are either licensed architects under this part 3 or persons who qualify for a license by endorsement under section 12-25-314 (3).

(2) The practice of architecture by the following entities is permitted, subject to subsection (3) of this section:

(a) A corporation that complies with the "Colorado Business Corporation Act", articles 101 to 117 of title 7, C.R.S.;

(b) A limited liability company that complies with the "Colorado Limited Liability Company Act", article 80 of title 7, C.R.S.;

(c) A registered limited liability partnership that has registered in accordance with section 7-60-144, C.R.S., or qualified in accordance with section 7-64-1002, C.R.S.

(3) An entity listed in subsection (2) of this section may practice architecture, but only if:

(a) The practice of architecture by such entity is under the direct supervision of an architect, licensed in the state of Colorado, who is an officer of the corporation, a member of the limited liability company, or a partner in the registered limited liability partnership;

(b) Such architect remains individually responsible to the board and the public for his or her professional acts and conduct; and

(c) All architectural plans, designs, drawings, specifications, or reports that are involved in such practice, issued by or for such entity, bear the seal and signature of an architect in responsible control of, and directly responsible for, such architectural work when issued.

(4) (a) Nothing in this part 3 shall be construed as prohibiting the formation of a corporation, limited liability company, registered limited liability partnership, joint venture, partnership, or association consisting of one or several architects or corporations meeting the requirements of subsection (3) of this section and one or several professional engineers, all duly licensed under the respective provisions of the applicable laws of this state.

(b) It is lawful for such an entity to use in its title the words "architects and engineers".

(c) No identifying media used by any member of such entity shall mislead the public as to the fact that such member is licensed as an architect or as a professional engineer.

Source: L. 2006: Entire part added with relocated provisions, p. 747, § 15, effective July 1.

Editor's note: Subsections (1), (2), (3), and (4) are similar to former § 12-4-110 (1), (1.5), (2), and (4) as they existed prior to 2006.

12-25-305. Unauthorized practice - penalties - enforcement. (1) Unless exempted under section 12-25-303 (7), any person who practices or offers or attempts to practice architecture without an active license issued under this part 3 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 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(a) to (c) Repealed.

(1.5) and (2) Repealed.

(2.5) (a) It is unlawful for any individual to hold himself or herself out to the public as an architect unless the individual has complied with this part 3.

(b) It is unlawful for any person to practice, or offer to practice, architecture in this state unless the individual in responsible control has complied with this part 3.

(c) Unless licensed pursuant to this part 3, it is unlawful for any person to use any of the following titles: "Architect", "architects", "architecture", "architectural", or "licensed architect". In addition, unless licensed pursuant to this part 3, it is unlawful for any person to use the words "architect", "architects", "architecture", "architectural", or "licensed architect" in any offer to the public to perform the services set forth in section 12-25-302 (6). Nothing in this subsection (2.5) prohibits the general use of the words "architect", "architecture", or "architectural", including the specific use of the term "architectural intern" by an individual who is working under the supervision of an architect and is in the process of completing required practice hours in preparation for the architect licensing examination, so long as those words are not being used in an offer to the public to perform the services set forth in section 12-25-302 (6).

(3) The attorney general or the attorney general's assistant shall act as legal advisor to the board and render such timely legal assistance as may be necessary in carrying out this part 3. With the concurrence of the attorney general, the board may employ counsel and assistance necessary to aid in the enforcement of this part 3, and the compensation and expenses therefor shall be paid from the funds of the board.

(4) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a 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 license, the board may issue an order to cease and desist such activity. 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 unlicensed practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (4), the licensee or person alleged to have acted without a license may request a hearing on the question of whether acts or practices in violation of this part 3 have occurred. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(5) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other provision of this part 3, then, in addition to any specific powers granted pursuant to this part 3, the board may issue to such person an order to show cause as to why the board should not issue a final order directing such person to cease and desist from the unlawful act or unlicensed practice.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (5) shall be promptly notified by the board of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the board for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order is issued. Personal service or mailing of an order or document pursuant to this subsection (5) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the board as provided in paragraph (b) of this subsection (5). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (5) does not appear at the hearing, the board may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (5) and such other evidence related to the matter as the board deems appropriate. The board shall issue the order within ten days after the board's determination related to reasonable attempts to notify such person, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

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

(IV) The board shall provide notice, in the manner set forth in paragraph (b) of this subsection (5), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has been

issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

(6) If it appears to the board, based upon credible evidence presented to the board, that a person has engaged in or is about to engage in an unlicensed act or practice, any act or practice constituting a violation of this part 3, any rule promulgated pursuant to this part 3, any order issued pursuant to this part 3, or any act or practice constituting grounds for administrative sanction pursuant to this part 3, the board may enter into a stipulation with such person.

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

(8) A person aggrieved by the final cease-and-desist order may seek judicial review of the board's determination or of the board's final order in a court of competent jurisdiction.

(9) After finding that a person has unlawfully engaged in the practice of architecture, the board may jointly and severally assess against the person a fine of not less than fifty dollars and not more than five thousand dollars for each violation proven by the board. The board shall transmit the moneys collected pursuant to this subsection (9) to the state treasurer, who shall credit them to the general fund.

(10) An individual practicing architecture who is not licensed or exempt from licensure shall not collect compensation of any kind for such practice, and, if compensation has been paid, the individual shall refund the compensation in full.

Source: L. 2006: Entire part added with relocated provisions, p. 749, § 15, effective July 1; IP(1) amended and (1)(a), (1)(b), (1)(c), (1.5), and (2) repealed, p. 82, §§ 4 to 6, effective August 7. **L. 2013:** (1) amended and (2.5), (9), and (10) added, (SB 13-161), ch. 356, p. 2089, § 26, effective July 1.

Editor's note: (1) Certain provisions of § 12-4-113 were repealed and relocated to this section by House Bill 06-1196. Section 12-4-113 (1), (1.5), (2), and (2.5) were renumbered and relocated to subsections (1), (1.5), (2), and (4) respectively of this section. In addition, § 12-4-113 (1), (1.5), and (2) were amended and repealed in House Bill 06-1048. Due to the repeal and relocation of § 12-4-113 in House Bill 06-1196, House Bill 06-1048 was harmonized with House Bill 06-1196 and § 12-4-113 (1), (1.5), and (2) were relocated to subsections (1), (1.5), and (2) respectively of this section.

(2) Subsection (2.5) was amended and subsections (4) to (8) were enacted in House Bill 06-1264. That amendment and those enactments were superseded by the enactment of this section in House Bill 06-1196.

12-25-306. Board - composition - appointments - terms. (1) To be eligible for membership on the board, an architect shall be:

(a) A United States citizen and a resident of Colorado for at least one year; and

(b) A licensed architect in the state of Colorado and have practiced architecture for at least three years prior to their appointment.

(2) The governor, in making appointments of architects to the board, shall endeavor to select the most highly qualified members of the profession willing to serve on the board. Staggered appointments shall be made so that not more than one member's term expires in any one year, and thereafter appointments shall be for terms of four years each. Appointees shall be limited to two full terms each. Except as otherwise provided in subsection (3) or (4) of this section, each board member shall hold office until the expiration of the term for which such member is appointed or until a successor has been duly appointed, whichever occurs first.

(3) In the event of an architecture vacancy on the board due to resignation, death, or any cause resulting in an unexpired term, the governor shall fill such vacancy promptly.

(4) The governor may remove an architect member of the board for official misconduct, incompetence, or neglect of duty.

Source: L. 2006: Entire part added with relocated provisions, p. 751, § 15, effective July 1.

12-25-307. Powers and duties of the board. (1) The board is authorized to:

(a) Adopt such rules as may be necessary to implement this part 3, including rules for disciplining licensed architects;

(b) Examine and license duly qualified applicants, and renew the licenses of duly qualified architects;

(c) Conduct hearings upon complaints concerning the conduct of architects;

(d) Cause the prosecution of all persons violating this part 3 by the district attorney or by the attorney general pursuant to section 12-25-305;

(e) Require every licensed architect to have a stamp as prescribed by the board.

(2) The board shall:

(a) Keep a record of its proceedings and of all applications for licensing under this part 3. The application record for each applicant shall include:

(I) Name, age, and residence of the applicant;

(II) Date of application;

(III) Place of business;

(IV) Education of the applicant;

(V) Architecture and other applicable experience of the applicant;

(VI) Type of examination required;

(VII) Date and type of action by the board; and

(VIII) Such other information as may be deemed necessary by the board;

(b) Make available through printed or electronic means the following:

(I) The architect statutes administered by the board;

(II) A list of the names and addresses of record of all currently licensed architects;

(III) The rules of conduct for architects adopted pursuant to paragraph (a) of subsection (1) of this section; and

(IV) The rules of the board and such other pertinent information as the board deems necessary.

Source: L. 2006: Entire part added with relocated provisions, p. 752, § 15, effective July 1. **L. 2013:** IP(2)(a) amended, (SB 13-161), ch. 356, p. 2090, § 27, effective July 1.

Editor's note: Subsections (1) and (2) are similar to former § 12-4-104 (2) and (5) as they existed prior to 2006.

12-25-308. Disciplinary actions - grounds for discipline. (1) The board may deny, suspend, revoke, or refuse to renew the license of, place on probation, or limit the scope of practice of a licensee for the following:

(a) Fraud, misrepresentation, deceit, or material misstatement of fact in procuring or attempting to procure a license;

(b) Any act or omission that fails to meet the generally accepted standards of the practice of architecture, as evidenced by conduct that endangers life, health, property, or the public welfare;

(c) Conviction of, or pleading guilty or nolo contendere to, a felony in Colorado concerning the practice of architecture or an equivalent crime outside Colorado. A certified copy of the judgment of a court of competent jurisdiction of such conviction or plea shall be presumptive evidence of such conviction or plea in any hearing under this part 3. The board shall be governed by section 24-5-101, C.R.S., in considering such conviction or plea.

(d) Affixing a seal or allowing a seal to be affixed to any document of which the architect was neither the author nor in responsible control of preparation;

(e) Violation of, or aiding or abetting in the violation of, this part 3 or any rule promulgated by the board in conformance with this part 3 or any order of the board issued in conformance with this part 3;

(f) Use of false, deceptive, or misleading advertising;

(g) Performing services beyond one's competency, training, or education;

(h) Failure to render adequate professional control of persons practicing architecture under the responsible control of a licensed architect;

(i) Habitual or excessive use or abuse of alcohol, controlled substances, or any habit-forming drug;

(j) Any use of a schedule I controlled substance, as defined in section 18-18-203, C.R.S.;

(k) Violation of the notification requirements in section 12-25-312;

(l) Failure to pay a fine assessed under this part 3;

(m) Failure to report to the board any architect known to have violated any provision of this article or any board order or rule or regulation;

(n) Fraud or deceit in the practice of architecture;

(o) Repealed.

(p) Making or offering to make any gift (other than a gift of nominal value such as reasonable entertainment or hospitality), donation, payment, or other valuable consideration to influence a prospective or existing client or employer regarding the employment of the architect; except that nothing in this paragraph (p) shall restrict an employer's ability to reward an employee for work obtained or performed;

(q) Selling or fraudulently obtaining or furnishing a license or renewal of a license to practice architecture;

(r) Engaging in conduct that is intended or reasonably might be expected to mislead the public into believing that the person is an architect; or

(s) Engaging in the practice of an architect as a corporation or partnership or group of persons, unless such entity meets the requirements of section 12-25-304.

(2) (a) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the board, does not warrant formal action by the board but that should not be dismissed as being without merit, the board may issue and send a letter of admonition by first-class mail to the licensee at the licensee's last-known address.

(b) When the board sends a letter of admonition to a licensee, the board shall advise the licensee that he or she has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(c) If the request for adjudication is timely made, the letter of admonition shall be deemed vacated and the matter shall be processed by means of formal disciplinary proceedings.

(d) When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the board and, in the opinion of the board, the complaint should be dismissed, but the board has noticed indications of possible errant conduct by the licensee that could lead to serious consequences if not corrected, a confidential letter of concern may be issued and sent to the licensee.

(3) Any disciplinary action in another state or jurisdiction on grounds substantially similar to those that would constitute a violation under this part 3 shall be prima facie evidence of grounds for disciplinary action, including denial of licensure, under this section.

(4) (a) In addition to the penalties provided for in subsection (2) of this section, any person violating any provision of this part 3 or any standards or rules promulgated pursuant to this part 3 may be punished by a fine of not less than fifty dollars and not more than five thousand dollars upon a finding of misconduct by the board, made pursuant to article 4 of title 24, C.R.S.

(b) All fines collected pursuant to this section shall be transferred to the state treasurer, who shall credit such moneys to the general fund.

(5) If, as a result of a proceeding held pursuant to article 4 of title 24, C.R.S., the board determines that a person licensed to practice architecture pursuant to this part 3 has acted in such a manner as to be subject to disciplinary action, the board may, in lieu of or in addition to other forms of disciplinary action that may be authorized by this section, require a licensee to take courses of training or education relating to his or her profession. The board shall determine the conditions that may be imposed on such licensee, including, but not limited to, the type and number of hours of training or education. All training or education courses are subject to approval by the board, and the licensee shall be required to furnish satisfactory proof of completion of any such training or education.

Source: L. 2006: Entire part added with relocated provisions, p. 753, § 15, effective July 1; (2)(d) added, p. 767, § 3, effective July 1; (1)(q) to (1)(s) added with relocated provisions, p. 81, § 3, effective August 7. **L. 2012:** (1)(i) amended, (HB 12-1311), ch. 281, p. 1610, § 11, effective July 1. **L. 2013:** (1)(i), (2)(a), (2)(b), and (4)(a) amended and (1)(o) repealed, (SB 13-161), ch. 356, p. 2090, § 28, effective July 1.

Editor's note: (1) Certain provisions of § 12-4-111 were repealed and relocated to this section by House Bill 06-1196. Section 12-4-111 (2), (3)(b), (2.5), (5), and (4) were renumbered and relocated to subsections (1), (2), (3), (4), and (5) of this section. In addition, § 12-4-113 (1)(a), (1)(b), and (1)(c)(IV) were amended and relocated to § 12-4-111 (2)(p), (2)(q), and (2)(r)

in House Bill 06-1048. Due to the repeal and relocation of § 12-4-111 in House Bill 06-1196, House Bill 06-1048 was harmonized with House Bill 06-1196 and § 12-4-111 (2)(p), (2)(q), and (2)(r) were relocated to subsections (1)(q), (1)(r), and (1)(s) of this section.

(2) Subsection (2)(d) is similar to former § 12-4-111 (3)(c) in House Bill 06-1264. Due to the repeal and relocation of § 12-4-111 in House Bill 06-1196, House Bill 06-1264 was harmonized with House Bill 06-1196, and § 12-4-111 (3)(c) was relocated to subsection (2)(d) of this section.

12-25-309. Disciplinary proceedings - injunctions. (1) The board upon its own motion may, and upon the receipt of a signed complaint in writing from any person shall, investigate the activities of any licensee or other person that present grounds for disciplinary action as specified in this part 3.

(2) Disciplinary hearings shall be conducted by the board or by an administrative law judge appointed pursuant to part 10 of article 30 of title 24, C.R.S., and shall be held in the manner prescribed in article 4 of title 24, C.R.S.

(3) (a) The board or an administrative law judge shall have the power to administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board.

(b) Upon failure of any witness to comply with such subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board or director of the division of professions and occupations within the department of regulatory agencies with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the board or 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 to obey the order of the court may be punished by the court as a contempt of court.

(4) The board may, in the name of the people of the state of Colorado, through the attorney general of the state of Colorado, apply for an injunction in any court of competent jurisdiction to enjoin any person from committing any act declared to be a misdemeanor by this part 3. In order to obtain such injunction the board need not prove irreparable injury.

(5) The court of appeals shall have initial jurisdiction to review all final actions and orders of the board that are subject to judicial review. Such proceedings shall be conducted in accordance with section 24-4-106 (11), C.R.S.

(6) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

Source: L. 2006: Entire part added with relocated provisions, p. 755, § 15, effective July 1.

Editor's note: Subsections (1) and (6) are similar to former § 12-4-111 (1) and (8), subsection (3) is similar to former § 12-4-104 (3), and subsection (4) is similar to former § 12-4-113 (3), as they existed prior to 2006.

12-25-309.5. Reconsideration and review of board actions. The board, on its own motion or upon application, at any time after the imposition of any discipline as provided in this section, may reconsider its prior action and reinstate or restore such license or terminate probation or reduce the severity of its prior disciplinary action. The taking of any such further action, or the holding of a hearing with respect thereto, shall rest in the sole discretion of the board.

Source: L. 2006: Entire part added with relocated provisions, p. 756, § 15, effective July 1.

Editor's note: This section is similar to former § 12-4-111 (6) as it existed prior to 2006.

12-25-310. Application for licensing. (1) An applicant shall submit an application that includes evidence of education and practical experience as required by section 12-25-314 and the rules of the board. The application shall also include a statement that the applicant has never been denied licensure as an architect or been disciplined with regard to the practice of architecture or practiced architecture in violation of the law. If the board determines that an applicant has committed any of the acts specified as grounds for discipline under section 12-25-308 (1), it may deny an application for examination or licensure. The board shall notify the applicant if it determines that the application is incomplete or otherwise defective and shall specify the grounds for the determination.

(2) When the board is reviewing or considering conviction of a crime, it shall be governed by section 24-5-101, C.R.S.

(3) A licensee whose license is revoked may reapply for licensure, but the board shall not consider the application until two years after the effective date of the revocation.

Source: L. 2006: Entire part added with relocated provisions, p. 756, § 15, effective July 1. **L. 2013:** (1) and (3) amended, (SB 13-161), ch. 356, p. 2091, § 29, effective July 1.

Editor's note: Subsection (1) is similar to former § 12-4-107 (1), and subsection (3) is similar to former § 12-4-111 (7), as they existed prior to 2006.

12-25-311. Professional liability. (1) The shareholders, members, or partners of an entity that practices architecture are liable for the acts, errors, and omissions of the employees, members, and partners of the entity except when the entity maintains a qualifying policy of professional liability insurance as set forth in subsection (2) of this section.

(2) (a) A qualifying policy of professional liability insurance shall meet the following minimum standards:

(I) The policy insures the entity against liability imposed upon it by law for damages arising out of the negligent acts, errors, and omissions of all professional and nonprofessional employees, members, and partners; and

(II) The insurance is in a policy amount of at least seventy-five thousand dollars multiplied by the total number of architects and engineers in or employed by the entity, up to a maximum of five hundred thousand dollars.

(b) In addition, the policy may include:

(I) A provision that it shall not apply to the following:

(A) A dishonest, fraudulent, criminal, or malicious act or omission of the insured entity or any stockholder, employee, member, or partner;

(B) The conduct of a business enterprise that is not the practice of architecture by the insured entity;

(C) The conduct of a business enterprise in which the insured entity may be a partner or that may be controlled, operated, or managed by the insured entity in its own or in a fiduciary capacity, including, but not limited to, the ownership, maintenance, or use of property;

(D) Bodily injury, sickness, disease, or death of a person; or

(E) Damage to, or destruction of, tangible property owned by the insured entity;

(II) Any other reasonable provisions with respect to policy periods, territory, claims, conditions, and ministerial matters.

Source: L. 2006: Entire part added with relocated provisions, p. 757, § 15, effective July 1.

12-25-312. Notification to board. Each architect shall report to the board any malpractice claim against the architect, or against any entity of which the architect is a member, that is settled or in which judgment is rendered, within sixty days after the effective date of the settlement or judgment, if the claim concerned the practice of architecture performed or supervised by the architect; except that a licensee is not required to report any claim that was dismissed by a court of law.

Source: L. 2006: Entire part added with relocated provisions, p. 758, § 15, effective July 1. **L. 2013:** Entire section R&RE, (SB 13-161), ch. 356, p. 2092, § 30, effective July 1.

Editor's note: This section is similar to former § 12-4-117 as it existed prior to 2006.

12-25-313. Eligibility for architect. To be eligible for licensing as an architect, an applicant shall provide documentation of technical competence.

Source: L. 2006: Entire part added with relocated provisions, p. 758, § 15, effective July 1.

12-25-314. Qualifications for architect licensure. (1) The board shall set minimum educational and experience requirements for applicants within the following guidelines:

(a) The board may require:

(I) No more than three years of practical experience under the direct supervision of a licensed architect or an architect exempt under the provisions of section 12-25-303 (4) and either:

(A) A professional degree from a program accredited by the national architectural accrediting board or its successor; or

(B) Substantially equivalent education or experience approved by the board, with the board requiring no more than five years of such education and experience; or

(II) No more than ten years of practical experience under the direct supervision of a licensed architect or an architect exempt under the provisions of section 12-25-303 (4); or

(III) A combination of such practical experience and education, which combination shall not exceed ten years.

(b) Up to one year of the required experience may be in on-site building construction operations, physical analyses of existing buildings, or teaching or research in a program accredited by the national architectural accreditation board or its successor.

(c) Full credit shall be given for education obtained in four-year baccalaureate programs in architecture or environmental design.

(2) (a) An applicant shall pass an examination or examinations developed or adopted by the board. The board shall ensure that the passing score for any examination is set to measure the level of minimum competency.

(b) The examination shall be given at least twice a year. The board shall designate a time and location for examinations and shall notify applicants of this time and location in a timely fashion and, as necessary, may contract for assistance in administering the examination.

(3) An applicant for licensure by endorsement must hold a license in good standing in a jurisdiction requiring qualifications substantially equivalent to those currently required for licensure by examination as provided in section 12-25-310 (1) and subsections (1) and (2) of this section and shall submit an application as prescribed by the board. The board shall provide procedures for an applicant to apply directly to the board. The board may also provide an alternative application procedure so that an applicant may, at his or her option, instead apply to a national clearinghouse designated by the board. The national clearinghouse shall then forward the application to the board.

Source: L. 2006: Entire part added with relocated provisions, p. 758, § 15, effective July 1. **L. 2013:** (3) amended, (SB 13-161), ch. 356, p. 2092, § 31, effective July 1.

Editor's note: Subsections (1), (2), and (3) are similar to former § 12-4-107 (2), (3), and (5) as they existed prior to 2006.

12-25-314.5. Retired architects - classification - fees. (1) An architect who has been duly licensed and is over sixty-five years of age may apply to the board for classification as a retired architect. Retired architects shall not practice architecture and shall pay a fee established by the board to be listed with and retain retired architect status. A person classified as a retired architect may hold himself or herself out as a retired architect.

(2) A retired architect shall be reinstated to the status of an architect upon payment of the renewal fee established pursuant to section 24-34-105, C.R.S. The board shall not assess any additional fees.

(3) The board may require reexamination of a retired architect who has been retired for two or more years and is seeking reinstatement pursuant to subsection (2) of this section unless the board is satisfied with the retired architect's competence to practice, as required by section 24-34-102 (8)(d)(II), C.R.S.

Source: L. 2016: Entire section added, (HB 16-1076), ch. 15, p. 34, § 1, effective August 10.

12-25-315. Licenses. (1) The board shall issue a license whenever an applicant for a license to practice architecture in Colorado successfully qualifies for such license as provided in this part 3.

(2) An architect may renew a license by paying to the board the license renewal fee established pursuant to section 24-34-105, C.R.S., and the board shall then renew the license.

(3) The license of any architect shall be renewed or reinstated pursuant to a schedule established by the director of the division of professions and occupations within the department of regulatory agencies and shall be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director of the division of professions and occupations within the department of regulatory agencies may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license pursuant to the schedule established by the director of the division of professions and occupations, such license shall expire. Any person whose license has expired shall be subject to the penalties provided in this part 3 or section 24-34-102 (8), C.R.S.

(4) An architect shall give notice to the board, in a manner prescribed by the board, of any change of address within thirty days after the change.

Source: L. 2006: Entire part added with relocated provisions, p. 759, § 15, effective July 1. **L. 2013:** (2) amended and (4) added, (SB 13-161), ch. 356, p. 2092, § 32, effective July 1.

Editor's note: Subsection (1) is similar to former § 12-4-107 (6), and subsections (2) and (3) are similar to former § 12-4-108 (1) and (2), as they existed prior to 2006.

12-25-315.5. Continuing education - rules. (1) No later than December 31, 2008, the board shall adopt rules establishing requirements for continuing education that an architect shall complete in order to renew a license to practice architecture in Colorado on or after July 1, 2009. The rules shall require the architect to participate in a process or procedure that demonstrates whether the architect retained the material presented in the continuing education program or course.

(2) and (3) Repealed.

Source: L. 2008: Entire section added, p. 1339, § 1, effective August 5. **L. 2010:** (2) and (3) repealed, (HB 10-1148), ch. 68, p. 237, § 1, effective August 11.

12-25-316. Disposition of fees - expenses of board. (1) All moneys collected under this part 3, except as provided in section 12-25-308 (4), shall be transmitted to the state treasurer, who shall credit the same pursuant to section 24-34-105, C.R.S., and the general assembly shall make annual appropriations pursuant to said section for expenditures of the board.

(2) The director of the division of professions and occupations within the department of regulatory agencies may employ such technical, clerical, investigative, or other assistance as is necessary for the proper performance of the board's work, subject to section 13 of article XII of the state constitution, and may make expenditures for any purpose that is reasonably necessary for the proper performance of the board's duties under this part 3.

(3) The board may charge fees for licensure by examination, reexamination, and endorsement. The board may also charge fees for renewal and reinstatement of a license.

Source: L. 2006: Entire part added with relocated provisions, p. 759, § 15, effective July 1. **L. 2013:** (3) amended, (SB 13-161), ch. 356, p. 2092, § 33, effective July 1.

Editor's note: This section is similar to former § 12-4-105 as it existed prior to 2006.

12-25-317. Architect's seal - rules. (1) Upon receiving a license from the board, an architect may obtain a crimp type seal, a rubber stamp type seal, or an electronic type seal in a design approved by the board. The seal must contain the architect's name and license number and the designation "Colorado licensed architect". Architects licensed before July 1, 2013, may continue to use their existing seals.

(2) An architect shall use his or her seal, signature, and the date of signature only when the work to which the seal is applied was prepared under the architect's responsible control.

(3) The board shall adopt rules governing use of the seal and the retention, use, and distribution of sealed documents and copies thereof.

Source: L. 2006: Entire part added with relocated provisions, p. 760, § 15, effective July 1. **L. 2013:** Entire section R&RE, (SB 13-161), ch. 356, p. 2092, § 34, effective July 1.

Editor's note: Subsection (1) is similar to former § 12-4-116, and subsection (2) is similar to former § 12-4-115 (1), as they existed prior to 2006.

12-25-318. Immunity. Any member of the board, any member of the board's staff, any person acting as a witness or consultant to the board, any witness testifying in a proceeding authorized under this part 3, and any person who lodges a complaint pursuant to this part 3 shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as board member, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. A person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this part 3 shall be immune from any civil or criminal liability that may result from such participation.

Source: L. 2006: Entire part added with relocated provisions, p. 760, § 15, effective July 1.

Editor's note: This section is similar to former § 12-4-104.5 as it existed prior to 2006.

12-25-319. Previous licenses - prior actions. Any person holding a valid license to practice architecture in Colorado before July 1, 2006, shall be licensed under this part 3. All official actions of the state board of examiners of architects made or taken before July 1, 2006, are expressly ratified.

Source: L. 2006: Entire part added with relocated provisions, p. 761, § 15, effective July 1.

Editor's note: This section is similar to former § 12-4-109 as it existed prior to 2006.

ARTICLE 25.5

Escort Services

12-25.5-101 to 12-25.5-115. (Repealed)

Source: L. 2017: Entire article repealed, (SB 17-228), ch. 246, p. 1042, § 9, effective August 9.

Editor's note: This article 25.5 was added in 1980. For amendments to this article 25.5 prior to its repeal in 2017, consult the 2016 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume. This article 25.5 was relocated to article 11.8 of title 29. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

ARTICLE 26

Firearms - Dealers

12-26-101 to 12-26-104. (Repealed)

Source: L. 2018: Entire article repealed, (SB 18-032), ch. 8, p. 154, § 8, effective October 1.

Editor's note: This article 26 was numbered as article 3 of chapter 53, C.R.S. 1963. For amendments to this article 26 prior to its repeal in 2018, consult the 2017 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume. This article 26 was relocated to part 4 of article 12 of title 18 by SB 18-032. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article 26, see the comparative tables located in the back of the index.

ARTICLE 26.1

Background Checks - Gun Shows

12-26.1-101 to 12-26.1-108. (Repealed)

Source: L. 2018: Entire article repealed, (SB 18-032), ch. 8, p. 154, § 8, effective October 1.

Editor's note: This article 26.1 was added in 2000 as an initiated measure. For amendments to this article 26.1 prior to its repeal in 2018, consult the 2017 Colorado Revised

Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume. This article 26.1 was relocated to part 5 of article 12 of title 18 by SB 18-032. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article 26.1, see the comparative tables located in the back of the index.

ARTICLE 26.5

Handguns - Statewide Instant Criminal
Background Check System

12-26.5-101 to 12-26.5-109. (Repealed)

Source: L. 2014: Entire article repealed, (SB 14-135), ch. 147, p. 498, § 2, effective August 6.

Editor's note: (1) This article was added in 1994. For amendments to this article prior to its repeal in 1998, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 12-26.5-109 as enacted by section 1 of chapter 5, Session Laws of Colorado 1994, and as amended by chapter 115, Session Laws of Colorado 1998, provided for the repeal of this article upon the implementation of the federal national instant criminal background check system. The revisor of statutes was notified that the system was implemented on November 30, 1998.

ARTICLE 27

Firearms - Purchase in Contiguous State

12-27-101 to 12-27-104. (Repealed)

Source: L. 2014: Entire article repealed, (SB 14-135), ch. 147, p. 498, § 2, effective August 6.

Editor's note: This article was numbered as article 6 of chapter 53, C.R.S. 1963 and was not amended prior to its repeal in 2014. For the text of this article prior to 2014, consult the 2013 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

Cross references: (1) For offenses relating to firearms, see article 12 of title 18; for the federal "Gun Control Act of 1968", see 82 Stat. 1213, 18 U.S.C. § 921 et seq.

(2) For the legislative declaration in SB 14-135, see section 1 of chapter 147, Session Laws of Colorado 2014.

ARTICLE 28

Fireworks

12-28-101 to 12-28-113. (Repealed)

Source: L. 2017: Entire article repealed, (SB 17-222), ch. 245, p. 1029, § 8, effective August 9.

Editor's note: This article 28 was numbered as article 5 of chapter 53, C.R.S. 1963. For amendments to this article 28 prior to its repeal in 2017, consult the 2016 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume. This article 28 was relocated to part 20 of article 33.5 of title 24. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

HEALTH CARE

ARTICLE 29

Basic Sciences

12-29-101 to 12-29-119. (Repealed)

Source: L. 76: Entire article repealed, p. 416, § 13, effective July 1.

Editor's note: This article was numbered as article 5 of chapter 91, C.R.S. 1963. For amendments to this article prior to its repeal in 1976, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 29.1

Professional Review Proceedings

12-29.1-101. Legislative declaration. The general assembly hereby finds and declares that the proper practice of the healing arts professions requires the supervision and discipline of licensed practitioners for the benefit of the public, and, to this end, the licensing boards and their duly constituted professional review committees shall have the power, duty, and responsibility to conduct proceedings to determine facts so that the boards may invoke discipline fairly and progressively where required, and that such proceedings shall accommodate the requirements of full professional and technical disclosure, as well as due process of law for the licensee under investigation.

Source: L. 77: Entire article added, p. 660, § 1, effective July 1.

12-29.1-102. Solicitation of accident victims - waiting period. (1) Except as permitted by subsection (2) of this section, no health care practitioner licensed under articles 29.5 to 43 of this title or his or her agent shall engage in solicitation for professional employment concerning a personal injury unless the incident for which employment is sought occurred more than thirty days prior to the solicitation.

(2) This section shall not apply to any person providing emergency health care at the time of the incident or follow-up referrals to physicians from the emergency health care providers.

(3) As used in this section, "solicitation" means an initial contact initiated in person, through any form of electronic or written communication, or by telephone, telegraph, or facsimile, any of which is directed to a specific individual, unless said contact is requested by the individual, a member of the individual's family, or the individual's authorized representative. "Solicitation" does not include radio, television, newspaper, or yellow pages advertisements.

(4) Any agreement made in violation of this section is voidable at the option of the individual suffering the personal injury or the individual's authorized representative.

Source: L. 97: Entire section added, p. 323, § 1, effective July 1.

ARTICLE 29.3

Uniform Emergency Volunteer
Health Practitioners Act

12-29.3-101 to 12-29.3-113. (Repealed)

Source: L. 2017: Entire article repealed, (HB 17-1240), ch. 244, p. 1017, § 3, effective August 9.

Editor's note: This article 29.3 was added in 2007. For amendments to this article 29.3 prior to its repeal in 2017, consult the 2016 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume. This article 29.3 was relocated to part 6 of article 1.5 of title 25. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article 29.3, see the comparative tables located in the back of the index.

ARTICLE 29.5

Acupuncturists

12-29.5-101. Legislative declaration. While recognizing that the rendering of acupuncture services is not part of the traditional practice of western medicine, it is the intent of the general assembly that those citizens who wish to obtain acupuncture services be allowed to do so and, in addition, that such citizens have available certain information to assist them in making informed choices when seeking such services. It is also the intent of the general assembly that the providers or practitioners of acupuncture should not misrepresent their

qualifications, harm their clients, practice in an unhealthy manner, or otherwise deceive insurers or the recipients of acupuncture services.

Source: L. 89: Entire article added, p. 656, § 1, effective June 6.

12-29.5-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Acupuncture" means a system of health care based upon traditional and modern oriental medical concepts that employs oriental methods of diagnosis, treatment, and adjunctive therapies for the promotion, maintenance, and restoration of health and the prevention of disease.

(2) "Acupuncturist" means any person who provides for compensation, or holds himself out to the public as providing, acupuncture services.

(3) "Director" means the director of the division of professions and occupations in the department of regulatory agencies.

(3.2) "Guest acupuncturist" means an acupuncturist who is:

(a) Licensed, registered, certified, or regulated as an acupuncturist in another jurisdiction;

(b) In this state for the purpose of instruction or education for not more than seven days within a three-month period; and

(c) Under the direct supervision of a Colorado licensed acupuncturist or licensed chiropractor while performing such instruction or education.

(3.3) "Injection therapy" means the injection of sterile herbs, vitamins, minerals, homeopathic substances, or other similar substances specifically manufactured for nonintravenous injection into acupuncture points by means of hypodermic needles used primarily for the treatment of musculoskeletal pain. Permissible substances include saline, glucose, lidocaine, procaine, oriental herbs, vitamin B-12, traumeel, sarapin, and homeopathic substances. "Injection therapy" includes the use of epinephrine and oxygen as necessary for patient care and safety, including for the purpose of addressing any risk of allergic reactions when using injection substances.

(3.4) "Licensee" means an acupuncturist licensed pursuant to section 12-29.5-104.

(3.5) (a) "Practice of acupuncture" means the insertion and removal of acupuncture needles, injection therapy, the application of heat therapies to specific areas of the human body, and adjunctive therapies. Adjunctive therapies within the scope of acupuncture may include manual, mechanical, thermal, electrical, and electromagnetic treatment; the recommendation of therapeutic exercises; and, subject to federal law, the recommendation of herbs and dietary guidelines. The "practice of acupuncture" is based upon traditional and modern oriental medical concepts and does not include the utilization of western medical diagnostic tests and procedures, such as magnetic resonance imaging, radiographs (X rays), computerized tomography scans, and ultrasound.

(b) Nothing in this article authorizes an acupuncturist to perform the practice of medicine; surgery; spinal adjustment, manipulation, or mobilization; or any other form of healing except as authorized by this article.

(4) (Deleted by amendment, L. 2002, p. 33, § 1, effective March 13, 2002.)

Source: L. 89: Entire article added, p. 656, § 1, effective June 6. **L. 95:** (1) amended and (3.2) and (3.5) added, p. 482, § 1, effective January 1, 1996. **L. 2002:** (3.2)(c) and (4) amended

and (3.3) added, p. 33, § 1, effective March 13. **L. 2013:** (1) and (3.5) amended, (SB 13-172), ch. 396, p. 2313, § 3, effective June 5. **L. 2015:** (3.3) and (3.5)(a) amended and (3.4) added, (HB 15-1360), ch. 319, p. 1300, § 1, effective June 5.

12-29.5-102.5. Injection therapy - training - substances - rules. (1) A licensee shall obtain the necessary training as determined by the director prior to practicing injection therapy.

(2) Notwithstanding section 12-42.5-305, a licensee who has received the necessary training to practice injection therapy may obtain substances for injection therapy from a registered prescription drug outlet, registered manufacturer, or registered wholesaler. An entity that provides a substance to a licensee in accordance with this section, and who relies in good faith upon the license information provided by the licensee, is not liable for providing the substance.

(3) The director shall promulgate rules to implement this section that include the necessary training for a licensee to practice injection therapy and a list of substances that a licensee may obtain for injection therapy. In promulgating the rules, the director shall consult with knowledgeable medical professionals and pharmacists.

Source: L. 2015: Entire section added, (HB 15-1360), ch. 319, p. 1301, § 2, effective June 5.

12-29.5-103. Mandatory disclosure of information to patients - retention of records of disclosure. (1) Every acupuncturist shall provide the following information in writing to each patient during the initial patient contact:

(a) The name, business address, and business phone number of the acupuncturist;

(b) A fee schedule;

(c) A statement indicating that:

(I) The patient is entitled to receive information about the methods of therapy, the techniques used, and the duration of therapy, if known;

(II) The patient may seek a second opinion from another health care professional or may terminate therapy at any time;

(III) In a professional relationship, sexual intimacy is never appropriate and should be reported to the director of the division of professions and occupations in the department of regulatory agencies;

(d) A listing of the acupuncturist's education, experience, degrees, membership in a professional organization whose membership includes not less than one-third of the persons licensed pursuant to this article, certificates or credentials related to acupuncture awarded by such organizations, the length of time required to obtain said degrees or credentials, and experience;

(e) A statement indicating any license, certificate, or registration in acupuncture or any other health care profession which was issued to the acupuncturist by any local, state, or national health care agency, and indicating whether any such license, certificate, or registration was suspended or revoked;

(f) A statement that the acupuncturist is complying with any rules and regulations promulgated by the department of public health and environment with respect to this article,

including those related to the proper cleaning and sterilization of needles used in the practice of acupuncture and the sanitation of acupuncture offices;

(g) A statement indicating that the practice of acupuncture is regulated by the department of regulatory agencies and the address and phone number of the director of the division of professions and occupations in the department of regulatory agencies; and

(h) A statement indicating the acupuncturist's training and experience in the recommendation and application of adjunctive therapies and herbs as defined by traditional oriental medical concepts.

(2) Any changes in the information required by paragraphs (a) to (f) of subsection (1) of this section shall be made in the mandatory disclosure within five days of the said change.

(3) The acupuncturist shall retain a copy of the written information specified in subsection (1) of this section, dated and signed by the patient, from the time of the initial evaluation until at least three years after the termination of treatment.

Source: L. 89: Entire article added, p. 657, § 1, effective June 6. **L. 92:** (1) amended and (3) added, p. 1992, § 3, effective July 1. **L. 94:** (1)(f) amended, p. 2725, § 326, effective July 1. **L. 95:** (1)(g) amended and (1)(h) added, p. 483, § 2, effective January 1, 1996. **L. 2002:** (1)(d) amended, p. 33, § 2, effective March 13.

12-29.5-104. Requirement for licensure with the division of professions and occupations - annual fee - required disclosures. (1) Every acupuncturist shall apply for licensure with the division of professions and occupations by providing an application to the director in the form the director shall require. Said application shall include the information specified in section 12-29.5-103 (1)(a) and (1)(d) to (1)(g), and shall include the disclosure of any act that would be grounds for disciplinary action against a licensed acupuncturist under this article.

(2) Any changes in the information required by subsection (1) of this section shall be reported within thirty days of said change to the division of professions and occupations in the manner prescribed by the director.

(3) In order to qualify for licensure, an acupuncturist shall have:

(a) Successfully completed an education program for acupuncturists that conforms to standards approved by the director, which standards may be established by utilizing the assistance of any professional organization whose membership includes not less than one-third of the persons licensed pursuant to this article; or

(b) Qualifications based on education, experience, or training which are substantially similar to those provided by paragraph (a) of this subsection (3) which are documented in the form required by the director and accepted by him in lieu of such education program.

(4) Every applicant for licensure shall pay license, renewal, and reinstatement fees to be established by the director in the same manner as is authorized by section 24-34-105, C.R.S. All licenses shall be renewed or reinstated pursuant to a schedule established by the director of the division of professions and occupations within the department of regulatory agencies and shall be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director of the division of professions and occupations within the department of regulatory agencies may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license pursuant to the schedule established by the director of the

division of professions and occupations, such license shall expire. Any person whose license has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

(5) (a) Every acupuncturist shall report to the director every judgment or administrative action, as well as the terms of any settlement or other disposition of any such judgment or action, against the acupuncturist involving malpractice or improper practice of acupuncture, whether occurring in Colorado or in any other jurisdiction. The acupuncturist shall make such report either within thirty days after the judgment or action or upon application for licensure or reinstatement, whichever occurs earlier.

(b) An acupuncturist who has had his or her license revoked or who has surrendered his or her license to avoid disciplinary action is not eligible to apply for a license for two years after the license is revoked or suspended.

(6) As a condition of licensure, every acupuncturist shall purchase and maintain commercial professional liability insurance with an insurance company authorized to do business in this state in a minimum indemnity amount of:

(a) Fifty thousand dollars per incident and fifty thousand dollars per year, if practicing as a sole proprietor or general partnership;

(b) Three hundred thousand dollars per incident and three hundred thousand dollars per year, if practicing as a limited liability company or a corporation.

(7) The director shall issue a license to practice acupuncture to any acupuncturist who is registered to practice acupuncture in this state prior to March 13, 2002.

Source: L. 89: Entire article added, p. 657, § 1, effective June 6. **L. 92:** (1) and (4) amended and (5) added, p. 1993, § 4, effective July 1. **L. 95:** (6) added, p. 483, § 3, effective January 1, 1996. **L. 2002:** (1), IP(3), (3)(a), (4), (5), and IP(6) amended and (7) added, p. 34, § 3, effective March 13. **L. 2004:** (4) amended, p. 1818, § 55, effective August 4. **L. 2013:** (5) amended, (SB 13-172), ch. 396, p. 2313, § 4, effective June 5.

12-29.5-104.5. Licensure by endorsement. (1) The director shall issue a license by endorsement to engage in the practice of acupuncture in this state to any applicant who has a license in good standing as an acupuncturist under the laws of another jurisdiction if the applicant presents satisfactory proof to the director that, at the time of application for a license by endorsement, the applicant possesses substantially equivalent credentials and qualifications to those required for licensure pursuant to this article.

(2) The director shall specify by rule what shall constitute "substantially equivalent credentials and qualifications" for the purposes of this section.

(3) The director shall establish a fee to be paid by any applicant for licensure by endorsement.

(4) For the purposes of this section, "in good standing" means a license that has not been revoked or suspended, or against which there are no disciplinary or adverse actions.

Source: L. 2002: Entire section added, p. 35, § 4, effective March 13.

12-29.5-105. Unlawful acts - exceptions - definition. (1) Nothing in this article shall interfere with, or be interpreted to interfere with or prevent, any other licensed health care professional from practicing within the scope of his or her practice, as defined in this title.

(1.5) (a) It is unlawful for any person to practice acupuncture without a valid and current license on file with the division of professions and occupations, unless the acupuncturist is practicing pursuant to section 12-36-106 (3)(l) or has met the requirements of subsection (2) of this section.

(b) It is unlawful for any person to:

(I) Engage in the practice of acupuncture without being licensed; or

(II) Use the title "licensed acupuncturist", "registered acupuncturist", or "diplomate of acupuncture", or use the designation "L.Ac.", "R.Ac.", or "Dipl. Ac.", unless such person is practicing pursuant to section 12-36-106 (3).

(2) Notwithstanding any provision of this section to the contrary, a person in training may practice acupuncture without a valid and current license issued by the division if such practice takes place in the course of a bona fide training program and the person performs all acupuncture acts and services under the direct, on-site supervision of a licensed acupuncturist, who is responsible for all such acts and services as though the licensed acupuncturist had personally performed them.

(3) (a) Notwithstanding any provision of this article 29.5 to the contrary, a mental health care professional who has provided documentation that he or she has been trained to perform auricular acudetox in compliance with subsection (3)(d) of this section may perform auricular acudetox if the auricular acudetox is performed under the mental health care professional's current scope of practice, and the mental health care professional is:

(I) Licensed pursuant to article 43 of this title 12;

(II) Certified as a level III addiction counselor pursuant to part 8 of article 43 of this title 12; or

(III) Registered as a psychotherapist pursuant to part 7 of article 43 of this title 12.

(b) A mental health professional performing auricular acudetox pursuant to this subsection (3) shall not use the title "acupuncturist" or otherwise claim to be a person qualified to perform acupuncture beyond the scope of this subsection (3).

(c) As used in this subsection (3) "auricular acudetox" means the subcutaneous insertion of sterile, disposable acupuncture needles in the following five consistent, predetermined bilateral locations:

(I) Sympathetic;

(II) Shen men;

(III) Kidney;

(IV) Liver; and

(V) Lung.

(d) In order to perform auricular acudetox pursuant to this subsection (3), a mental health care professional must successfully complete a training program in auricular acudetox for the treatment of substance use disorders that meets or exceeds standards of training established by the national acupuncture detoxification association or another organization approved by the director.

Source: L. 89: Entire article added, p. 658, § 1, effective June 6. **L. 92:** Entire section amended, p. 1994, § 5, effective July 1. **L. 95:** Entire section amended, p. 484, § 4, effective January 1, 1996. **L. 2002:** (1.5) and (2) amended, p. 35, § 5, effective March 13. **L. 2013:** (2) amended, (SB 13-172), ch. 396, p. 2314, § 5, effective June 5; (3) added, (SB 13-207), ch. 416,

p. 2462, § 1, effective July 1. **L. 2017:** (3)(d) amended, (SB 17-242), ch. 263, p. 1267, § 42, effective May 25. **L. 2018:** (3)(a) amended, (SB 18-020), ch. 52, p. 494, § 1, effective August 8.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-29.5-106. Grounds for disciplinary action. (1) The director may deny licensure to or take disciplinary action against an acupuncturist pursuant to section 24-4-105 if the director finds that the acupuncturist has committed any of the following acts:

(a) Violated the provisions of section 12-29.5-105;

(b) Failed to provide the mandatory disclosure required by section 12-29.5-103 or provided false, deceptive, or misleading information to patients in the said disclosure;

(c) Failed to provide the information required by section 12-29.5-104 (1) or provided false, deceptive, or misleading information to the division of professions and occupations;

(d) Committed, or advertised in any manner that he or she will commit, any act constituting an abuse of health insurance as prohibited by section 18-13-119, C.R.S., or a fraudulent insurance act as defined in section 10-1-128, C.R.S.;

(e) Failed to refer a patient to an appropriate practitioner when the problem of the patient is beyond the training, experience, or competence of the acupuncturist;

(f) Accepted commissions or rebates or other forms of remuneration for referring clients to other professional persons;

(g) Offered or gave commissions, rebates, or other forms of remuneration for the referral of clients; except that, notwithstanding the provisions of this paragraph (g), an acupuncturist may pay an independent advertising or marketing agent compensation for advertising or marketing services rendered on his behalf by such agent, including compensation which is paid for the results of performance of such services, on a per patient basis;

(h) Failed to comply with, or aided or abetted a failure to comply with, the requirements of this article or any lawful rules or regulations adopted by the executive director of the department of public health and environment, including those regulations governing the proper cleaning and sterilization of acupuncture needles or the sanitary conditions of acupuncture offices, or any lawful orders of the department of public health and environment or of court;

(i) Failed to comply with, or aided or abetted a failure to comply with, the requirements of this article or any lawful rules or regulations governing the practice of acupuncture adopted by the director, or any lawful orders of the director or of court;

(j) Engaged in sexual contact, sexual intrusion, or sexual penetration, as defined in section 18-3-401, C.R.S., with a patient during the period of time beginning with the initial patient evaluation and ending with the termination of treatment;

(k) Departed from, or failed to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established;

(l) (I) Failed to notify the director of a physical illness; a physical condition; or a behavioral, mental health, or substance use disorder that impacts the licensee's ability to practice acupuncture with reasonable skill and safety to patients;

(II) Failed to act within the limitations created by a physical illness; a physical condition; or a behavioral, mental health, or substance use disorder that renders the licensee unable to perform acupuncture with reasonable skill and safety to the patient; or

(III) Failed to comply with the limitations agreed to under a confidential agreement;

(m) Continued in the practice of acupuncture while abusing or habitually or excessively using alcohol, a habit-forming drug, or controlled substance as defined in section 18-18-102 (5), C.R.S.;

(n) Committed and been convicted of a felony or entered a plea of guilty or nolo contendere to a felony; and

(o) Published or circulated, directly or indirectly, any fraudulent, false, deceitful, or misleading claims or statements relating to acupuncture or to the acupuncturist's practice, capabilities, services, methods, or qualifications.

(2) The director may accept, as prima facie evidence of the commission of any act enumerated in subsection (1) of this section, evidence of disciplinary action taken by another jurisdiction against an acupuncturist's license or other authorization to practice if such disciplinary action was based upon acts or practices substantially similar to those enumerated in subsection (1) of this section.

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

(b) Upon failure of any witness to comply with such subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board or director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or 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 to obey the order of the court may be punished by the court as a contempt of court.

Source: L. 89: Entire article added, p. 658, § 1, effective June 6. **L. 92:** Entire section amended, p. 1994, § 6, effective July 1. **L. 94:** (1)(h) amended, p. 2725, § 327, effective July 1. **L. 2002:** IP(1) amended, p. 36, § 6, effective March 13. **L. 2003:** (1)(d) amended, p. 620, § 25, effective July 1. **L. 2004:** (1)(m) amended, p. 1193, § 32, effective August 4; (3) added, p. 1819, § 56, effective August 4. **L. 2012:** (1)(m) amended, (HB 12-1311), ch. 281, p. 1610, § 12, effective July 1. **L. 2013:** (1)(l) and (1)(m) amended, (SB 13-172), ch. 396, p. 2314, § 6, effective June 5. **L. 2017:** IP(1) and (1)(l) amended, (SB 17-242), ch. 263, p. 1267, § 43, effective May 25.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-29.5-107. Disciplinary authority and proceedings. (1) A proceeding for discipline of a licensee may be commenced by the director when the director has reasonable grounds to believe that a licensee has committed any act prohibited by section 12-29.5-106 (1).

(2) Disciplinary actions may consist of the following:

(a) Revocation or suspension of licensure;

(b) Placement of the licensee on probation and setting the terms of that probation; and

(c) (I) Issuance of letters of admonition. When a complaint or investigation discloses an instance of misconduct that, in the opinion of the director, does not warrant formal action by the director but that should not be dismissed as being without merit, the director may issue and send a letter of admonition by first-class mail, to the licensee.

(II) When the director sends a letter of admonition to a licensee, the director shall advise the licensee that he or she has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(III) If the request for adjudication is timely made, the letter of admonition shall be deemed vacated and the matter shall be processed by means of formal disciplinary proceedings.

(2.5) When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the director and, in the opinion of the director, the complaint should be dismissed, but the director has noticed indications of possible errant conduct by the licensee that could lead to serious consequences if not corrected, a confidential letter of concern may be issued and sent to the licensee.

(3) Complaints of record on file with the director and the results of investigations shall be closed to public inspection during the investigatory period and until dismissed or until notice of hearing and charges are served on a licensee. The director's records and papers shall be subject to the provisions of sections 24-72-203 and 24-72-204, C.R.S.

(4) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the director, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(5) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a 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 license, the director may issue an order to cease and desist such activity. 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 unlicensed practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (5), the respondent may request a hearing on the question of whether acts or practices in violation of this article have occurred. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

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

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (6) shall be promptly notified by the director of the issuance of

the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the director for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order is issued. Personal service or mailing of an order or document pursuant to this subsection (6) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the director as provided in paragraph (b) of this subsection (6). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (6) does not appear at the hearing, the director may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (6) and such other evidence related to the matter as the director deems appropriate. The director shall issue the order within ten days after the director's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(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 license or has or is about to engage in acts or practices constituting violations of this article, a final cease-and-desist order may be issued directing such person to cease and desist from further unlawful acts or unlicensed practices.

(IV) The director shall provide notice, in the manner set forth in paragraph (b) of this subsection (6), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

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

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

(9) A person aggrieved by the final cease-and-desist order may seek judicial review of the director's determination or of the director's final order in a court of competent jurisdiction.

Source: L. 89: Entire article added, p. 659, § 1, effective June 6. **L. 2002:** (1), (2)(a), (2)(b), and (3) amended, p. 36, § 7, effective March 13. **L. 2004:** (2)(c) amended and (4) added,

p. 1819, § 57, effective August 4. **L. 2006:** (2.5) and (5) to (9) added, p. 787, § 20, effective July 1. **L. 2013:** (2)(c)(I) and (2)(c)(II) amended, (SB 13-172), ch. 396, p. 2314, § 7, effective June 5.

12-29.5-108. Unauthorized practice - penalties. (1) Any person who practices or offers or attempts to practice acupuncture 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 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(2) Any person who violates the provision of section 12-29.5-106 (1)(j) by engaging in sexual contact with a patient during the course of patient care commits a class 1 misdemeanor and shall be referred for criminal prosecution.

(3) Any person who violates the provisions of section 12-29.5-106 (1)(j) by engaging in sexual intrusion or sexual penetration with a patient during the course of patient care commits a class 4 felony and shall be referred for criminal prosecution.

Source: L. 89: Entire article added, p. 659, § 1, effective June 6. **L. 2002:** Entire section amended, p. 1476, § 67, effective October 1. **L. 2006:** Entire section amended, p. 86, § 22, effective August 7.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

12-29.5-108.5. Examinations - notice - confidential agreements. (1) If an acupuncturist suffers from a physical illness; a physical condition; or a behavioral or mental health disorder that renders the licensee unable to practice acupuncture or practice as an acupuncturist with reasonable skill and patient safety, the acupuncturist shall notify the director of the physical illness; the physical condition; or the behavioral or mental health disorder in a manner and within a period of time determined by the director. The director may require the licensee to submit to an examination or to evaluate the extent of the physical illness; the physical condition; or the behavioral or mental health disorder and its impact on the licensee's ability to practice with reasonable skill and safety to patients.

(2) (a) Upon determining that an acupuncturist with a physical illness; a physical condition; or a behavioral or mental health disorder is able to render limited acupuncture treatment with reasonable skill and patient safety, the director may enter into a confidential agreement with the acupuncturist in which the acupuncturist agrees to limit his or her practice based on the restrictions imposed by the physical illness; the physical condition; or the behavioral or mental health disorder, as determined by the director.

(b) The agreement must specify that the licensee 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.

(d) By entering into an agreement with the director under this subsection (2) to limit his or her practice, the licensee is not engaging in unprofessional conduct. The agreement is an administrative action and does not constitute a restriction or discipline by the director. However, if the licensee fails to comply with an agreement entered into pursuant to this subsection (2), the

failure constitutes grounds for disciplinary action under section 12-29.5-106 (1)(l) and the licensee is subject to discipline in accordance with section 12-29.5-107.

(3) This section does not apply to a licensee subject to discipline under section 12-29.5-106 (1)(m).

Source: L. 2013: Entire section added, (SB 13-172), ch. 396, p. 2315, § 8, effective June 5. **L. 2017:** (1) and (2)(a) amended, (SB 17-242), ch. 263, p. 1268, § 44, effective May 25.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-29.5-109. Civil penalties. (1) No action may be maintained against a recipient of acupuncture services for breach of a contract involving the rendering of acupuncture services provided under such contract by an acupuncturist who has committed, with respect to such recipient, any act prohibited by section 12-29.5-106 (1).

(2) When a patient, his insurer, or his legal guardian or representative has paid for acupuncture services rendered by an acupuncturist who has committed, with respect to such patient, any act prohibited by section 12-29.5-106 (1), whether or not said patient knew that said act or acts were illegal, he, his insurer, or his legal guardian or representative may recover, in an action at law, the amount of any fees paid for the acupuncture services and reasonable attorney fees.

(3) The criminal and civil penalties specified under this article are not exclusive but cumulative and in addition to any other causes of action, rights, or remedies a patient may have under law.

Source: L. 89: Entire article added, p. 660, § 1, effective June 6.

12-29.5-109.5. Immunity. The director, the director's staff, any person acting as a witness or 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 liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as director, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this article shall be immune from any civil or criminal liability that may result from such participation.

Source: L. 92: Entire section added, p. 1996, § 7, effective July 1. **L. 2004:** Entire section amended, p. 1820, § 58, effective August 4.

12-29.5-110. Director - powers and duties. (1) In addition to any other powers and duties conferred by this article, the director shall have the following powers and duties:

(a) To adopt such rules and regulations as may be necessary to carry out the provisions of this article;

(b) To establish the fees for licensure and renewal of licenses in the same manner as is authorized by section 24-34-105, C.R.S.;

(c) To accept or deny applications for licensure and to collect the annual license fees authorized by this article;

(d) To inspect on a complaint basis any premises where acupuncture services are provided to ensure compliance with this article and the rules and regulations adopted pursuant thereto;

(e) To contract with the department of public health and environment or others to provide appropriate services as needed to carry out the inspections authorized with respect to the proper cleaning and sterilization of needles and the sanitation of acupuncture offices;

(f) To make investigations, hold hearings, and take evidence with respect to any complaint against any licensee when the director has reasonable cause to believe that the licensee is violating any of the provisions of this article and to subpoena witnesses, administer oaths, and compel the testimony of witnesses and the production of books, papers, and records relevant to those investigations or hearings. Any subpoena issued pursuant to this article shall be enforceable by the district court.

(g) To conduct any other meetings or hearings necessary to carry out the provisions of this article;

(h) Through the department of regulatory agencies, and subject to appropriations made to the department of regulatory agencies, to employ administrative law judges on a full-time or part-time basis to conduct any hearings required by this article. The administrative law judges shall be appointed pursuant to part 10 of article 30 of title 24, C.R.S.

(i) To seek, through the office of the attorney general, an injunction in any court of competent jurisdiction to enjoin any person from committing any act prohibited by this article. When seeking an injunction under this paragraph (i), the director shall 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.

(j) To order the physical or mental examination of an acupuncturist if the director has reasonable cause to believe that the acupuncturist is subject to a physical or mental disability which renders the acupuncturist unable to treat patients with reasonable skill and safety or which may endanger a patient's health or safety; and the director may order such an examination whether or not actual injury to a patient is established;

(k) To report to the United States department of health and human services, pursuant to applicable federal law and regulations, any adverse action taken against the license of any acupuncturist.

Source: L. 89: Entire article added, p. 660, § 1, effective June 6. **L. 92:** (1)(d) amended and (1)(j) and (1)(k) added, p. 1997, §§ 8, 9, effective July 1. **L. 94:** (1)(e) amended, p. 2726, § 328, effective July 1. **L. 2002:** (1)(b), (1)(c), (1)(f), and (1)(k) amended, p. 36, § 8, effective March 13.

12-29.5-111. Powers and duties of the executive director of the department of public health and environment. The executive director of the department of public health and

environment shall promulgate rules and regulations relating to the proper cleaning and sterilization of needles to be used in the practice of acupuncture and the sanitation of acupuncture offices.

Source: L. 89: Entire article added, p. 661, § 1, effective June 6. **L. 94:** Entire section amended, p. 2726, § 329, effective July 1.

12-29.5-112. Insurance coverage - not affected. Nothing in this article shall be construed to affect any present or future provision of law or contract or other agreement concerning insurance or insurance coverage with respect to the provision of acupuncture services.

Source: L. 89: Entire article added, p. 661, § 1, effective June 6.

12-29.5-113. Scope of article. The provisions of this article shall not apply to those persons who are otherwise licensed by the state of Colorado under this title if the provision of acupuncture services is within the scope of such licensure. It is not intended nor shall it be interpreted that the practice of acupuncture constitutes the practice of medicine within the scope of the "Colorado Medical Practice Act", article 36 of this title.

Source: L. 89: Entire article added, p. 661, § 1, effective June 6. **L. 95:** Entire section amended, p. 484, § 5, effective January 1, 1996.

12-29.5-114. Division of professions and occupations cash fund. It is the intention of the general assembly that all direct and indirect costs incurred in the implementation of this article be funded by annual registration and license fees. All fees collected by the director shall be transmitted to the state treasurer, who shall credit the same to the division of professions and occupations cash fund, created by section 24-34-105, C.R.S.

Source: L. 89: Entire article added, p. 661, § 1, effective June 6. **L. 2002:** Entire section amended, p. 37, § 9, effective March 13.

12-29.5-115. Effective date - applicability. This article shall take effect July 1, 1989, and shall apply to practicing acupuncturists on or after January 1, 1990.

Source: L. 89: Entire article added, p. 661, § 1, effective June 6.

12-29.5-116. Repeal of article - termination of functions. (1) This article is repealed, effective September 1, 2022.

(2) The licensing functions of the director of the division of professions and occupations as set forth in this article are terminated on September 1, 2022. Prior to such termination, the licensing functions shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: L. 89: Entire article added, p. 661, § 1, effective June 6. **L. 93:** Entire section amended, p. 1460, § 3, effective June 6. **L. 2002:** Entire section amended, p. 37, § 10, effective March 13. **L. 2013:** Entire section amended, (SB 13-172), ch. 396, p. 2312, § 1, effective June 5.

ARTICLE 29.7

Athletic Trainer Practice Act

Editor's note: This article was added in 2009. It was repealed in 2015 and was subsequently recreated and reenacted in 2016, resulting in the addition, relocation, or elimination of sections as well as subject matter. For amendments to this article prior to 2015, consult the 2014 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

12-29.7-101. Short title. The short title of this article is the "Athletic Trainer Practice Act".

Source: L. 2016: Entire article RC&RE, (SB 16-161), ch. 264, p. 1082, § 1, effective July 1.

12-29.7-102. Legislative declaration. The general assembly hereby finds and declares that the practice of athletic training by a person who does not possess a valid registration issued pursuant to this article is not in the best interests of the people of the state of Colorado. It is not, however, the intent of this article to restrict the practice of a person duly licensed, certified, or registered under any article of this title or other laws of this state from practicing within the person's scope of practice and authority pursuant to those laws.

Source: L. 2016: Entire article RC&RE, (SB 16-161), ch. 264, p. 1082, § 1, effective July 1.

12-29.7-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Accredited athletic training education program" means a program of instruction in athletic training that is offered by an institution of higher education and accredited by a national, regional, or state agency recognized by the United States secretary of education, or any other accredited program approved by the director.

(2) "Athlete" means a person who, in association with an educational institution, an organized community sports program or event, or a professional, amateur, or recreational organization or sports club, participates in games, sports, recreation, or exercise requiring physical strength, flexibility, range of motion, speed, stamina, or agility.

(3) "Athletic trainer" means a person engaged in the practice of athletic training.

(4) (a) "Athletic training" means the performance of those services that require the education, training, and experience required by this article for registration as an athletic trainer pursuant to section 12-29.7-107. "Athletic training" includes services appropriate for the

prevention, recognition, assessment, management, treatment, rehabilitation, and reconditioning of injuries and illnesses sustained by an athlete:

(I) Who is engaged in sports, games, recreation, or exercise requiring physical strength, flexibility, range of motion, speed, stamina, or agility; or

(II) That affect an athlete's participation or performance in sports, games, recreation, or exercise as described in subparagraph (I) of this paragraph (a).

(b) "Athletic training" includes:

(I) Planning, administering, evaluating, and modifying methods for prevention and risk management of injuries and illnesses;

(II) Identifying an athlete's medical conditions and disabilities and appropriately caring for or referring an athlete as appropriate;

(III) Recognizing, assessing, treating, managing, preventing, rehabilitating, reconditioning, and appropriately referring to another health care provider to treat injuries and illnesses;

(IV) Using therapeutic modalities for which the athletic trainer has received appropriate training and education;

(V) Using conditioning and rehabilitative exercise;

(VI) Using topical pharmacological agents, in conjunction with the administration of therapeutic modalities and pursuant to prescriptions issued in accordance with the laws of this state, for which the athletic trainer has received appropriate training and education;

(VII) Educating and counseling athletes concerning the prevention and care of injuries and illnesses;

(VIII) Educating and counseling the general public with respect to athletic training services;

(IX) Referring an athlete receiving athletic training services to appropriate health care personnel as needed; and

(X) Planning, organizing, administering, and evaluating the practice of athletic training.

(c) As used in this subsection (4), "injuries and illnesses" includes those conditions in an athlete for which athletic trainers, as the result of their education, training, and competency, are qualified to provide care.

(5) "Direction of a Colorado-licensed or otherwise lawfully practicing physician, dentist, or health care professional" means the planning of services with a physician, dentist, or health care professional; the development and approval by the physician, dentist, or health care professional of procedures and protocols to be followed in the event of an injury or illness; the mutual review of the protocols on a periodic basis; and the appropriate consultation and referral between the physician, dentist, or health care professional and the athletic trainer.

(6) "Director" means the director of the division or his or her designee.

(7) "Division" means the division of professions and occupations in the department of regulatory agencies created in section 24-34-102, C.R.S.

(8) "National certifying agency" means a nationally recognized agency that certifies the competency of athletic trainers through the use of an examination.

(9) "Registrant" means an athletic trainer registered pursuant to this article.

Source: L. 2016: Entire article RC&RE, (SB 16-161), ch. 264, p. 1082, § 1, effective July 1.

12-29.7-104. Use of titles restricted. Only a person registered as an athletic trainer may use the title "athletic trainer" or "registered athletic trainer", the letters "A.T.", "A.T.C.", or any other generally accepted terms, letters, or figures that indicate that the person is an athletic trainer.

Source: L. 2016: Entire article RC&RE, (SB 16-161), ch. 264, p. 1084, § 1, effective July 1.

12-29.7-105. Limitations on authority. (1) Nothing in this article authorizes an athletic trainer to practice:

(a) Medicine, as defined in article 36 of this title;

(b) Physical therapy, as defined in article 41 of this title;

(c) Chiropractic, as defined in article 33 of this title;

(d) Occupational therapy, as defined in article 40.5 of this title; or

(e) Any other regulated form of healing except as authorized by this article.

(2) Nothing in this article authorizes an athletic trainer to treat a disease or condition that is not related to a person's participation in sports, games, recreation, or exercise, but the athletic trainer shall take a person's disease or condition into account in providing athletic training services and shall consult with a physician as appropriate regarding the disease or condition.

(3) Nothing in this article prohibits a person from recommending weight management or exercise to improve strength, conditioning, flexibility, and cardiovascular performance to a person in normal health as long as the person recommending the weight management or exercise does not represent himself or herself as an athletic trainer and the person does not engage in athletic training as defined in this article.

Source: L. 2016: Entire article RC&RE, (SB 16-161), ch. 264, p. 1084, § 1, effective July 1.

12-29.7-106. Registration required. (1) Except as otherwise provided in this article, in order to practice athletic training or represent oneself as being able to practice athletic training in this state, a person must:

(a) Possess a valid registration issued by the director in accordance with this article and any rules adopted under this article; and

(b) Practice pursuant to the direction of a Colorado-licensed or otherwise lawfully practicing physician, dentist, or health care professional.

Source: L. 2016: Entire article RC&RE, (SB 16-161), ch. 264, p. 1085, § 1, effective July 1.

12-29.7-107. Requirements for registration - registration by endorsement - application - denial. (1) Every applicant for a registration to practice athletic training must have:

(a) Earned a baccalaureate degree from an accredited college or university;

(b) Successfully completed an accredited athletic training education program;

(c) (I) Passed a competency examination administered by a national certifying agency that has been approved by the director and provided evidence of current certification by the national certifying agency; or

(II) Passed a competency examination developed and administered by the director;

(d) Submitted an application in the form and manner designated by the director;

(e) Paid a fee in an amount determined by the director; and

(f) Submitted additional information as requested by the director to fully and fairly evaluate the applicant's qualifications for registration and to protect public health and safety.

(2) When an applicant has fulfilled the requirements of subsection (1) of this section, the director shall issue a registration to the applicant. The director may deny registration if the applicant has committed an act that would be grounds for disciplinary action under section 12-29.7-110.

(3) (a) An applicant for registration by endorsement shall file an application and pay a fee as prescribed by the director and shall hold a current, valid license or registration in a jurisdiction that requires qualifications substantially equivalent to those required for registration by subsection (1) of this section.

(b) An applicant for registration shall submit, with the application, verification that the applicant has actively practiced for a period of time determined by rules of the director or has otherwise maintained continued competency as determined by the director.

(c) Upon receipt of all documents required by paragraphs (a) and (b) of this subsection (3), the director shall review the application and make a determination of the applicant's qualifications to be registered by endorsement.

(d) The director may deny the registration if the applicant has committed an act that would be grounds for disciplinary action under section 12-29.7-110.

Source: L. 2016: Entire article RC&RE, (SB 16-161), ch. 264, p. 1085, § 1, effective July 1.

12-29.7-108. Renewal of registration - fees. (1) (a) A registrant shall renew the registration issued pursuant to this article according to a schedule of renewal dates established by the director. The registrant shall submit an application in the form and manner designated by, and shall pay a renewal fee in an amount determined by, the director.

(b) Registrations shall be renewed or reinstated in accordance with the schedule established by the director, and renewal or reinstatement shall be granted pursuant to section 24-34-102 (8), C.R.S. The director may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a registrant fails to renew his or her registration pursuant to the director's schedule, the registration expires. A person whose registration has expired is subject to the penalties provided in this article or section 24-34-102 (8), C.R.S., for reinstatement.

(c) The registrant shall submit additional information that the director requests, including evidence that the registrant has maintained and holds a current, valid certification from the national certifying agency, to fully and fairly evaluate the applicant's qualifications for registration renewal and to protect public health and safety.

(2) All fees collected pursuant to this article shall be determined, collected, and appropriated in the same manner as set forth in section 24-34-105, C.R.S., and periodically adjusted in accordance with section 24-75-402, C.R.S.

Source: L. 2016: Entire article RC&RE, (SB 16-161), ch. 264, p. 1086, § 1, effective July 1.

12-29.7-109. Scope of article - exclusions - authority for clinical setting. (1) Nothing in this article prohibits:

(a) The practice of athletic training that is an integral part of a program of study by students enrolled in an accredited athletic training education program. Students enrolled in an accredited athletic training education program shall be identified as "athletic training students" and shall only practice athletic training under the direction and immediate supervision of an athletic trainer currently registered under this article. An athletic training student shall not represent himself or herself as an athletic trainer.

(b) The practice of athletic training by a person who is certified by a national certifying agency and who is employed by the United States government or any bureau, division, or agency of the federal government while acting in the course and scope of employment;

(c) The practice of athletic training by a person who resides in another state or country, is currently licensed or registered in another state, or is currently certified by a national certifying agency, and is:

(I) Administering athletic training services to an athlete who is a member of a bona fide professional or amateur sports organization or of a sports team of an accredited educational institution, if the person acts in accordance with rules established by the director and engages in the unregistered practice of athletic training for no more than ninety days in any calendar year; or

(II) Participating in an educational program of not more than twelve weeks' duration. Upon written application by the person prior to the expiration of the twelve-week period, the director may grant an extension of time.

(d) The practice of any health care profession, other than athletic training, by a person licensed or registered under any other article of this title in accordance with the lawful scope of practice of the other profession or the performance of activities described in subsection (2) of this section, if the person does not represent himself or herself as an athletic trainer or as engaging in the practice of athletic training;

(e) Athletic training by a patient for himself or herself or gratuitous athletic training by a friend or family member who does not represent himself or herself as an athletic trainer.

(2) Nothing in this article limits or prohibits the administration of routine assistance or first aid by a person who is not a registered athletic trainer for injuries or illnesses sustained at an athletic event or program.

(3) Nothing in this article requires an entity offering or sponsoring an athletic event or regular athletic activity, including a youth sports team or program whose participants are eighteen years of age or younger, to employ a registered athletic trainer.

(4) (a) A school coach, athletic director, or other employee or a person contracted with a school is not engaging in the practice of athletic training when he or she engages in or holds responsibility for the following activities in the course of his or her regularly scheduled duties:

(I) Planning, administering, or modifying methods for prevention and risk management of injuries and illnesses;

(II) Administering routine assistance for first aid to an injured athlete;

(III) Directing conditioning exercises;

(IV) Educating or counseling athletes concerning the prevention of injuries and illnesses; or

(V) Referring an athlete to a licensed health care professional.

(b) As used in this subsection (4), "school" means a public or private elementary, middle, junior high, or high school.

(5) A registered athletic trainer may provide athletic training services in a clinical setting to a person who is not an athlete if the athletic trainer is under the direction and supervision of a Colorado-licensed or otherwise lawfully practicing physician, dentist, or health care professional who treats sports or musculoskeletal injuries. As used in this subsection (5), "direction and supervision" means the issuance of written or oral directives by the physician, dentist, or licensed health care professional to the registered athletic trainer pertaining to the athletic training services to be provided.

Source: L. 2016: Entire article RC&RE, (SB 16-161), ch. 264, p. 1087, § 1, effective July 1.

12-29.7-110. Grounds for discipline - disciplinary proceedings. (1) The director may take disciplinary action against a registrant if the director finds that the registrant has represented himself or herself as a registered athletic trainer after the expiration, suspension, or revocation of his or her registration.

(2) The director may revoke, deny, suspend, or refuse to renew a registration or issue a cease-and-desist order in accordance with this section upon reasonable grounds that the registrant:

(a) Has engaged in a sexual act with a person receiving services while a therapeutic relationship existed or within six months immediately following termination of the therapeutic relationship. For the purposes of this paragraph (a):

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

(II) "Therapeutic relationship" means the period beginning with the initial evaluation and ending upon the written termination of treatment. When an individual receiving services is an athlete participating on a sports team operated under the auspices of a bona fide amateur sports organization or an accredited educational institution that employs the registrant, the therapeutic relationship exists from the time the athlete becomes affiliated with the team until the affiliation ends or the athletic trainer terminates the provision of athletic training services to the team, whichever occurs first.

(b) Has falsified information in an application or has attempted to obtain or has obtained a registration by fraud, deception, or misrepresentation;

(c) Has an alcohol use disorder, as defined in section 27-81-102, or a substance use disorder, as defined in section 27-82-102, or is an excessive or habitual user or abuser of alcohol or habit-forming drugs or is a habitual user of a controlled substance, as defined in section 18-18-102 (5), or other drugs having similar effects; except that the director has the discretion not to

discipline the registrant if he or she is participating in good faith in an alcohol or substance use disorder treatment program approved by the director;

(d) (I) Has failed to notify the director, as required by section 12-29.7-113, of a physical illness; a physical condition; or a behavioral, mental health, or substance use disorder that affects the registrant's ability to provide athletic training services with reasonable skill and safety or that may endanger the health or safety of individuals receiving athletic training services;

(II) Has failed to act within the limitations created by a physical illness; a physical condition; or a behavioral, mental health, or substance use disorder that renders the registrant unable to perform athletic training with reasonable skill and safety or that may endanger the health or safety of persons under his or her care; or

(III) Has failed to comply with the limitations agreed to under a confidential agreement entered pursuant to section 12-29.7-113;

(e) Has had a registration or license suspended or revoked for actions that are a violation of this article;

(f) Has been convicted of or pled guilty or nolo contendere to a felony or any crime defined in title 18, C.R.S. A certified copy of the judgment of a court of competent jurisdiction of the conviction or plea is prima facie evidence of the conviction or plea. In considering the disciplinary action, the director is governed by section 24-5-101, C.R.S.

(g) Has practiced athletic training without a registration;

(h) Has failed to notify the director of any disciplinary action in regard to the person's past or currently held license, certificate, or registration required to practice athletic training in this state or any other jurisdiction;

(i) Has refused to submit to a physical or mental examination when so ordered by the director pursuant to section 12-29.7-112;

(j) Has failed to practice pursuant to the direction of a Colorado-licensed or otherwise lawfully practicing physician, dentist, or health care professional;

(k) Has practiced athletic training in a manner that fails to meet generally accepted standards of athletic training practice; or

(l) Has otherwise violated any provision of this article.

(3) Except as otherwise provided in subsection (2) of this section, the director need not find that the actions that are grounds for discipline were willful but may consider whether the actions were willful when determining the nature of disciplinary sanctions to be imposed.

(4) (a) The director may commence a proceeding to discipline a registrant when the director has reasonable grounds to believe that the registrant has committed an act enumerated in this section.

(b) In any proceeding held under this section, the director may accept as evidence of grounds for disciplinary action any disciplinary action taken against a registrant in another jurisdiction if the violation that prompted the disciplinary action in the other jurisdiction would be grounds for disciplinary action under this article.

(5) Disciplinary proceedings shall be conducted in accordance with article 4 of title 24, C.R.S., and the hearing and opportunity for review shall be conducted pursuant to that article by the director or by an administrative law judge, at the director's discretion. The director has the authority to exercise all powers and duties conferred by this article during the disciplinary proceedings.

(6) (a) The director may request the attorney general to seek an injunction, in any court of competent jurisdiction, to enjoin a person from committing an act prohibited by this article. When seeking an injunction under this paragraph (a), the attorney general is not 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.

(b) (I) The director may investigate, hold hearings, and gather evidence in all matters related to the exercise and performance of the powers and duties of the director.

(II) In order to aid the director in any hearing or investigation instituted pursuant to this section, the director or an administrative law judge appointed pursuant to paragraph (c) of this subsection (6) may administer oaths, take affirmations of witnesses, and issue subpoenas compelling the attendance of witnesses and the production of all relevant records, papers, books, documentary evidence, and materials in any hearing, investigation, accusation, or other matter before the director or an administrative law judge.

(III) Upon failure of any witness or registrant to comply with a subpoena or process, the district court of the county in which the subpoenaed person or registrant resides or conducts business, upon application by the director with notice to the subpoenaed person or registrant, may issue to the person or registrant an order requiring the person or registrant to appear before the director; produce the relevant papers, books, records, documentary evidence, or materials; or give evidence touching the matter under investigation or in question. If the person or registrant fails to obey the order of the court, the person or registrant may be held in contempt of court.

(c) The director may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to conduct hearings, take evidence, make findings, and report the findings to the director.

(7) (a) The director, the director's staff, any person acting as a witness or 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 is immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as director, staff, consultant, or witness, respectively, if the individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts.

(b) A person participating in good faith in making a complaint or report or in an investigative or administrative proceeding pursuant to this section is immune from any civil or criminal liability that otherwise might result by reason of the participation.

(8) A final action of the director is subject to judicial review by the court of appeals pursuant to section 24-4-106 (11), C.R.S. The director may institute a judicial proceeding in accordance with section 24-4-106, C.R.S., to enforce the director's order.

(9) An employer of an athletic trainer shall report to the director any disciplinary action taken against the athletic trainer or the resignation of the athletic trainer in lieu of disciplinary action for conduct that violates this article.

(10) 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 by a deferred settlement, action, judgment, or prosecution.

Source: L. 2016: Entire article RC&RE, (SB 16-161), ch. 264, p. 1088, § 1, effective July 1. **L. 2017:** (2)(c), (2)(d)(I), and (2)(d)(II) amended, (SB 17-242), ch. 263, p. 1268, § 45, effective May 25.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-29.7-111. 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 is acting in a manner that is an imminent threat to the health and safety of the public or that a person is acting or has acted without the required registration, the director may issue an order to cease and desist the activity. The director 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 practices immediately cease.

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

(2) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this article or rules adopted under this article, in addition to any specific powers granted pursuant to this article, the director may issue to the person an order to show cause as to why the director should not issue a final order directing the person to cease and desist from the unlawful act or unregistered practice.

(b) The director shall promptly notify a person against whom the director has issued an order to show cause pursuant to paragraph (a) of this subsection (2) of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the director for a hearing on the order. The director may serve the notice on the person by personal service, by first-class, postage-prepaid United States mail, or in another manner as may be practicable. Personal service or mailing of an order or document pursuant to this paragraph (b) constitutes notice of the order to the person.

(c) (I) The director shall hold the hearing on an order to show cause no sooner than ten and no later than forty-five calendar days after the date the director transmitted or served the notice as provided in paragraph (b) of this subsection (2). The director may continue the hearing by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the director hold the hearing later than sixty calendar days after the date the notice was transmitted or served.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (2) does not appear at the hearing, the director may present evidence that notification was properly sent or served on the person pursuant to paragraph (b) of this subsection (2) and other evidence related to the matter as the director deems appropriate. The director shall issue the order within ten days after the director's determination related to reasonable attempts to notify the respondent, and the order becomes final as to that person by operation of law. The hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(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, or has or is about to engage in acts or practices constituting violations of this article or rules adopted under this article, the director may issue a final cease-and-desist order, directing the person to cease and desist from further unlawful acts or unregistered practices.

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

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

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

(5) A person aggrieved by the final cease-and-desist order may seek judicial review of the director's determination or of the director's final order as provided in section 12-29.7-110 (8).

Source: L. 2016: Entire article RC&RE, (SB 16-161), ch. 264, p. 1092, § 1, effective July 1.

12-29.7-112. Mental or physical examination of registrants. (1) If the director has reasonable cause to believe that a registrant is unable to practice with reasonable skill and safety, the director may order the registrant to take a mental or physical examination administered by a physician or other licensed health care professional designated by the director. Unless due to circumstances beyond the registrant's control, if the registrant refuses to undergo a mental or physical examination, the director may suspend the person's registration until the results of the examination are known and the director has made a determination of the registrant's fitness to practice. The director shall proceed with an order for examination and shall make his or her determination in a timely manner.

(2) The director shall include in an order requiring a registrant to undergo a mental or physical examination the basis of the director's reasonable cause to believe that the registrant is unable to practice with reasonable skill and safety. For purposes of a disciplinary proceeding authorized under this article, the registrant is deemed to have waived all objections to the admissibility of the examining physician's or licensed health care professional's testimony or examination reports on the ground that they are privileged communications.

(3) The registrant may submit to the director testimony or examination reports from a physician chosen by the registrant and pertaining to any condition that the director has alleged may preclude the registrant from practicing with reasonable skill and safety. The testimony and

reports submitted by the registrant may be considered by the director in conjunction with, but not in lieu of, testimony and examination reports of the physician designated by the director.

(4) The results of a mental or physical examination ordered by the director shall not be used as evidence in any proceeding other than one before the director and shall not be deemed a public record or made available to the public.

Source: L. 2016: Entire article RC&RE, (SB 16-161), ch. 264, p. 1093, § 1, effective July 1.

12-29.7-113. Confidential agreement to limit practice - violation grounds for discipline. (1) If a registered athletic trainer suffers from a physical illness; a physical condition; or a behavioral or mental health disorder that renders him or her unable to practice athletic training with reasonable skill and safety to patients, he or she shall notify the director of the physical illness; the physical condition; or the behavioral or mental health disorder in a manner and within a period of time determined by the director. The director may require the registrant to submit to an examination to evaluate the extent of the physical illness; the physical condition; or the behavioral or mental health disorder and its impact on the registrant's ability to practice with reasonable skill and safety to patients.

(2) (a) Upon determining that a registrant with a physical illness; a physical condition; or a behavioral or mental health disorder is able to render limited athletic training services with reasonable skill and safety to patients, the director may enter into a confidential agreement with the registrant in which the registrant agrees to limit his or her practice based on the restrictions imposed by the physical illness; the physical condition; or the behavioral or mental health disorder, as determined by the director.

(b) The agreement must specify that the registrant 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.

(d) By entering into an agreement with the director pursuant to this section to limit his or her practice, the registrant is not engaging in activities that constitute grounds for discipline under section 12-29.7-110. The agreement is an administrative action and does not constitute a restriction or discipline by the director. However, if the registrant fails to comply with the terms of an agreement entered into pursuant to this section, the failure constitutes grounds for disciplinary action under section 12-29.7-110 (2)(d), and the registrant is subject to discipline in accordance with section 12-29.7-110.

(3) This section does not apply to a registrant subject to discipline under section 12-29.7-110 (2)(c).

Source: L. 2016: Entire article RC&RE, (SB 16-161), ch. 264, p. 1094, § 1, effective July 1. **L. 2017:** (1) and (2)(a) amended, (SB 17-242), ch. 263, p. 1269, § 46, effective May 25.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-29.7-114. Unauthorized practice - penalties. A person who practices or offers or attempts to practice athletic training without an active registration 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. 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.

Source: L. 2016: Entire article RC&RE, (SB 16-161), ch. 264, p. 1095, § 1, effective July 1.

12-29.7-115. Rule-making authority. The director shall promulgate rules as necessary for the administration of this article.

Source: L. 2016: Entire article RC&RE, (SB 16-161), ch. 264, p. 1095, § 1, effective July 1.

12-29.7-116. Severability. If any provision of this article is held to be invalid, the invalidity does not affect other provisions of this article that can be given effect without the invalid provision.

Source: L. 2016: Entire article RC&RE, (SB 16-161), ch. 264, p. 1095, § 1, effective July 1.

12-29.7-117. Repeal of article - review of functions. This article is repealed, effective September 1, 2021, and the powers, duties, and functions of the director specified in this article are repealed on that date. Prior to the repeal, the department of regulatory agencies shall review the powers, duties, and functions of the director as provided in section 24-34-104, C.R.S.

Source: L. 2016: Entire article RC&RE, (SB 16-161), ch. 264, p. 1095, § 1, effective July 1.

ARTICLE 29.9

Audiologists

12-29.9-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Applicant" means a person applying for a license to practice audiology.

(2) "Audiologist" means a person engaged in the practice of audiology.

(3) "Director" means the director of the division or the director's designee.

(4) "Division" means the division of professions and occupations in the department of regulatory agencies.

(5) (a) "Hearing aid" means any wearable instrument or device designed or offered to aid or compensate for impaired human hearing and any parts, attachments, or accessories to the instrument or device, including ear molds but excluding batteries and cords.

(b) "Hearing aid" does not include a surgically implanted hearing device.

(6) "Licensee" means an audiologist who holds a current license issued by the division pursuant to this article.

(7) "Practice of audiology" means:

(a) (I) The application of principles, methods, and procedures related to the development, disorders, and conditions of the human auditory-vestibular system, whether those disorders or conditions are of organic or functional origin, including disorders of hearing, balance, tinnitus, auditory processing, and other neural functions, as those principles, methods, and procedures are taught in accredited programs in audiology.

(II) The principles, methods, or procedures include diagnosis, assessment, measurement, testing, appraisal, evaluation, rehabilitation, treatment, prevention, conservation, identification, consultation, counseling, intervention, management, interpretation, instruction, and research related to hearing, vestibular function, balance and fall prevention, and associated neural systems, and any abnormal condition related to tinnitus, auditory sensitivity, acuity, function or processing, speech, language, or other aberrant behavior resulting from hearing loss, for the purpose of diagnosing, designing, and implementing audiological management and treatment or other programs for the amelioration of human auditory-vestibular system disorders and conditions.

(b) Prescribing, selecting, specifying, evaluating, assisting in the adjustment to, and dispensing of prosthetic devices for hearing loss, including hearing aids and hearing assistive devices by means of specialized audiometric equipment or by any other means accepted by the director;

(c) Determining work-related hearing loss or impairment, as defined by federal regulations;

(d) Prevention of hearing loss; and

(e) Consulting with, and making referrals to, a physician when appropriate.

(8) "Surgically implanted hearing device" means a device that is designed to produce useful hearing sensations to a person with a hearing impairment and that has, as one or more components, a unit that is surgically implanted into the ear, skull, or other interior part of the body. The term includes any associated unit that may be worn on the body.

Source: L. 2013: Entire article added, (SB 13-039), ch. 288, p. 1523, § 1, effective May 24.

12-29.9-102. Scope of article - exemption. (1) This article does not apply to a person who is:

(a) Licensed pursuant to section 22-60.5-210, C.R.S., and not licensed under this article for work undertaken as part of his or her employment by, or contractual agreement with, the public schools;

(b) Engaged in the practice of audiology in the discharge of his or her official duties in the service of the United States armed forces, public health service, Coast Guard, or veterans administration;

(c) A student enrolled in a course of study leading to a degree in audiology or the hearing or speech sciences at an institution of higher education or postsecondary education accredited by a national, regional, or state agency recognized by the United States department of

education who is practicing audiology, if the student is supervised by a licensed audiologist and the student's designated title clearly indicates his or her status as a student; or

(d) Otherwise licensed as a health professional under this title.

(2) Nothing in this article authorizes an audiologist to engage in the practice of medicine as defined in section 12-36-106.

Source: L. 2013: Entire article added, (SB 13-039), ch. 288, p. 1525, § 1, effective May 24.

12-29.9-103. Title protection - use of title. (1) It is unlawful for any person to use the following titles unless he or she is licensed pursuant to this article: "Audiologist", "hearing and balance audiologist", "vestibular audiologist", or any other title or abbreviation that implies that the person is an audiologist.

(2) A licensee who has a doctorate degree in audiology is entitled to use the title "Doctor" or "Dr." when accompanied by the words "Audiologist" or "Audiology" or the letters "Au.D.", "Ed.D.", "Ph.D.", "Sc.D.", or any other appropriate degree designation, and to use the title "Doctor of Audiology".

Source: L. 2013: Entire article added, (SB 13-039), ch. 288, p. 1525, § 1, effective May 24.

12-29.9-104. License required - application - fee - bond - disclosure - exemption. (1) (a) An audiologist must obtain a license from the division before engaging in the practice of audiology in this state.

(b) The director shall give each licensee a license bearing a unique license number. The licensee shall include the license number on all written contracts and receipts.

(2) To qualify for licensure as an audiologist under this article, a person must have:

(a) Earned a doctoral degree in audiology from a program that is or, at the time the applicant was enrolled and graduated, was offered by an institution of higher education or postsecondary education accredited by a national, regional, or state agency recognized by the United States department of education, or another program approved by the director; or

(b) (I) Earned a master's degree from a program with a concentration in audiology that was conferred before July 1, 2007, from a program of higher learning that is or, at the time the applicant was enrolled and graduated, was offered by an institution of higher education or postsecondary education accredited by a national, regional, or state agency recognized by the United States department of education, or another program approved by the director; and

(II) Obtained a certificate of competency in audiology from a nationally recognized certification agency.

(3) An audiologist desiring to be licensed pursuant to this article must submit to the director an application containing the information described in subsection (4) of this section and must pay to the director all required fees in the amounts determined and collected by the director pursuant to section 24-34-105, C.R.S. The director may deny an application for a license if the required information and fees are not submitted. If an applicant or licensee fails to notify the director of a change in the submitted information within thirty days after the change, the failure is grounds for disciplinary action pursuant to section 12-29.9-108.

(4) An applicant must include the following information in an application for a license as an audiologist under this article:

(a) The audiologist's name, business address, and business telephone number;

(b) A listing of the audiologist's education, experience, and degrees or credentials, including all degrees or credentials awarded to the audiologist that are related to the practice of audiology;

(c) A statement indicating whether a local, state, or federal government agency has:

(I) Issued a license, certificate, or registration in audiology to the applicant;

(II) Suspended or revoked a license, certificate, or registration issued to the applicant;

(III) Charges or complaints pending against the applicant; or

(IV) Taken disciplinary action against the applicant;

(d) The length of time and the locations where the applicant has engaged in the practice of audiology; and

(e) If the audiologist intends to provide services to patients, proof of professional liability insurance in the form and amount determined appropriate by the director pursuant to section 12-29.9-112.

(5) An applicant or licensee shall report and update information as required by section 24-34-110, C.R.S. When reporting and updating information regarding malpractice judgments and settlements, as required by section 24-34-110 (4)(h) and (8)(a), C.R.S., the applicant or licensee shall include the case number, the name of the court, and names of all parties to the action.

Source: L. 2013: Entire article added, (SB 13-039), ch. 288, p. 1525, § 1, effective May 24.

12-29.9-105. Licensure - certificate - expiration - renewal - reinstatement - fees. (1) The director shall issue a license to an applicant who satisfies the requirements of this article.

(2) All licenses issued under this article expire pursuant to a schedule established by the director and must be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director shall establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license pursuant to the schedule established by the director, the license expires. A person whose license has expired is subject to the penalties set forth in this article or in section 24-34-102 (8), C.R.S.

Source: L. 2013: Entire article added, (SB 13-039), ch. 288, p. 1527, § 1, effective May 24.

12-29.9-106. Licensure by endorsement - rules. (1) The director shall issue a license by endorsement to engage in the practice of audiology in this state to an individual who possesses an active license in good standing to practice audiology in another state or territory of the United States or in a foreign country if the applicant:

(a) Presents satisfactory proof to the director that the individual possesses a valid license from another state or jurisdiction that requires qualifications substantially equivalent to the qualifications for licensure in this state and meets all other requirements for licensure pursuant to this article; and

(b) Pays the license fee established under section 24-34-105, C.R.S.

(2) The director may specify by rule what constitutes substantially equivalent qualifications for the purposes of this section.

Source: L. 2013: Entire article added, (SB 13-039), ch. 288, p. 1527, § 1, effective May 24.

12-29.9-107. Disposition of fees - legislative intent. It is the intent of the general assembly to fund all direct and indirect costs incurred in the implementation of this article with annual license and renewal fees. The director shall transmit all fees collected under this article to the state treasurer, who shall credit the same to the division of professions and occupations cash fund created by section 24-34-105, C.R.S.

Source: L. 2013: Entire article added, (SB 13-039), ch. 288, p. 1527, § 1, effective May 24.

12-29.9-108. Disciplinary actions - grounds for discipline. (1) Upon proof that an applicant or licensee has engaged in an activity that is grounds for discipline under subsection (2) of this section, the director may:

(a) Impose an administrative fine not to exceed two thousand five hundred dollars for each separate offense;

(b) Issue a letter of admonition;

(c) Place a licensee on probation, which entails close supervision on the terms and for the period of time that the director deems appropriate; or

(d) Deny, refuse to renew, revoke, or suspend the license of an applicant or licensee.

(2) The following acts constitute grounds for discipline:

(a) Making a false or misleading statement or omission in an application for licensure;

(b) Failing to notify the director of a change in the information filed pursuant to section 12-29.9-104;

(c) Violating any provision of this article, including failure to comply with the license requirements of section 12-29.9-104 or failure to report information as required under section 12-29.9-104 (5) or 24-34-110, C.R.S.;

(d) Violating any rule promulgated by the director under this article;

(e) Aiding or abetting a violation, or conspiring to violate, any provision of this article or any rule promulgated or order issued under this article by the director;

(f) Failing to maintain professional liability insurance as required by section 12-29.9-112;

(g) Using false or misleading advertising;

(h) Violating the "Colorado Consumer Protection Act", article 1 of title 6, C.R.S.;

(i) Causing physical harm to a customer;

(j) Failing to practice audiology according to commonly accepted professional standards;

(k) Providing services beyond the licensee's scope of educational preparation, experience, skills, or competence;

(l) Failing to adequately supervise a trainee for any of the healing arts;

(m) Employing a sales agent or employee who violates any provision of this article;

(n) Committing abuse of health insurance as described in section 18-13-119, C.R.S.;

(o) Failing to comply with a final agency order or with a stipulation or agreement made with or order issued by the director;

(p) Falsifying information in any application or attempting to obtain or obtaining a license by fraud, deception, or misrepresentation;

(q) An alcohol use disorder, as defined in section 27-81-102, or a substance use disorder, as defined in section 27-82-102, or excessively or habitually using or abusing alcohol or habit-forming drugs or habitually using a controlled substance, as defined in section 18-18-102, or other drugs or substances having similar effects; except that the director has the discretion not to discipline the licensee if he or she is participating in good faith in an alcohol or substance use disorder treatment program approved by the director;

(r) (I) Failing to notify the director, as required by section 12-29.9-113, of a physical illness; a physical condition; or a behavioral, mental health, or substance use disorder that impacts the licensee's ability to perform audiology with reasonable skill and safety to patients;

(II) Failing to act within the limitations created by a physical illness; a physical condition; or a behavioral, mental health, or substance use disorder that renders the licensee unable to perform audiology with reasonable skill and safety to the patient; or

(III) Failing to comply with the limitations agreed to under a confidential agreement entered pursuant to section 12-29.9-113;

(s) Refusing to submit to a physical or mental examination when so ordered by the director pursuant to section 12-29.9-114;

(t) Failing to respond in an honest, materially responsive, and timely manner to a complaint lodged against the licensee; and

(u) In any court of competent jurisdiction, being convicted of, pleading guilty or nolo contendere to, or receiving a deferred sentence for a felony or a crime involving fraud, deception, false pretense, theft, misrepresentation, false advertising, or dishonest dealing.

(3) When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the director and, in the opinion of the director, should be dismissed, but the director has noticed indications of possible errant conduct by the licensee that could lead to serious consequences if not corrected, the director may send the licensee a confidential letter of concern.

(4) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the director, warrants formal action, the director shall not resolve the complaint by a deferred settlement, action, judgment, or prosecution.

(5) A person whose license to practice under this article is revoked, or who surrenders his or her license to avoid discipline, is ineligible to apply for a new license under this article for two years after the date of revocation or surrender.

(6) Any disciplinary action taken by another state, local jurisdiction, or the federal government against an applicant or licensee constitutes prima facie evidence of grounds for disciplinary action, including denial of a license under this article; except that this subsection (6) applies only to discipline for acts or omissions that are substantially similar to those set out as grounds for disciplinary action under this article.

(7) (a) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the director, does not warrant formal action by the director but should not be

dismissed as being without merit, the director may issue and send to the licensee a letter of admonition.

(b) (I) When the director sends a letter of admonition to a licensee pursuant to paragraph (a) of this subsection (7), the director shall also advise the licensee that he or she has the 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 upon which the letter of admonition is based.

(II) If the licensee makes the request for adjudication in a timely manner, the director shall vacate the letter of admonition and shall process the matter by means of formal disciplinary proceedings.

(8) The director shall transmit all fines collected pursuant to this section to the state treasurer, who shall credit them to the general fund.

Source: L. 2013: Entire article added, (SB 13-039), ch. 288, p. 1527, § 1, effective May 24. **L. 2017:** (2)(q), (2)(r)(I), and (2)(r)(II) amended, (SB 17-242), ch. 263, p. 1269, § 47, effective May 25.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-29.9-109. Director - powers - duties - rules. (1) The director may conduct investigations and inspections as necessary to determine whether an applicant or licensee has violated this article or any rule adopted by the director under this article.

(2) The director may apply to a court of competent jurisdiction for an order enjoining any act or practice that constitutes a violation of this article. Upon a showing that a person is engaging in or intends to engage in the act or practice, the court shall grant an injunction, restraining order, or other appropriate order, regardless of the existence of another remedy. The Colorado rules of civil procedure govern all proceedings related to such court orders.

(3) (a) The director or an administrative law judge may administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the director pursuant to this article. The director may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the director.

(b) Upon the failure of any witness to comply with a subpoena or process, the director may apply to the district court of the county in which the subpoenaed person or licensee resides or conducts business, and after notice of the application by the director to the subpoenaed person or licensee, the district court may issue to the person or licensee an order requiring that the person or licensee appear before the director; produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or give evidence relevant to the matter under investigation or in question. If the person or licensee fails to obey the order of the court, the court may hold the person or licensee in contempt of court.

(4) The director shall determine the amount of malpractice coverage that must be obtained by an audiologist who provides services to patients.

(5) No later than December 31, 2013, and as necessary thereafter, the director shall adopt rules necessary for the enforcement or administration of this article, including rules requiring licensees to maintain records identifying customers by name, the goods or services provided to each customer other than batteries and minor accessories, and the date and price of each transaction. Licensees shall maintain the records for at least seven years after the last transaction.

Source: L. 2013: Entire article added, (SB 13-039), ch. 288, p. 1530, § 1, effective May 24.

12-29.9-110. Cease-and-desist orders - unauthorized practice - penalties. (1) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a 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 license, the director may issue an order to cease and desist the activity. The director must set forth in the order 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 unlicensed practices immediately cease.

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

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

(b) The director shall promptly notify a person against whom he or she has issued an order to show cause pursuant to paragraph (a) of this subsection (2) of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the director for a hearing on the order. The director may serve the notice by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom the order is issued. Personal service or mailing of an order or document pursuant to this subsection (2) constitutes notice to the person of the existence and contents of the order or document.

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

(II) If a person to whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (2) does not appear at the hearing, the director may present evidence that notification was properly sent or served upon the person pursuant to paragraph (b) of this subsection (2) and any other evidence related to the matter as the director deems appropriate. The director shall issue the order within ten days after the director's determination related to

reasonable attempts to notify the respondent, and the order becomes final as to that person by operation of law. The conduct of the hearing is governed by sections 24-4-104 and 24-4-105, C.R.S.

(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 license or has or is about to engage in acts or practices constituting violations of this article, the director may issue a final cease-and-desist order directing the person to cease and desist from further unlawful acts or unlicensed practices.

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

(3) The director may enter into a stipulation with a person if it appears to the director, based upon credible evidence presented to the director, that the person has engaged in or is about to engage in:

(a) An unlicensed act or practice;

(b) An act or practice constituting a violation of this article, a rule promulgated pursuant to this article, or an order issued pursuant to this article; or

(c) An act or practice constituting grounds for administrative sanction pursuant to this article.

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

(5) A person aggrieved by a final cease-and-desist order may seek judicial review of the director's determination or of the director's final order in a court of competent jurisdiction.

(6) A person who practices or offers or attempts to practice audiology services without an active audiologist 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 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: L. 2013: Entire article added, (SB 13-039), ch. 288, p. 1531, § 1, effective May 24.

12-29.9-111. Immunity. The director, the director's staff, any person acting as a witness or 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 is immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as director, staff, consultant, or witness, respectively, if the individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a

complaint or participating in any investigative or administrative proceeding pursuant to this article is immune from any civil or criminal liability that may result from that participation.

Source: L. 2013: Entire article added, (SB 13-039), ch. 288, p. 1533, § 1, effective May 24.

12-29.9-112. Professional liability insurance required - rules. (1) (a) Except as provided in paragraph (b) of this subsection (1), an audiologist shall not practice audiology unless the audiologist purchases and maintains or is covered by professional liability insurance in the form and amount determined by the director by rule.

(b) The director, by rule, may exempt or establish lesser liability insurance requirements for a class of audiologists whose practice does not require the level of public protection the director establishes pursuant to this paragraph (b) for all other audiologists.

(2) The professional liability insurance required by this section must cover all acts with the scope of practice of an audiologist as defined in this article.

Source: L. 2013: Entire article added, (SB 13-039), ch. 288, p. 1533, § 1, effective May 24.

12-29.9-113. Confidential agreements to limit practice - violation grounds for discipline. (1) If an audiologist suffers from a physical illness; a physical condition; or a behavioral or mental health disorder that renders the licensee unable to practice audiology with reasonable skill and safety to patients, the audiologist shall notify the director of the physical illness; the physical condition; or the behavioral or mental health disorder in a manner and within a period of time determined by the director. The director may require the licensee to submit to an examination to evaluate the extent of the physical illness; the physical condition; or the behavioral or mental health disorder and its impact on the licensee's ability to practice audiology with reasonable skill and safety to patients.

(2) (a) Upon determining that an audiologist with a physical illness; a physical condition; or a behavioral or mental health disorder is able to render limited audiology services with reasonable skill and safety to patients, the director may enter into a confidential agreement with the audiologist in which the audiologist agrees to limit his or her practice based on the restrictions imposed by the physical illness; the physical condition; or the behavioral or mental health disorder, as determined by the director.

(b) As part of the agreement, the audiologist 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 monitoring.

(d) By entering into an agreement with the director under this subsection (2) to limit his or her practice, an audiologist is not engaging in conduct that is grounds for discipline under section 12-29.9-108 (2). The agreement does not constitute a restriction or discipline by the director. However, if the audiologist fails to comply with the terms of an agreement entered into pursuant to this subsection (2), the failure constitutes grounds for disciplinary action under section 12-29.9-108 (2)(r), and the licensee is subject to discipline in accordance with section 12-29.9-108.

(3) This section does not apply to an audiologist subject to discipline under section 12-29.9-108 (2)(q).

Source: L. 2013: Entire article added, (SB 13-039), ch. 288, p. 1534, § 1, effective May 24. **L. 2017:** (1) and (2)(a) amended, (SB 17-242), ch. 263, p. 1270, § 48, effective May 25.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-29.9-114. Mental and physical examination of licensees. (1) If the director has reasonable cause to believe that a licensee is unable to practice with reasonable skill and safety, the director may require the licensee to take a mental or physical examination by a health care provider designated by the director. If the licensee refuses to undergo a mental or physical examination, unless due to circumstances beyond the licensee's control, the director may suspend the licensee's license until the results of the examination are known and the director has made a determination of the licensee's fitness to practice. The director shall proceed with an order for examination and determination in a timely manner.

(2) The director shall include in an order issued to a licensee under subsection (1) of this section the basis of the director's reasonable cause to believe that the licensee is unable to practice with reasonable skill and safety. For the purposes of a disciplinary proceeding authorized by this article, the licensee is deemed to have waived all objections to the admissibility of the examining health care provider's testimony or examination reports on the ground that they are privileged communications.

(3) The licensee may submit to the director testimony or examination reports from a health care provider chosen by the licensee pertaining to the condition that the director alleges may preclude the licensee from practicing with reasonable skill and safety. The director may consider testimony and reports submitted by the licensee in conjunction with, but not in lieu of, testimony and examination reports of the health care provider designated by the director.

(4) A person shall not use the results of any mental or physical examination ordered by the director as evidence in any proceeding other than one before the director. The examination results are not public records and are not available to the public.

Source: L. 2013: Entire article added, (SB 13-039), ch. 288, p. 1534, § 1, effective May 24.

12-29.9-115. Protection of medical records - licensee's obligations - verification of compliance - noncompliance grounds for discipline - rules. (1) Each licensee shall develop a written plan to ensure the security of patient medical records. The plan must address at least the following:

(a) The storage and proper disposal of patient medical records;

(b) The disposition of patient medical records in the event the licensee dies, retires, or otherwise ceases to practice or provide audiology services to patients; and

(c) The method by which patients may access or obtain their medical records promptly if any of the events described in paragraph (b) of this subsection (1) occurs.

(2) Upon initial licensure under this article, the licensee shall attest to the director that he or she has developed a plan in compliance with this section.

(3) A licensee shall inform each patient, in writing, of the method by which the patient may access or obtain his or her medical records if an event described in paragraph (b) of subsection (1) of this section occurs.

(4) A licensee who fails to comply with this section is subject to discipline in accordance with section 12-29.9-108.

(5) The director may adopt rules as necessary to implement this section.

Source: L. 2013: Entire article added, (SB 13-039), ch. 288, p. 1535, § 1, effective May 24.

12-29.9-116. Repeal of article. This article is repealed, effective September 1, 2020. Prior to the repeal, the department of regulatory agencies shall review the licensing and supervisory functions of the director as provided in section 24-34-104, C.R.S.

Source: L. 2013: Entire article added, (SB 13-039), ch. 288, p. 1536, § 1, effective May 24.

ARTICLE 30

Cancer Cure Control

12-30-101 to 12-30-113. (Repealed)

Source: L. 2017: Entire article repealed, (HB 17-1240), ch. 244, p. 1017, § 3, effective August 9.

Editor's note: This article 30 was numbered as article 7 of chapter 91, C.R.S. 1963. For amendments to this article 30 prior to its repeal in 2017, consult the 2016 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume. This article 30 was relocated to article 50 of title 25. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article 30, see the comparative tables located in the back of the index.

ARTICLE 31

Child Health Associates

12-31-101 to 12-31-116. (Repealed)

Editor's note: (1) This article was numbered as article 10 of chapter 91, C.R.S. 1963. For amendments to this article prior to its repeal in 1990, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 12-31-116 provided for the repeal of this article, effective July 1, 1990. (See L. 86, p. 638.)

Cross references: For certification of child health associates as physician assistants on and after July 1, 1990, see § 12-36-106.5.

ARTICLE 32

Podiatrists

Cross references: For provisions of this article that relate to the practice of medicine, see article 36 of this title.

PART 1

GENERAL PROVISIONS

12-32-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Podiatric medicine" means the practice of podiatry.

(2) "Podiatric physician" or "podiatrist" means any person who practices podiatry.

(3) (a) "Practice of podiatry" means:

(I) Holding out one's self to the public as being able to treat, prescribe for, palliate, correct, or prevent any disease, ailment, pain, injury, deformity, or physical condition of the human toe, foot, ankle, tendons that insert into the foot, and soft tissue below the mid-calf, by the use of any medical, surgical, mechanical, manipulative, or electrical treatment, including complications thereof consistent with such scope of practice;

(II) Suggesting, recommending, prescribing, or administering any podiatric form of treatment, operation, or healing for the intended palliation, relief, or cure of any disease, ailment, injury, condition, or defect of the human toe, foot, ankle, tendons that insert into the foot, and soft tissue wounds below the mid-calf, including complications thereof consistent with such scope of practice; and

(III) Maintaining an office or other place for the purpose of examining and treating persons afflicted with disease, injury, or defect of the human toe, foot, ankle, tendons that insert into the foot, and soft tissue wounds below the mid-calf, including the complications thereof consistent with such scope of practice.

(b) The "practice of podiatry" does not include the amputation of the foot or the administration of an anesthetic other than a local anesthetic.

(c) A podiatrist may only treat a soft tissue wound below the mid-calf if the patient is being treated by a physician for his or her underlying medical condition or if the podiatrist refers the patient to a physician for further treatment of the underlying medical condition.

(4) "Soft tissue wound" means a lesion to the musculoskeletal junction that include dermal and sub-dermal tissue that do not involve bone removal or repair or muscle transfer.

Source: L. 43: p. 427, § 2. **L. 47:** p. 654, § 1. **CSA:** C. 109, § 26(2). **CRS 53:** § 91-2-2. **C.R.S. 1963:** § 91-2-2. **L. 67:** p. 246, § 2. **L. 73:** p. 1023, § 1. **L. 79:** (2) repealed and (8.5) and

(8.7) added, pp. 483, 486, §§ 1, 12, effective July 1. **L. 85:** Entire section R&RE, p. 485, § 2, effective July 1. **L. 90:** (3) R&RE, p. 805, § 1, effective July 1. **L. 2010:** (3) amended and (4) added, (HB 10-1224), ch. 420, p. 2146, § 3, effective July 1.

12-32-101.5. Podiatric surgery. (1) Surgical procedures on the ankle below the level of the dermis may be performed by a podiatrist licensed before July 1, 2010, in this state who:

(a) Is certified by the American board of podiatric surgery or its successor organization;

(b) Is performing surgery under the direct supervision of a licensed podiatrist certified by the American board of podiatric surgery or its successor organization; except that, if the supervising podiatrist is licensed on or after July 1, 2010, the supervising podiatrist shall be certified in reconstructive rearfoot/ankle surgery or foot and ankle surgery by the American board of podiatric surgery or its successor organization; or

(c) Is performing surgery under the direct supervision of a person licensed to practice medicine and certified by the American board of orthopedic surgery or its successor organization or by the American osteopathic board of orthopedic surgery or its successor organization.

(2) Surgical procedures on the ankle below the level of the dermis may be performed by a podiatrist licensed on or after July 1, 2010, in this state who:

(a) Is certified in reconstructive rearfoot/ankle surgery or foot and ankle surgery by the American board of podiatric surgery or its successor organization;

(b) Is performing surgery under the direct supervision of a licensed podiatrist certified by the American board of podiatric surgery or its successor organization; except that, if the supervising podiatrist is licensed on or after July 1, 2010, the supervising podiatrist shall be certified in reconstructive rearfoot/ankle surgery or foot and ankle surgery by the American board of podiatric surgery or its successor organization;

(c) Is performing surgery under the direct supervision of a person licensed to practice medicine and certified by the American board of orthopedic surgery or its successor organization or by the American osteopathic board of orthopedic surgery or its successor organization; or

(d) Has completed a three-year surgical residency approved by the Colorado podiatry board.

Source: L. 90: Entire section added, p. 806, § 2, effective July 1. **L. 2010:** Entire section amended, (HB 10-1224), ch. 420, p. 2147, § 4, effective July 1.

12-32-102. Podiatry license required - professional liability insurance required - exceptions. (1) It is unlawful for any person to practice podiatry within the state of Colorado who does not hold a license to practice medicine issued by the Colorado medical board or a license to practice podiatry issued by the Colorado podiatry board as provided by this article. A podiatry training license is required for a person serving an approved residency program. Such persons shall be licensed by the Colorado podiatry board pursuant to section 12-32-107.4. As used in this section, an "approved residency" is a residency in a hospital conforming to the minimum standards for residency training established or approved by the Colorado podiatry board, which has the authority, upon its own investigation, to approve any residency.

(2) It is unlawful for any person to practice podiatry within the state of Colorado unless such person purchases and maintains professional liability insurance as follows:

(a) If such person performs surgical procedures, professional liability insurance shall be maintained in an amount not less than one million dollars per claim and three million dollars per year for all claims;

(b) The Colorado podiatry board shall by rule establish financial responsibility standards for podiatrists who do not perform podiatric surgical procedures and who sign an affidavit attesting to such fact. The board may determine that no professional liability insurance requirements apply to such persons or may impose standards which shall not in any event exceed those prescribed in paragraph (a) of this subsection (2).

Source: L. 43: p. 427, § 1. **CSA:** C. 109, § 26(1). **CRS 53:** § 91-2-1. **C.R.S. 1963:** § 91-2-1. **L. 67:** p. 246, § 1. **L. 79:** Entire section amended, p. 483, § 2, effective July 1. **L. 82:** Entire section amended, p. 622, § 11, effective April 2. **L. 85:** Entire section amended, p. 486, § 3, effective July 1. **L. 95:** Entire section amended, p. 219, § 1, effective July 1. **L. 2010:** (1) and (2)(a) amended, (HB 10-1224), ch. 420, p. 2148, § 5, effective July 1; (1) amended, (HB 10-1260), ch. 403, p. 1979, § 54, effective July 1.

Editor's note: Amendments to subsection (1) by House Bill 10-1224 and House Bill 10-1260 were harmonized.

12-32-103. Appointment of members of podiatry board - terms - repeal of article. (1) The governor shall appoint the members of the Colorado podiatry board. The board shall consist of four podiatrist members and one member from the public at large. The member from the public shall not be a licensed health care professional or be employed by or benefit financially from the health care industry. The terms of the members of the board shall be four years. The governor may remove any member of the board for misconduct, incompetency, or neglect of duty. Members of the board shall remain in office until their successors are appointed.

(2) The Colorado podiatry board shall elect biennially from its membership a president and a vice-president. A majority of the board shall constitute a quorum for the transaction of all business.

(3) Members of the Colorado podiatry board shall be immune from suit in any action, civil or criminal, based upon any disciplinary proceedings or other official acts performed in good faith as members of such board.

(4) (a) The provisions of section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the Colorado podiatry board created by this section.

(b) This article is repealed, effective July 1, 2019.

Source: L. 43: p. 430, § 9. **CSA:** C. 109, § 26(9). **CRS 53:** § 91-2-9. **C.R.S. 1963:** § 91-2-9. **L. 71:** p. 1032, § 3. **L. 73:** p. 1024, § 3. **L. 79:** Entire section amended, p. 483, § 3, effective July 1; entire section amended, p. 909, § 8, effective July 1. **L. 85:** Entire section amended, p. 486, § 4, effective July 1. **L. 87:** Entire section amended, p. 903, § 5, effective June 15. **L. 91:** (4) amended, p. 682, § 23, effective April 20. **L. 95:** (4)(b) amended, p. 220, § 2, effective July 1. **L. 2003:** (1) amended, p. 910, § 8, effective August 6. **L. 2010:** (1), (2), and (4)(b) amended, (HB 10-1224), ch. 420, p. 2149, § 6, effective July 1.

Editor's note: Amendments to this section by Senate Bill 79-43 and Senate Bill 79-264 were harmonized.

12-32-104. Powers and duties of board. (1) The Colorado podiatry board shall regulate the practice of podiatry. The board shall exercise, subject to the provisions of this article, the following powers and duties:

(a) Adopt, promulgate, and from time to time revise such rules and regulations as may be necessary to enable it to carry out the provisions of this article;

(b) Examine, license, and renew licenses of duly qualified podiatric applicants;

(c) Conduct hearings upon complaints concerning the disciplining of podiatrists;

(d) (I) Make investigations, hold hearings, and take evidence in all matters relating to the exercise and performance of the powers and duties vested in the board.

(II) The board or an administrative law judge may administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board. The board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the board.

(III) Upon failure of any witness to comply with such subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board or director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the board or 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 to obey the order of the court may be punished by the court as a contempt of court.

(e) Cause the prosecution of and seek injunctions against all persons violating this article;

(f) Approve or refuse to approve podiatric colleges; and

(g) Adopt regulations governing advertising by licensees to prevent the use of advertising which is misleading, deceptive, or false.

(2) Repealed.

Source: L. 43: p. 430, § 10. **L. 47:** p. 657, § 5. **CSA:** C. 109, § 26(10). **CRS 53:** § 91-2-10. **C.R.S. 1963:** § 91-2-10. **L. 64:** p. 151, § 92. **L. 85:** Entire section R&RE, p. 487, § 5, effective July 1. **L. 96:** (2) amended, p. 1228, § 44, effective August 7. **L. 2004:** (1)(d) amended, p. 1820, § 59, effective August 4. **L. 2010:** (2) repealed, (HB 10-1224), ch. 420, p. 2149, § 7, effective July 1.

Cross references: For the legislative declaration contained in the 1996 act amending subsection (2), see section 1 of chapter 237, Session Laws of Colorado 1996.

12-32-104.5. Limitation on authority. The authority granted the board under the provisions of this article shall not be construed to authorize the board to arbitrate or adjudicate fee disputes between licensees or between a licensee and any other party.

Source: L. 89: Entire section added, p. 670, § 4, effective July 1.

Cross references: For the legislative declaration contained in the 1989 act enacting this section, see section 1 of chapter 111, Session Laws of Colorado 1989.

12-32-105. Examination as to qualifications. (1) Every person desiring to practice podiatry in this state shall be examined as to his or her qualifications, except as otherwise provided in this article. Each applicant shall submit, in a manner approved by the Colorado podiatry board, an application containing satisfactory proof that said applicant:

(a) Is twenty-one years of age;

(b) Is a graduate of a school of podiatry at which not less than a two-year prepodiatry course and a four-year course of podiatry is required and that is recognized and approved by the Colorado podiatry board;

(c) Has completed one year of a residency program approved by the Colorado podiatry board as established by rules promulgated by the board; and

(d) In the two years immediately preceding the date the application is received by the Colorado podiatry board, has been enrolled in podiatric medical school or in a residency program, has passed the national examination, has been engaged in the active practice of podiatry as defined by the board, or can otherwise demonstrate competency as determined by the board.

(2) and (3) (Deleted by amendment, L. 2010, (HB 10-1224), ch. 420, p. 2149, § 8, effective July 1, 2010.)

Source: L. 43: p. 428, § 3. **L. 47:** p. 655, § 2. **CSA:** C. 109, § 26(3). **CRS 53:** § 91-2-3. **C.R.S. 1963:** § 91-2-3. **L. 73:** pp. 526, 1023, §§ 52, 2. **L. 76:** (2) amended, p. 411, § 2, effective July 1. **L. 79:** (1) amended, p. 484, § 4, effective July 1. **L. 85:** Entire section amended, p. 488, § 6, effective July 1. **L. 2001:** (1) amended and (3) added, p. 107, § 1, effective March 23. **L. 2003:** (1)(c) amended, p. 910, § 9, effective August 6. **L. 2010:** Entire section amended, (HB 10-1224), ch. 420, p. 2149, § 8, effective July 1.

12-32-106. Fees for examination - passing grade - date of examination. (Repealed)

Source: L. 43: p. 428, § 4. **CSA:** C. 109, § 26(4). **CRS 53:** § 91-2-4. **C.R.S. 1963:** § 91-2-4. **L. 71:** p. 1031, § 1. **L. 79:** Entire section R&RE, p. 484, § 5, effective July 1. **L. 83:** Entire section amended, p. 528, § 1, effective June 10. **L. 90:** Entire section amended, p. 806, § 3, effective July 1. **L. 2010:** Entire section repealed, (HB 10-1224), ch. 420, p. 2150, § 9, effective July 1.

12-32-107. Issuance, revocation, or suspension of license - probation - immunity in professional review. (1) (a) If the Colorado podiatry board determines that an applicant possesses the qualifications required by this article, has paid a fee to be determined and collected pursuant to section 24-34-105, C.R.S., and is entitled to a license to practice podiatry, the board shall issue such license.

(b) If the Colorado podiatry board determines that an applicant for a license to practice podiatry does not possess the qualifications required by this article or that he or she has done any

of the acts defined in subsection (3) of this section as unprofessional conduct, it may refrain from issuing a license, and the applicant may proceed as provided in section 24-4-104 (9), C.R.S.

(2) The Colorado podiatry board may refuse to issue or may revoke, suspend, or refuse to renew the license to practice podiatry issued to any person; or the board may issue a letter of admonition or a letter of concern to or place on probation any person who, while holding such a license, is guilty of any unprofessional conduct.

(3) "Unprofessional conduct" as used in this article means:

(a) Repealed.

(b) Resorting to fraud, misrepresentation, or material deception, or making a misleading omission, in applying for, securing, renewing, or seeking reinstatement of a license to practice podiatry in this state or any other state, in applying for professional liability coverage required pursuant to section 12-32-109.5 or for privileges at a hospital or other health care facility, or in taking the examination required in this article;

(c) and (d) Repealed.

(e) Conviction of a felony or any crime that would constitute a violation of this article. For purposes of this paragraph (e), "conviction" includes the entry of a plea of guilty or nolo contendere or the imposition of a deferred sentence.

(f) Habitual or excessive use or abuse of alcohol or controlled substances;

(g) Repealed.

(h) Aiding or abetting in the practice of podiatry any person not licensed to practice podiatry or any person whose license to practice podiatry is suspended;

(i) Any act or omission which fails to meet generally accepted standards of the practice of podiatry;

(j) Except as otherwise provided in section 25-3-103.7, C.R.S., practicing podiatry as the partner, agent, or employee of, or in joint venture with, any person who does not hold a license to practice podiatry within this state, or practicing podiatry as an employee of, or in joint venture with, any partnership or association any of whose partners or associates do not hold a license to practice podiatry within this state, or practicing podiatry as an employee of, or in joint venture with, any corporation other than a professional service corporation for the practice of podiatry as provided for in sections 12-32-109 (4) and 12-32-109.5. Any licensee holding a license to practice podiatry in this state may accept employment from any person, partnership, association, or corporation to examine and treat the employees of such person, partnership, association, or corporation.

(k) Violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this article, any rule or regulation promulgated by the board pursuant to this article, or any final agency order;

(l) and (m) Repealed.

(n) Administering, dispensing, or prescribing any habit-forming drug or any controlled substance, as defined in section 18-18-102 (5), C.R.S., other than in the course of legitimate professional practice, which includes only prescriptions related to the scope of podiatric medicine as defined in section 12-32-101 (3)(a);

(o) Conviction of violation of any federal or state law regulating the possession, distribution, or use of any controlled substance, as defined in section 18-18-102 (5), C.R.S., and, for the purposes of this paragraph (o), a plea of guilty or a plea of nolo contendere accepted by the court shall be considered as a conviction;

(p) Such physical or mental disability as to render the licensee unable to perform podiatry with reasonable skill and with safety to the patient;

(q) Advertising which is misleading, deceptive, or false;

(r) (I) Violation or abuse of health insurance pursuant to section 18-13-119, C.R.S.; or

(II) Advertising through newspapers, magazines, circulars, direct mail, directories, radio, television, or otherwise that the licensee will perform any act prohibited by section 18-13-119 (3), C.R.S.;

(s) Engaging in a sexual act with a patient during the course of patient care or during the six-month period immediately following the termination of such care. "Sexual act", as used in this paragraph (s), means sexual contact, sexual intrusion, or sexual penetration as defined in section 18-3-401, C.R.S.

(t) Performing any procedure in the course of patient care beyond the podiatrist's training and competence. This paragraph (t) shall not be construed to authorize a licensed podiatrist to act beyond the scope of podiatry as defined by section 12-32-101 (3).

(u) Engaging in any of the following activities and practices: Willful and repeated ordering or performance, without clinical justification, of demonstrably unnecessary laboratory tests or studies; the administration, without clinical justification, of treatment which is demonstrably unnecessary; the failure to obtain consultations or perform referrals when failing to do so is not consistent with the standard of care for the profession; or ordering or performing, without clinical justification, any service, X ray, or treatment which is contrary to recognized standards of the practice of podiatry as interpreted by the board;

(v) Falsifying or repeatedly making incorrect essential entries or repeatedly failing to make essential entries on patient records;

(w) Committing a fraudulent insurance act, as defined in section 10-1-128, C.R.S.;

(x) (Deleted by amendment, L. 95, p. 220, § 3, effective July 1, 1995.)

(y) Refusing to complete and submit the renewal questionnaire, or failing to report all of the relevant facts, or falsifying any information on the questionnaire as required pursuant to section 12-32-111;

(z) Failing to report to the board any podiatrist known to have violated or, upon information or belief, believed to have violated any of the provisions of this subsection (3);

(aa) Dividing fees or compensation or billing for services performed by an unlicensed person as prohibited by section 12-32-117;

(bb) Failing to report to the Colorado podiatry board within thirty days any adverse action taken against the licensee by another licensing agency in another state, territory, or country, any peer review body, any health care institution, any professional or medical society or association, any governmental agency, any law enforcement agency, or any court for acts of conduct that would constitute grounds for action as described in this article;

(cc) Failing to report to the board the surrender of a license or other authorization to practice medicine in another state or jurisdiction or the surrender of membership on any medical staff or in any medical or professional association or society while under investigation by any of those authorities or bodies for acts or conduct similar to acts or conduct that would constitute grounds for action as defined in this article;

(dd) Violating the provisions of section 8-42-101 (3.6), C.R.S.;

(ee) Any violation of the provisions of section 12-32-202 or any rule or regulation of the board adopted pursuant to said section;

(ff) Failing to respond in an honest, materially responsive, and timely manner to a complaint issued pursuant to section 12-32-108.3.

(3.5) The discipline of a licensee for acts related to the practice of podiatry in another state, territory, or country shall be deemed unprofessional conduct. For purposes of this subsection (3.5), "discipline" includes any sanction required to be reported pursuant to 45 CFR 60.8. This subsection (3.5) shall apply only to disciplinary action based upon acts or omissions in such other state, territory, or country substantially as defined as unprofessional conduct pursuant to subsection (3) of this section.

(4) (a) If a professional review committee is established pursuant to this section to investigate the quality of care being given by a person licensed pursuant to this article, it shall include in its membership at least three persons licensed under this article, but such committee may be authorized to act only by:

(I) The Colorado podiatry board; or

(II) A society or an association of persons licensed pursuant to this article whose membership includes not less than one-third of the persons licensed pursuant to this article residing in this state if the licensee whose services are the subject of review is a member of such society or association.

(b) Any member of the board or professional review committee, any member of the board's staff, any member of the professional review committee's staff, any person acting as a witness or consultant to the board or committee, 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 liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as board member, committee member, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this article shall be immune from any civil or criminal liability that may result from such participation.

(5) To prevent the use of advertising which is misleading, deceptive, or false, the Colorado podiatry board may adopt regulations governing advertising by podiatrists.

Source: L. 43: p. 430, § 8. **CSA:** C. 109, § 26(8). **CRS 53:** § 91-2-8. **C.R.S. 1963:** § 91-2-8. **L. 67:** p. 247, § 3. **L. 71:** p. 1031, § 2. **L. 73:** p. 526, § 53. **L. 77:** (4) added, p. 661, § 3, effective July 1. **L. 79:** (1) amended, (3)(l) repealed, and (5) added, pp. 485, 486, 522, §§ 6, 12, 25, effective July 1. **L. 83:** (3)(a), (3)(c), (3)(d), and (3)(g) repealed, (3)(f), (3)(i), and (3)(j) amended, and (3)(m) to (3)(q) and (3.5) added, pp. 530, 531, 532, §§ 1, 2, 4, effective April 29. **L. 85:** (1), (2), (3)(e), (3)(n), (3)(o), (4)(a)(I), (4)(b), and (5) amended and (3)(r) to (3)(t) added, pp. 489, 681, §§ 7, 2, effective July 1. **L. 86:** (3)(j) amended, p. 1216, § 6, effective May 30. **L. 89:** (3)(u) to (3)(w) added, p. 670, § 5, effective July 1. **L. 90:** (2), (3)(i) to (3)(k), (3)(n), (3)(o), (3)(r)(I), and (3.5) amended, (3)(x) to (3)(cc) added, p. 806, § 4, effective July 1. **L. 91:** (3)(dd) added, p. 1336, § 49, effective July 1; (3)(ee) added, p. 1615, § 5, effective January 1, 1993. **L. 93:** (3)(j) amended, p. 722, § 3, effective May 6. **L. 95:** (3)(b), (3)(e), (3)(s), and (3)(x) amended, p. 220, § 3, effective July 1. **L. 2003:** (3)(w) amended, p. 620, § 26, effective July 1. **L. 2004:** (3)(f) amended, p. 1193, § 33, effective August 4; (4)(b) amended, p. 1821, § 60, effective

August 4. **L. 2005:** (3)(n) amended, p. 763, § 18, effective June 1. **L. 2010:** (1), (3)(b), (3)(f), (3)(y), (3)(bb), and (3.5) amended and (3)(ff) added, (HB 10-1224), ch. 420, p. 2151, § 10, effective July 1. **L. 2012:** (3)(n) and (3)(o) amended, (HB 12-1311), ch. 281, p. 1610, § 13, effective July 1. **L. 2013:** (3)(m) repealed, (HB 13-1154), ch. 372, p. 2192, § 3, effective July 1.

Cross references: (1) For an alternative disciplinary action for persons licensed pursuant to this article, see § 24-34-106; for an exception to the provisions of subsection (3)(j) of this section, see § 6-18-303.

(2) For the legislative declaration contained in the 1989 act enacting subsection (3)(u) to (3)(w), see section 1 of chapter 111, Session Laws of Colorado 1989. For the legislative declaration in the 2013 act repealing subsection (3)(m), see section 1 of chapter 372, Session Laws of Colorado 2013.

12-32-107.2. Volunteer podiatrist license. (1) Any person licensed to practice podiatry pursuant to this article may apply to the Colorado podiatry board for volunteer licensure status. Any such application shall be in the form and manner designated by the board. The board may grant such status by issuing a volunteer license, or it may deny the application if the licensee has been disciplined for any of the causes set forth in section 12-32-107.

(2) Any person applying for a license under this section shall:

(a) Attest that, after a date certain, the applicant no longer earns income as a podiatrist;

(b) Pay the license fee authorized by section 24-34-105, C.R.S. The volunteer podiatrist license fee shall be reduced from the license fee.

(c) Maintain liability insurance as provided in section 12-32-102.

(3) The volunteer status of a licensee shall be plainly indicated on the face of any volunteer license issued pursuant to this section.

(4) The Colorado podiatry board is authorized to conduct disciplinary proceedings pursuant to section 12-32-108.3 against any person licensed under this section for an act committed while such person was licensed pursuant to this section.

(5) Any person licensed under this section may apply to the Colorado podiatry board for a return to active licensure status by filing an application in the form and manner designated by the board. The board may approve such application and issue a license to practice podiatry or may deny the application if the licensee has been disciplined for or engaged in any of the activities set forth in section 12-32-107.

(6) A podiatrist with a volunteer license shall only provide podiatry services if the services are performed on a limited basis for no fee or other compensation.

Source: L. 2010: Entire section added, (HB 10-1224), ch. 420, p. 2152, § 11, effective July 1. **L. 2011:** (2)(b) amended, (HB 11-1303), ch. 264, p. 1150, § 10, effective August 10.

12-32-107.4. Podiatry training license. (1) The Colorado podiatry board shall issue a podiatry training license to an applicant who has:

(a) Graduated from a podiatric medical school approved by the Colorado podiatry board;

(b) Passed the part I and part II examinations by the national board of podiatric medical examiners or its successor organization; and

(c) Been accepted into a podiatric residency program in Colorado.

(2) At least thirty days prior to the date the applicant begins the residency program, the applicant shall submit a statement to the Colorado podiatry board from the residency director of an approved residency program in Colorado that states the applicant meets the necessary qualifications and that the residency program accepts responsibility for the applicant's training while in the program.

(3) Where feasible, the applicant shall submit a completed application, on a form approved by the Colorado podiatry board, on or before the date on which the applicant begins the approved residency. A podiatry training license granted pursuant to this section shall expire if a completed application is not received by the board within sixty days after the applicant begins the approved residency.

(4) The Colorado podiatry board may refuse to issue a podiatric training license to an applicant who does not have the necessary qualifications, who has engaged in unprofessional conduct pursuant to section 12-32-107, or who has been disciplined by a licensing board in another jurisdiction.

(5) A person with a podiatric training license shall only practice podiatry under the supervision of a licensed podiatrist or a physician licensed to practice medicine within the residency program. A person with a podiatry training license shall not delegate podiatric or medical services to a person who is not licensed to practice podiatry or medicine and shall not have the authority to supervise physician assistants.

(6) The podiatry training license shall not be renewed and shall expire:

(a) No later than three years after the date the license is issued;

(b) If the training licensee is no longer participating in the residency program; or

(c) When the training licensee receives a license to practice podiatry pursuant to section 12-32-107.

Source: L. 2010: Entire section added, (HB 10-1224), ch. 420, p. 2152, § 11, effective July 1.

12-32-107.5. Prescriptions - requirement to advise patients - limit on opioid prescriptions - repeal. (1) A podiatrist licensed under this article may advise the podiatrist's patients of their option to have the symptom or purpose for which a prescription is being issued included on the prescription order.

(2) A podiatrist's failure to advise a patient under subsection (1) of this section shall not be grounds for any disciplinary action against the podiatrist's professional license issued under this article. Failure to advise a patient pursuant to subsection (1) of this section shall not be grounds for any civil action against a podiatrist in a negligence or tort action, nor shall such failure be evidence in any civil action against a podiatrist.

(3) (a) A podiatrist shall not prescribe more than a seven-day supply of an opioid to a patient who has not had an opioid prescription in the last twelve months by that podiatrist, and may exercise discretion to include a second fill for a seven-day supply. The limits on initial prescribing do not apply if, in the judgment of the podiatrist, the patient:

(I) Has chronic pain that typically lasts longer than ninety days or past the time of normal healing, as determined by the podiatrist, or following transfer of care from another podiatrist who prescribed an opioid to the patient;

(II) Has been diagnosed with cancer and is experiencing cancer-related pain; or

(III) Is experiencing post-surgical pain that, because of the nature of the procedure, is expected to last more than fourteen days.

(b) Prior to prescribing the second fill of any opioid prescription pursuant to this section, a podiatrist must comply with the requirements of section 12-42.5-404 (3.6). Failure to comply with section 12-42.5-404 (3.6) constitutes unprofessional conduct under section 12-32-107 only if the podiatrist repeatedly fails to comply.

(c) A podiatrist licensed pursuant to this article 32 may prescribe opioids electronically.

(d) A violation of this subsection (3) does not create a private right of action or serve as the basis of a cause of action. A violation of this section does not constitute negligence per se or contributory negligence per se and does not alone establish a standard of care. Compliance with this section does not alone establish an absolute defense to any alleged breach of the standard of care.

(e) This subsection (3) is repealed, effective September 1, 2021.

Source: L. 2003: Entire section added, p. 764, § 4, effective March 25. **L. 2018:** (3) added, (SB 18-022), ch. 221, p. 1401, § 1, effective May 21.

12-32-108. Licensure by endorsement. (1) The Colorado podiatry board may issue a license by endorsement to engage in the practice of podiatry in this state to any applicant who has a license in good standing as a podiatrist under the laws of another jurisdiction if the applicant presents proof satisfactory to the board that, at the time of application for a Colorado license by endorsement, the applicant possesses credentials and qualifications that are substantially equivalent to requirements in Colorado for licensure by examination, and that in the two years immediately preceding the date of the application the applicant has been engaged in the active practice of podiatry as defined by the board or can otherwise demonstrate competency as determined by the board. The board may specify by rule what shall constitute substantially equivalent credentials and qualifications.

(2) A fee to be set by the board shall be charged for registration by endorsement.

(3) "In good standing", as used in subsection (1) of this section, means a license that has not been revoked or suspended or against which there are no current disciplinary or adverse actions.

Source: L. 43: p. 430, § 7. **L. 47:** p. 656, § 4. **CSA:** C. 109, § 26(7). **CRS 53:** § 91-2-7. **L. 55:** p. 596, § 1. **C.R.S. 1963:** § 91-2-7. **L. 79:** (2) amended, p. 485, § 7, effective July 1. **L. 83:** (1)(b) to (1)(f) amended, p. 529, § 2, effective June 10. **L. 85:** IP(1) amended, p. 490, § 8, effective July 1. **L. 90:** Entire section R&RE, p. 808, § 5, effective July 1. **L. 2010:** (1) and (3) amended, (HB 10-1224), ch. 420, p. 2153, § 12, effective July 1.

12-32-108.3. Disciplinary action by board. (1) In the discharge of its duties, the Colorado podiatry board may enlist the assistance of other persons licensed to practice podiatry or medicine in this state. Podiatrists have the duty to report to the board any podiatrist known, or upon information and belief, to have violated any of the provisions of section 12-32-107 (3).

(2) (a) Complaints in writing relating to the conduct of any podiatrist licensed or authorized to practice podiatry in this state may be made by any person or may be initiated by the Colorado podiatry board on its own motion. The podiatrist complained of shall be given

notice by first-class mail of the nature of all matters complained of within thirty days of the receipt of the complaint or initiation of the complaint by the Colorado podiatry board and shall be given thirty days to make explanation or answer thereto.

(b) The Colorado podiatry board shall cause an investigation to be made when the board is informed of:

(I) Disciplinary actions taken by hospitals to suspend or revoke the privileges of a podiatrist and reported to such board pursuant to section 25-3-107, C.R.S.;

(II) Disciplinary actions taken by a professional review committee established pursuant to section 12-32-107 (4) against a podiatrist;

(III) An instance of a malpractice settlement or judgment against a podiatrist reported to the board pursuant to section 10-1-124, C.R.S.; or

(IV) Podiatrists who have been allowed to resign from hospitals for unprofessional conduct. Such hospitals shall report to the board.

(c) On completion of an investigation, the board shall make a finding that:

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

(II) There is no reasonable cause to warrant further action with reference thereto;

(III) (A) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the board, does not warrant formal action by the board but that should not be dismissed as being without merit, a letter of admonition may be issued and sent, by certified mail, to the licensee.

(B) When a letter of admonition is sent by the board, by certified mail, to a licensee, such licensee shall be advised that he or she has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(C) If the request for adjudication is timely made, the letter of admonition shall be deemed vacated and the matter shall be processed by means of formal disciplinary proceedings.

(IV) (A) The investigation discloses facts that warrant further proceedings by formal complaint, as provided in subsection (3) of this section, in which event the complaint shall be referred to the attorney general for preparation and filing of a formal complaint;

(B) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(V) The investigation discloses an instance of conduct which, in the opinion of the board, does not warrant formal action but in which the board has noticed indications of possible errant conduct by the licensee that could lead to serious consequences if not corrected, in which case, a confidential letter of concern shall be sent to the podiatrist against whom a complaint was made. If the board learns of second or subsequent actions of the same or similar nature by the licensee, the board shall not issue a confidential letter of concern but shall take such other course of action as it deems appropriate.

(d) Repealed.

(3) (a) All formal complaints seeking disciplinary action against a podiatrist shall be filed with the Colorado podiatry board. A formal complaint shall set forth the charges with sufficient particularity as to inform the podiatrist clearly and specifically of the acts of unprofessional conduct with which he or she is charged.

(b) The board may include in any disciplinary order placing a podiatrist on probation such conditions as the board may deem appropriate to assure that the podiatrist is physically, mentally, and otherwise qualified to practice podiatry in accordance with generally accepted professional standards of practice, including any or all of the following:

(I) Submission by the podiatrist to such examinations as the board may order to determine his or her physical or mental condition or his or her professional qualifications;

(II) The taking by him or her of such therapy or courses of training or education as may be needed to correct deficiencies found either in the hearing or by such examinations;

(III) The review or supervision of his or her practice as may be necessary to determine the quality of his or her practice and to correct deficiencies therein; and

(IV) The imposition of restrictions upon the nature of his or her practice to assure that he or she does not practice beyond the limits of his or her capabilities.

(c) Upon the failure of a licensee to comply with any conditions imposed by the Colorado podiatry board pursuant to paragraph (b) of this subsection (3), unless compliance is beyond the control of the licensee, the board may suspend the license of the licensee until the licensee complies with the conditions of the board.

(4) The board, through the department of regulatory agencies, may employ administrative law judges, on a full-time or part-time basis, to conduct hearings as provided by this article or on any matter within the board's jurisdiction upon such conditions and terms as the board may determine.

(5) The attendance of witnesses and the production of books, patient records, papers, and other pertinent documents at the hearing may be summoned by subpoenas issued by the board, which shall be served in the manner provided by the Colorado rules of civil procedure for service of subpoenas.

(6) Disciplinary proceedings and hearings shall be conducted in the manner prescribed by article 4 of title 24, C.R.S., and the hearing and opportunity for review shall be conducted pursuant to said article by the board or an administrative law judge at the board's discretion.

(7) (a) The board or an administrative law judge shall have the power to administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board. The board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the board. The person providing such copies shall prepare them from the original record and shall delete from the copy provided pursuant to the subpoena the name of the patient, but shall identify the patient by a numbered code, to be retained by the custodian of the records from which the copies were made. Upon certification of the custodian that the copies are true and complete except for the patient's name, they 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 board or the custodian or his or her authorized employee for furnishing or using such copies in accordance with this subsection (7).

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

board or 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 to obey the order of the court may be punished by the court as a contempt of court.

(8) (Deleted by amendment, L. 2010, (HB 10-1224), ch. 420, p. 2154, § 13, effective July 1, 2010.)

(9) Upon the expiration of the term of suspension, the license shall be reinstated by the Colorado podiatry board if the holder of the license furnishes the board with evidence that he or she has complied with all terms of the suspension. If the evidence shows he or she has not complied with all terms of the suspension, the board shall continue the suspension or revoke the license at a hearing, notice of which and the procedure at which shall be as provided in this section.

(10) If a person holding a license to practice podiatry in this state is determined to be mentally incompetent or insane by a court of competent jurisdiction and a court enters, pursuant to part 3 or 4 of article 14 of title 15 or section 27-65-109 (4) or 27-65-127, C.R.S., an order specifically finding that the mental incompetency or insanity is of such a degree that the person holding a license is incapable of continuing to practice podiatry, his or her license shall automatically be suspended by the board, and, anything in this article to the contrary notwithstanding, the suspension shall continue until the licensee is found by such court to be competent to practice podiatry.

(11) (a) If the Colorado podiatry board has reasonable cause to believe that a person licensed to practice podiatry in this state is unable to practice podiatry with reasonable skill and safety to patients because of a condition described in section 12-32-107 (3)(f) or (3)(p), it may require the licensee to submit to mental or physical examinations by physicians designated by the board. Upon the failure of the licensee to submit to the mental or physical examinations, unless due to circumstances beyond his or her control, the board may suspend the licensee's license to practice podiatry in this state until such time as he or she submits to the required examinations and the board has made a determination on the ability of the licensee based on the results of the examinations. The board shall ensure that all examinations are conducted and evaluated in a timely manner.

(b) Every person licensed to practice podiatry in this state shall be deemed, by so practicing or by applying for registration of his or her license to practice podiatry in this state, to have given his or her consent to submit to mental or physical examinations when directed in writing by the board and, further, to have waived all objections to the admissibility of the examining physician's testimony or examination reports on the ground of privileged communication.

(c) The results of any mental or physical examination ordered by the board shall not be used as evidence in any proceeding other than before the Colorado podiatry board.

(12) Investigations and examinations of the Colorado podiatry board conducted pursuant to the provisions of this section shall be exempt from the provisions of any law requiring that proceedings of the board be conducted publicly or that the minutes or records of the board with respect to action of the board taken pursuant to the provisions of this subsection (12) be open to public inspection. Any proceedings with regard to a licensee who is in violation of section 12-32-107 (3)(f) and who is participating in good faith in a rehabilitation program designed to

alleviate the conditions specified in section 12-32-107 (3)(f) which has been approved by the board are also exempt from any such requirements of law.

(13) A person licensed to practice podiatry or medicine who, at the request of the Colorado podiatry board, examines another person licensed to practice podiatry shall be immune from suit for damages by the person examined if the examining person conducted the examination and made his or her findings or diagnosis in good faith.

(14) Repealed.

(15) (a) If it appears to the Colorado podiatry board, based upon credible evidence as presented in a written complaint by any person, that a 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 license, the board may issue an order to cease and desist such activity. 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 unlicensed practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (15), the respondent may request a hearing on the question of whether acts or practices in violation of this part 1 have occurred. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(16) (a) If it appears to the Colorado podiatry board, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this part 1, then, in addition to any specific powers granted pursuant to this part 1, the board may issue to such person an order to show cause as to why the board should not issue a final order directing such person to cease and desist from the unlawful act or unlicensed practice.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (16) shall be promptly notified by the Colorado podiatry board of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the board for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order is issued. Personal service or mailing of an order or document pursuant to this subsection (16) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the Colorado podiatry board as provided in paragraph (b) of this subsection (16). The hearing may be continued by agreement of the parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (16) does not appear at the hearing, the Colorado podiatry board may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (16) and such other evidence related to the matter as the board deems appropriate. The board shall issue the order within ten days after the board's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the Colorado podiatry board reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required license or has or is about to engage in acts or practices constituting violations of this part 1, a final cease-and-desist order may be issued directing such person to cease and desist from further unlawful acts or unlicensed practices.

(IV) The Colorado podiatry board shall provide notice, in the manner set forth in paragraph (b) of this subsection (16), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

(17) If it appears to the Colorado podiatry board, based upon credible evidence presented to the board, that a person has engaged in or is about to engage in any unlicensed act or practice, any act or practice constituting a violation of this part 1, any rule promulgated pursuant to this part 1, any order issued pursuant to this part 1, or any act or practice constituting grounds for administrative sanction pursuant to this part 1, the board may enter into a stipulation with such person.

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

(19) A person aggrieved by the final cease-and-desist order may seek judicial review of the Colorado podiatry board's determination or of the board's final order as provided in section 12-32-108.7.

(20) The Colorado podiatry board may impose a fine, not to exceed five thousand dollars, for a violation of this article. All fines collected pursuant to this subsection (20) shall be transferred to the state treasurer, who shall credit the moneys to the general fund.

Source: L. 85: Entire section added, p. 490, § 9, effective July 1. **L. 87:** (4) and (6) amended, p. 946, § 32, effective March 13. **L. 90:** (2)(c)(V) added, (2)(d) repealed, and (11)(a) amended, pp. 808, 812, 809, §§ 6, 14, 7, effective July 1. **L. 91:** (10) amended, p. 1782, § 5, effective July 1. **L. 95:** (2)(c)(V) amended and (14) repealed, pp. 220, 221, §§ 4, 5, effective July 1. **L. 2003:** (2)(b)(III) amended, p. 620, § 27, effective July 1. **L. 2004:** (1), (2)(c)(III), (2)(c)(IV), and (7) amended, p. 1822, § 61, effective August 4. **L. 2006:** (15) to (19) added, p. 789, § 21, effective July 1. **L. 2010:** (10) amended, (SB 10-175), ch. 188, p. 778, § 7, effective April 29; (2)(a), (3), (8), (9), (10), (11)(a), (11)(b), and (13) amended and (3)(c) and (20) added, (HB 10-1224), ch. 420, pp. 2154, 2156, §§ 13, 14, effective July 1.

Editor's note: Amendments to subsection (10) by Senate Bill 10-175 and House Bill 10-1224 were harmonized.

Cross references: For the Colorado rule of civil procedure concerning subpoenas, see C.R.C.P. 45.

12-32-108.5. Reconsideration and review of action of board. (1) The Colorado podiatry board, on its own motion or upon application in accordance with subsection (3) of this section, at any time after the refusal to grant a license, the imposition of any discipline as provided in section 12-32-108.3, or the ordering of probation, as provided in section 12-32-107 (2), may reconsider its prior action and grant, reinstate, or restore such license or terminate probation or reduce the severity of its prior disciplinary action. The taking of any such further action, or the holding of a hearing with respect thereto, shall rest in the sole discretion of the board.

(2) Upon the receipt of the application, it may be forwarded to the attorney general for such investigation as may be deemed necessary. A copy of the application and the report of investigation shall be forwarded to the board, which shall consider the same and report its findings and conclusions. The proceedings shall be governed by the applicable provisions governing formal hearings in disciplinary proceedings. The attorney general may present evidence bearing upon the matters in issue, and the burden shall be upon the applicant seeking reinstatement to establish the averments of his or her application as specified in section 24-4-105 (7), C.R.S. No application for reinstatement or for modification of a prior order shall be accepted unless the applicant deposits with the board all amounts unpaid under any prior order of the board.

(3) No licensee whose license is revoked shall be allowed to apply for reinstatement of such license earlier than two years after the effective date of the revocation.

Source: L. 85: Entire section added, p. 494, § 9, effective July 1. **L. 86:** (1) amended, p. 1216, § 7, effective May 20. **L. 90:** (1) amended and (3) added, p. 809, § 8, effective July 1. **L. 2010:** (2) amended, (HB 10-1224), ch. 420, p. 2156, § 15, effective July 1.

12-32-108.7. Judicial review. The court of appeals shall have initial jurisdiction to review all final actions and orders that are subject to judicial review of the Colorado podiatry board. Such proceedings shall be conducted in accordance with section 24-4-106 (11), C.R.S.

Source: L. 85: Entire section added, p. 495, § 9, effective July 1.

12-32-109. Unauthorized practice - penalties. (1) Any person who practices or offers or attempts to practice podiatry within this state 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 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(1.5) Any person who presents as his or her own the diploma, license, certificate, or credentials of another, or who gives either false or forged evidence of any kind to the Colorado podiatry board, or any member thereof, in connection with an application for a license to practice podiatry, or who practices podiatry under a false or assumed name, or who falsely impersonates another licensee of a like or different name commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(2) No person shall advertise in any form or hold himself or herself out to the public as a podiatrist, or, in any sign or any advertisement, use the word "podiatrist", "foot specialist", "foot correctionist", "foot expert", "practipedist", "podologist", or any other terms or letters indicating

or implying that he or she is a podiatrist or that he or she practices or holds himself or herself out as practicing podiatry or foot correction in any manner, without having, at the time of so doing, a valid, unsuspended, and unrevoked license as required by this article.

(3) No podiatrist shall willfully cause the public to believe that he or she has qualifications extending beyond the limits of this article, and no podiatrist shall willfully sign his or her name using the prefix "Doctor" or "Dr." without following his or her name with "podiatrist", "Doctor of Podiatric Medicine", or "D.P.M.". No podiatrist shall use the title "podiatric physician" unless such title is followed by the words "practice limited to treatment of the foot and ankle".

(4) The conduct of the practice of podiatry in a corporate capacity is hereby prohibited, but such prohibition shall not be construed to prevent the practice of podiatry by a professional service corporation whose stockholders are restricted solely to licensed podiatrists. Any such professional service corporation may exercise such powers and shall be subject to such limitations and requirements, insofar as applicable, as are provided in section 12-32-109.5, relating to professional service corporations for the practice of podiatry.

(5) The provisions of this article shall not apply to any physician licensed to practice medicine or surgery, any regularly commissioned surgeon of the United States armed forces or United States public health service, or any licensed osteopath.

(6) The provisions of this article shall not be construed to prohibit the recommending, advertising, fitting, adjusting, or sale of corrective shoes, arch supports, or similar mechanical appliances and foot remedies by retail dealers and manufacturers.

(7) The provisions of this article shall not be construed to prohibit, or to require a license for, the rendering of services under the personal and responsible direction and supervision of a person licensed to practice podiatry, and this exemption shall not apply to persons otherwise qualified to practice podiatry but not licensed to practice in this state.

(8) The provisions of this article shall not be construed to prohibit, or to require a license for, the rendering of nursing services by registered or other nurses in the lawful discharge of their duties pursuant to article 38 of this title.

Source: L. 43: p. 429, § 5. **L. 47:** p. 656, § 3. **CSA:** C. 109, § 26(5). **CRS 53:** § 91-2-5. **C.R.S. 1963:** § 91-2-5. **L. 71:** p. 1033, § 1. **L. 77:** (1) amended, p. 876, § 38, effective July 1, 1979. **L. 79:** Entire section R&RE, p. 485, § 8, effective July 1. **L. 81:** (1) amended and (7) added, p. 774, § 1, effective May 27. **L. 85:** (1) amended, p. 407, § 7, effective July 1; (1) and (4) amended and (1.5) added, p. 495, § 10, effective July 1. **L. 89:** (1.5) amended, p. 825, § 23, effective July 1. **L. 90:** (3) amended and (8) added, p. 809, § 9, effective July 1. **L. 2002:** (1) and (1.5) amended, p. 1477, § 70, effective October 1. **L. 2006:** (1) amended, p. 86, § 23, effective August 7. **L. 2010:** (2), (3), and (5) amended, (HB 10-1224), ch. 420, p. 2156, § 16, effective July 1.

Editor's note: (1) Amendments to subsection (1) by House Bill 85-1031 and House Bill 85-1172 were harmonized.

(2) The effective date for amendments made to this section by chapter 216, L. 77, was changed from July 1, 1978, to April 1, 1979, by chapter 1, First Extraordinary Session, L. 78, and was subsequently changed to July 1, 1979, by chapter 157, § 23, L. 79. See People v. McKenna, 199 Colo. 452, 611 P.2d 54 (1980).

Cross references: For the legislative declaration contained in the 2002 act amending subsections (1) and (1.5), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-32-109.3. Use of physician assistants - rules. (1) A person licensed under the laws of this state to practice podiatry may delegate to a physician assistant licensed by the Colorado medical board pursuant to section 12-36-107.4 the authority to perform acts that constitute the practice of podiatry to the extent and in the manner authorized by rules promulgated by the Colorado podiatry board. Such acts shall be consistent with sound practices of podiatry. Each prescription for a controlled substance, as defined in section 18-18-102 (5), C.R.S., issued by a physician assistant must have the name of the physician assistant's supervising podiatrist printed on the prescription. For all other prescriptions issued by a physician assistant, the name and address of the health facility and, if the health facility is a multi-speciality organization, the name and address of the speciality clinic within the health facility where the physician assistant is practicing must be imprinted on the prescription. Nothing in this section limits the ability of otherwise licensed health personnel to perform delegated acts. The dispensing of prescription medication by a physician assistant is subject to section 12-42.5-118 (6).

(2) If the authority to perform an act is delegated pursuant to subsection (1) of this section, the act shall not be performed except under the personal and responsible direction and supervision of a person licensed under the laws of this state to practice podiatry, and said person shall not be responsible for the direction and supervision of more than four physician assistants at any one time without specific approval of the board. The board may define appropriate direction and supervision pursuant to rules.

(3) The provisions of sections 12-36-106 (5) and 12-36-107.4 governing physician assistants under the "Colorado Medical Practice Act" shall apply to physician assistants under this section.

Source: L. 90: Entire section added, p. 809, § 10, effective July 1. **L. 2001:** (1) amended, p. 176, § 1, effective August 8. **L. 2010:** (1) amended, (HB 10-1224), ch. 420, p. 2157, § 17, effective July 1; (1) and (3) amended, (HB 10-1260), ch. 403, p. 1979, § 55, effective July 1. **L. 2011:** (3) amended, (HB 11-1303), ch. 264, p. 1150, § 11, effective August 10. **L. 2012:** (1) amended, (HB 12-1311), ch. 281, p. 1611, § 14, effective July 1. **L. 2016:** (1) and (2) amended, (SB 16-158), ch. 204, p. 723, § 7, effective August 10.

Editor's note: Amendments to subsection (1) by House Bill 10-1224 and House Bill 10-1260 were harmonized.

Cross references: For the legislative declaration in SB 16-158, see section 1 of chapter 204, Session Laws of Colorado 2016.

12-32-109.5. Professional service corporations, limited liability companies, and registered limited liability partnerships for the practice of podiatry - definitions. (1) Persons licensed to practice podiatry by the Colorado podiatry board may form professional service corporations for the practice of podiatry under the "Colorado Corporation Code", if such corporations are organized and operated in accordance with the provisions of this section. The

articles of incorporation of such corporations shall contain provisions complying with the following requirements:

(a) The name of the corporation shall contain the words "professional company" or "professional corporation" or abbreviations thereof.

(b) The corporation shall be organized solely for the purposes of conducting the practice of podiatry only through persons licensed by the Colorado podiatry board to practice podiatry in the state of Colorado.

(c) The corporation may exercise the powers and privileges conferred upon corporations by the laws of Colorado only in furtherance of and subject to its corporate purpose.

(d) All shareholders of the corporation shall be persons licensed by the Colorado podiatry board to practice podiatry in the state of Colorado, and who at all times own their shares in their own right. They shall be individuals who, except for illness, accident, time spent in the armed services, on vacations, and on leaves of absence not to exceed one year, are actively engaged in the practice of podiatry in the offices of the corporation.

(e) Provisions shall be made requiring any shareholder who ceases to be or for any reason is ineligible to be a shareholder to dispose of all his or her shares immediately, either to the corporation or to any person having the qualifications described in paragraph (d) of this subsection (1).

(f) The president shall be a shareholder and a director and, to the extent possible, all other directors and officers shall be persons having the qualifications described in paragraph (d) of this subsection (1). Lay directors and officers shall not exercise any authority whatsoever over professional matters. Notwithstanding sections 7-108-103 to 7-108-106, C.R.S., relating to the terms of office of directors, a professional service corporation for the practice of podiatry may provide in the articles of incorporation or the bylaws that the directors may have terms of office of up to six years and that the directors may be divided into either two or three classes, each class to be as nearly equal in number as possible, with the terms of each class staggered to provide for the periodic, but not annual, election of less than all the directors.

(g) The articles of incorporation shall provide and all shareholders of the corporation shall agree that all shareholders of the corporation shall be jointly and severally liable for all acts, errors, and omissions of the employees of the corporation or that all shareholders of the corporation shall be jointly and severally liable for all acts, errors, and omissions of the employees of the corporation except during periods of time when each person licensed by the Colorado podiatry board to practice podiatry in Colorado who is a shareholder or any employee of the corporation has a professional liability policy insuring himself or herself and all employees who are not licensed to practice podiatry who act at his or her direction in the amount of fifty thousand dollars for each claim and an aggregate top limit of liability per year for all claims of one hundred fifty thousand dollars or the corporation maintains in good standing professional liability insurance, which shall meet the following minimum standards:

(I) The insurance shall insure the corporation against liability imposed upon the corporation by law for damages resulting from any claim made against the corporation arising out of the performance of professional services for others by those officers and employees of the corporation who are licensed by the Colorado podiatry board to practice podiatry.

(II) Such policies shall insure the corporation against liability imposed upon it by law for damages arising out of the acts, errors, and omissions of all nonprofessional employees.

(III) The insurance shall be in an amount for each claim of at least fifty thousand dollars multiplied by the number of persons licensed to practice podiatry employed by the corporation. The policy may provide for an aggregate top limit of liability per year for all claims of one hundred fifty thousand dollars also multiplied by the number of persons licensed to practice podiatry employed by the corporation, but no firm shall be required to carry insurance in excess of three hundred thousand dollars for each claim with an aggregate top limit of liability for all claims during the year of nine hundred thousand dollars.

(IV) The policy may provide that it does not apply to: Any dishonest, fraudulent, criminal, or malicious act or omission of the insured corporation or any stockholder or employee thereof; the conduct of any business enterprise, as distinguished from the practice of podiatry, in which the insured corporation under this section is not permitted to engage but which nevertheless may be owned by the insured corporation or in which the insured corporation may be a partner or which may be controlled, operated, or managed by the insured corporation in its own or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith; when not resulting from breach of professional duty, bodily injury to, or sickness, disease, or death of any person, or to injury to or destruction of any tangible property, including the loss of use thereof; and such policy may contain reasonable provisions with respect to policy periods, territory, claims, conditions, and other usual matters.

(2) (a) The corporation shall do nothing which, if done by a person licensed to practice podiatry in the state of Colorado employed by it, would violate the standards of professional conduct as provided for in section 12-32-107 (3). Any violation by the corporation of this section shall be grounds for the Colorado podiatry board to terminate or suspend its right to practice podiatry.

(b) The provisions of paragraph (b) of subsection (5) of this section shall apply to the employment of a podiatrist by a professional service corporation, limited liability company, or registered limited liability partnership formed for the practice of podiatry in accordance with this section regardless of the date of formation of the entity.

(3) Nothing in this section shall be deemed to diminish or change the obligation of each person licensed to practice podiatry employed by the corporation to conduct his or her practice in accordance with the standards of professional conduct provided for in section 12-32-107 (3). Any person licensed by the Colorado podiatry board to practice podiatry who by act or omission causes the corporation to act or fail to act in a way that violates such standards of professional conduct, including any provision of this section, shall be deemed personally responsible for the act or omission and shall be subject to discipline for the act or omission.

(4) A professional service corporation may adopt a pension, profit-sharing (whether cash or deferred), health and accident, insurance, or welfare plan for all or part of its employees including lay employees if such plan does not require or result in the sharing of specific or identifiable fees with lay employees, and if any payments made to lay employees, or into any such plan in behalf of lay employees, are based upon their compensation or length of service, or both, rather than the amount of fees or income received.

(5) (a) Except as provided in this section, corporations shall not practice podiatry.

(b) Employment of a podiatrist by a certified or licensed hospital, licensed skilled nursing facility, certified home health agency, licensed hospice, certified comprehensive outpatient rehabilitation facility, certified rehabilitation agency, authorized health maintenance

organization, accredited educational entity, or other entity wholly owned and operated by any governmental unit or agency shall not be considered the corporate practice of podiatry if:

(I) The relationship created by the employment does not affect the ability of the podiatrist to exercise his or her independent judgment in the practice of the profession;

(II) The podiatrist's independent judgment in the practice of the profession is in fact unaffected by the relationship;

(III) The policies of the entity employing the podiatrist contain a procedure by which complaints by a podiatrist alleging a violation of this paragraph (b) may be heard and resolved;

(IV) The podiatrist is not required to exclusively refer any patient to a particular provider or supplier; except that nothing in this subparagraph (IV) shall invalidate the policy provisions of a contract between a podiatrist and his or her intermediary or the managed care provisions of a health coverage plan; and

(V) The podiatrist is not required to take any other action he or she determines not to be in the patient's best interest.

(c) A podiatrist employed by an entity described in paragraph (b) of this subsection (5) shall be an employee of the entity for purposes of liability for all acts, errors, and omissions of the employee.

(6) As used in this section, unless the context otherwise requires:

(a) "Articles of incorporation" includes operating agreements of limited liability companies and partnership agreements of registered limited liability partnerships.

(b) "Corporation" includes a limited liability company organized under the "Colorado Limited Liability Company Act", article 80 of title 7, C.R.S., and a limited liability partnership registered under section 7-60-144 or 7-64-1002, C.R.S.

(c) "Director" and "officer" of a corporation includes a member and a manager of a limited liability company and a partner in a registered limited liability partnership.

(d) "Employees" includes employees, members, and managers of a limited liability company and employees and partners of a registered limited liability partnership.

(d.5) "Health benefit plan" has the same meaning as set forth in section 10-16-102 (32), C.R.S.

(e) "Share" includes a member's rights in a limited liability company and a partner's rights in a registered limited liability partnership.

(f) "Shareholder" includes a member of a limited liability company and a partner in a registered limited liability partnership.

Source: L. 85: Entire section added, p. 495, § 11, effective July 1. **L. 93:** (1)(f) amended, p. 862, § 33, effective July 1, 1994. **L. 95:** (6) added, p. 811, § 30, effective May 24. **L. 97:** (6)(b) amended, p. 918, § 11, effective January 1, 1998. **L. 2006:** (2) and (5) amended and (6)(d.5) added, pp. 105, 106, §§ 1, 2, effective August 7. **L. 2010:** (1)(e), IP(1)(g), and (3) amended, (HB 10-1224), ch. 420, p. 2157, § 18, effective July 1. **L. 2013:** (6)(d.5) amended, (HB 13-1266), ch. 217, p. 991, § 57, effective May 13.

Editor's note: The "Colorado Corporation Code", articles 1 to 10 of title 7, referred to in the introductory portion to subsection (1) was repealed, effective July 1, 1994, and was replaced on that date by the "Colorado Business Corporation Act", articles 101 to 117 of title 7.

12-32-110. Penalties for practicing without license. (Repealed)

Source: L. 43: p. 429, § 6. **CSA:** C. 109, § 26(6). **CRS 53:** § 91-2-6. **L. 63:** p. 291, § 11. **C.R.S. 1963:** § 91-2-6. **L. 79:** Entire section repealed, p. 486, § 12, effective July 1.

12-32-111. Renewal of license. (1) (a) The Colorado podiatry board shall set reasonable continuing education requirements for renewal of license, but in no event shall the board require more than fourteen hours' credit of continuing education per year. A podiatrist desiring to renew his or her license to practice podiatry shall submit to the Colorado podiatry board the information the board believes necessary to show that he or she has fulfilled the board's continuing education requirements and a fee to be determined and collected pursuant to section 24-34-105, C.R.S.

(b) On or before the 2013 podiatrist license renewal cycle, the Colorado podiatry board shall promulgate rules and implement an ongoing professional development program that shall be developed in conjunction with statewide professional associations that represent podiatrists. The professional development program may include the continuing education requirements in paragraph (a) of this subsection (1).

(1.5) The board shall establish a questionnaire to accompany the renewal form. The questionnaire shall be designed to determine if the licensee has acted in violation of, or has been disciplined for actions that might be construed as violations of, this article or that may make the licensee unfit to practice podiatry with reasonable care and safety. The failure of an applicant to answer the questionnaire accurately shall constitute unprofessional conduct pursuant to section 12-32-107.

(2) No license to practice podiatry that has been delinquent for more than two years shall be renewed unless the applicant demonstrates to the Colorado podiatry board his or her continued professional competence.

(3) (Deleted by amendment, L. 2010, (HB 10-1224), ch. 420, p. 2158, § 19, effective July 1, 2010.)

(4) Renewal or reinstatement of a license shall be pursuant to a schedule established by the director of the division of professions and occupations within the department of regulatory agencies, and a license shall be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license pursuant to the schedule established by the director, the license shall expire. A person whose license has expired shall be subject to the penalties provided in this article or in section 24-34-102 (8), C.R.S. The board shall establish the criteria for reinstatement of a license.

Source: L. 71: p. 1032, § 4. **C.R.S. 1963:** § 91-2-11. **L. 79:** (1) R&RE, p. 486, § 9, effective July 1. **L. 85:** Entire section amended, p. 497, § 12, effective July 1. **L. 2010:** Entire section amended, (HB 10-1224), ch. 420, p. 2158, § 19, effective July 1.

Cross references: For the authority of the executive director of the department of regulatory agencies to change the period of validity and renewal date of any license or certificate issued by any examining or licensing board or commission in the division of professions and occupations, see § 24-34-102 (7) and (8).

12-32-112. Existing licenses and proceedings. (Repealed)

Source: L. 79: Entire section added, p. 486, § 10, effective July 1. **L. 85:** Entire section repealed, p. 506, § 24, effective July 1.

12-32-113. Injunctive proceedings. The Colorado podiatry board, in the name of the people of the state of Colorado, may apply for injunctive relief through the attorney general in any court of competent jurisdiction to enjoin any person who does not possess a currently valid or active podiatry license from committing any act declared to be unlawful or prohibited by this article. If it is established that the defendant has been or is committing an act declared to be unlawful or prohibited by this article, the court or any judge thereof shall enter a decree perpetually enjoining said defendant from further committing such act. In the case of a violation of any injunction issued under the provisions of this section, the court or any judge thereof may summarily try and punish the offender for contempt of court. Such injunctive proceedings shall be in addition to, and not in lieu of, all penalties and other remedies provided for in this article.

Source: L. 85: Entire section added, p. 498, § 13, effective July 1.

12-32-114. Duplicates of license. The Colorado podiatry board is authorized to issue a duplicate license to any person to whom a license to practice podiatry in this state has been issued, upon application, properly verified by oath, establishing to the satisfaction of the board that the original license has been lost or destroyed and upon payment to the board of a fee to be determined by rule adopted by the board. No person shall be entitled to a duplicate license unless he or she is a licensee in good standing.

Source: L. 85: Entire section added, p. 498, § 13, effective July 1. **L. 2010:** Entire section amended, (HB 10-1224), ch. 420, p. 2159, § 20, effective July 1.

12-32-115. Procedure - registration - fees. (Repealed)

Source: L. 85: Entire section added and (1)(b) amended, pp. 498, 1371, §§ 13, 49, effective July 1. **L. 90:** (2) and (3) amended, p. 810, § 11, effective July 1. **L. 95:** (3) amended, p. 221, § 6, effective July 1. **L. 2004:** (3) amended, p. 1823, § 62, effective August 4. **L. 2010:** Entire section repealed, (HB 10-1224), ch. 420, p. 2159, § 21, effective July 1.

12-32-116. Certification of licensing. (Repealed)

Source: L. 85: Entire section added, p. 499, § 13, effective July 1. **L. 2010:** Entire section repealed, (HB 10-1224), ch. 420, p. 2160, § 22, effective July 1.

12-32-117. Division of fees. (1) If any person holding a license issued by the Colorado podiatry board divides any fee or compensation received or charged for services rendered by him or her as such licensee or agrees to divide any such fee or compensation with any person, firm, association, or corporation as pay or compensation to such other person for sending or bringing any patient or other person to such licensee, or for recommending such licensee to any person, or

for being instrumental in any manner in causing any person to engage such licensee in his or her professional capacity; or if any such licensee shall either directly or indirectly pay or compensate or agree to pay or compensate any person, firm, association, or corporation for sending or bringing any patient or other person to such licensee for examination or treatment, or for recommending such licensee to any person, or for being instrumental in causing any person to engage such licensee in his or her professional capacity; or if any such licensee, in his or her professional capacity and in his or her own name or behalf, shall make or present a bill or request a payment for services rendered by any person other than the licensee, such licensee commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(2) Repealed.

Source: L. 85: Entire section added, p. 499, § 13, effective July 1. **L. 86:** (1) amended, p. 1216, § 8, effective May 30. **L. 90:** (2) repealed, p. 812, § 14, effective July 1. **L. 2002:** (1) amended, p. 1477, § 71, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (1), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-32-118. Recovery of fees illegally paid. If any licensee, in violation of section 12-32-117, divides or agrees to divide any fee or compensation received by him or her for services rendered in his or her professional capacity with any person, the person who has paid such fee or compensation to the licensee may recover the amount unlawfully paid or agreed to be paid from either the licensee or from the person to whom the fee or compensation has been paid, by an action to be instituted within two years after the date on which the fee or compensation was divided or agreed to be divided.

Source: L. 85: Entire section added, p. 500, § 13, effective July 1. **L. 2010:** Entire section amended, (HB 10-1224), ch. 420, p. 2160, § 23, effective July 1.

12-32-119. Existing licenses and proceedings. (Repealed)

Source: L. 85: Entire section added, p. 500, § 13, effective July 1. **L. 2010:** Entire section repealed, (HB 10-1224), ch. 420, p. 2160, § 24, effective July 1.

PART 2

SAFETY TRAINING FOR UNLICENSED X-RAY TECHNICIANS

Cross references: For similar provisions in article 33 of this title regulating chiropractors, see part 2 of said article; for similar provisions in article 35 of this title regulating dentists, see part 2 of said article.

12-32-201. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that public exposure to the hazards of ionizing radiation used for diagnostic purposes should be minimized wherever possible. Accordingly, the general assembly finds,

determines, and declares that for any podiatric physician or podiatrist to allow an untrained person to operate a machine source of ionizing radiation, including without limitation a device commonly known as an "X-ray machine", or to administer such radiation to a patient for diagnostic purposes is a threat to the public health and safety.

(2) It is the intent of the general assembly that podiatric physicians or podiatrists utilizing unlicensed persons in their practices provide those persons with a minimum level of education and training before allowing them to operate machine sources of ionizing radiation; however, it is not the general assembly's intent to discourage education and training beyond this minimum. It is further the intent of the general assembly that established minimum training and education requirements correspond as closely as possible to the requirements of each particular work setting as determined by the Colorado podiatry board pursuant to this part 2.

(3) The general assembly seeks to ensure, and accordingly declares its intent, that in promulgating the rules and regulations authorized by this part 2, the Colorado podiatry board will make every effort, consistent with its other statutory duties, to avoid creating a shortage of qualified individuals to operate machine sources of ionizing radiation for beneficial medical purposes in any area of the state.

Source: L. 91: Entire part added, p. 1609, § 1, effective May 1.

12-32-202. Board authorized to issue rules. (1) (a) The Colorado podiatry board shall adopt rules and regulations prescribing minimum standards for the qualifications, education, and training of unlicensed persons operating machine sources of ionizing radiation and administering such radiation to patients for diagnostic podiatric use. No podiatric physician nor podiatrist shall allow any unlicensed person to operate a machine source of ionizing radiation or to administer such radiation to any patient unless such person has met the standards then in effect under rules and regulations adopted pursuant to this section. The board may adopt rules and regulations allowing a grace period in which newly hired operators of machine sources of ionizing radiation shall receive the training required pursuant to this section.

(b) For purposes of this part 2, "unlicensed person" means any person who does not hold a current and active license entitling the person to practice podiatry under the provisions of this article.

(2) The Colorado podiatry board shall seek the assistance of licensed podiatrists in developing and formulating the rules and regulations promulgated pursuant to this section.

(3) The required number of hours of training and education for all unlicensed persons operating machine sources of ionizing radiation and administering such radiation to patients shall be established by the board by rule on or before July 1, 1992. This standard shall apply to all persons in podiatric settings other than hospitals and similar facilities licensed by the department of public health and environment pursuant to section 25-1.5-103, C.R.S. Such training and education may be obtained through programs approved by the appropriate authority of any state or through equivalent programs and training experience including on-the-job training as determined by the board.

Source: L. 91: Entire part added, p. 1610, § 1, effective May 1. **L. 94:** (3) amended, p. 2726, § 331, effective July 1. **L. 2003:** (3) amended, p. 700, § 7, effective July 1.

ARTICLE 33

Chiropractors

PART 1

GENERAL PROVISIONS

12-33-101. Legislative declaration - unlawful acts - license required. (1) It is hereby declared to be the policy of the general assembly of the state of Colorado that, in order to safeguard the life, health, and property and the public welfare of the people of this state and in order to protect the people of this state against unauthorized, unqualified, and improper practice of chiropractic, it is necessary that a proper regulatory authority be established and adequately provided for.

(2) It is unlawful for any person to practice or to offer to practice chiropractic in the state of Colorado, or to use in connection with his name or business or otherwise to assume, use, or advertise any title or description which will or which reasonably might be expected to mislead the public into believing he is a doctor of chiropractic, unless such person has been duly licensed under the provisions of this article. Anyone who holds himself out to the public as a doctor of chiropractic without qualifying for proper licensing under this article and without submitting to the regulations provided in this article endangers thereby the public life, health, property, and welfare.

Source: L. 59: p. 293, § 1. **CRS 53:** § 23-2-1. **C.R.S. 1963:** § 23-1-1.

12-33-102. Definitions. As used in this article 33, unless the context otherwise requires:

(1) "Acupuncture" means the puncture of the skin with fine needles for diagnostic and therapeutic purposes.

(1.3) (a) "Animal chiropractic" means diagnosing and treating animal vertebral subluxation through chiropractic adjustment of the spine or extremity articulations of fully awake dogs and equids. The chiropractic adjustment may be performed only with the hands or with the use of a hand-held low-force mechanical adjusting device functionally equivalent to the device known as an activator; all other equipment is prohibited.

(b) "Animal chiropractic" does not include:

(I) Performing veterinary medical care and diagnosis;

(II) Performing surgery;

(III) Dispensing or administering medications, dietary or nutritional supplements, herbs, essences, nutraceutical products, or anything else supplied orally, rectally, by inhalation, by injection, or topically except topically applied heat or cold;

(IV) Generating radiographic images or performing imaging procedures, including thermography;

(V) Performing acupuncture, or any treatment activity other than chiropractic adjustment;

(VI) Providing magnetic or other nonmanual treatment techniques, colonics, colored-light therapy, homeopathy, radionics, or vitamin therapy;

(VII) Venipuncture;

(VIII) Making diagnoses by methods such as live cell analysis, pendulum divining, iridology, hair analysis, nutritional deficiency questionnaires, herbal crystallization analysis, or food allergy testing.

(1.5) "Animal vertebral subluxation" means a lesion or dysfunction in a joint or motion segment in which alignment, movement integrity, or physiological function are altered, although contact between joint surfaces remains intact, which may influence biomechanical and neural integrity. Diagnosis of animal vertebral subluxation typically involves evaluation of gait and radiographs, and static and motion palpation techniques that are used to identify joint dysfunction. Diagnosis of animal vertebral subluxation does not include methods such as applied kinesiology, reflexology, pendulum divining, or thermography.

(1.7) "Chiropractic" means that branch of the healing arts that is based on the premise that disease is attributable to the abnormal functioning of the human nervous system. It includes the diagnosing and analyzing of human ailments and seeks the elimination of the abnormal functioning of the human nervous system by the adjustment or manipulation, by hand or instrument, of the articulations and adjacent tissue of the human body, particularly the spinal column, and the use as indicated of procedures that facilitate the adjustment or manipulation and make it more effective and the use of sanitary, hygienic, nutritional, and physical remedial measures for the promotion, maintenance, and restoration of health, the prevention of disease, and the treatment of human ailments. "Chiropractic" includes the use of venipuncture for diagnostic purposes. "Chiropractic" does not include colonic irrigation therapy. "Chiropractic" includes treatment by acupuncture when performed by an appropriately trained chiropractor as determined by the Colorado state board of chiropractic examiners. Nothing in this section shall apply to persons using acupuncture not licensed by the board.

(2) "Chiropractic adjustment" means the application, by hand, by a trained chiropractor who has fulfilled the educational and licensing requirements of this article, of adjustive force to correct subluxations, fixations, structural distortions, abnormal tensions, and disrelated structures, or to remove interference with the transmission of nerve force. The application of the dynamic adjustive thrust is designed and intended to produce and usually elicits audible and perceptible release of tensions and movement of tissues or anatomical parts for the purpose of removing or correcting interference to nerve transmission and expression.

(3) "Electrotherapy" means the application of any radiant or current energies of high or low frequency, alternating or direct, except surgical cauterization, electrocoagulation, the use of radium in any form, and X-ray therapy.

(3.1) "Equid" means a hoofed mammal of the family equidae and includes donkeys, horses, mules, and zebras.

(3.5) "Licensed veterinarian" has the same meaning as set forth in section 12-64-103 (9).

(4) "Venipuncture" means the puncture of a vein for the withdrawal of blood for the purpose of diagnosis through blood analysis. Any blood analysis shall be done by a chiropractor or by a commercial laboratory.

(5) "Veterinary medical clearance" means that a veterinarian licensed under article 64 of this title has examined an animal patient, has provided a diagnosis or differential diagnosis if appropriate, and has provided written clearance, which may be transmitted electronically, for animal chiropractic. The veterinary medical clearance shall precede the commencement of animal chiropractic treatment and may contain limitations on the scope, date of initiation, and

duration of chiropractic treatment. Once a veterinary medical clearance has been received, the chiropractor is responsible for developing the plan of care for the animal patient's animal chiropractic.

Source: L. 59: p. 294, § 1. **CRS 53:** § 23-2-2. **C.R.S. 1963:** § 23-1-2. **L. 79:** (2) amended, p. 488, § 1, effective July 1. **L. 85:** (1) amended and (1.5) and (4) added, p. 507, § 1, effective July 1. **L. 2009:** (1) and (1.5) amended and (1.3), (1.7), and (5) added, (SB 09-167), ch. 366, p. 1917, § 6, effective June 1. **L. 2018:** IP and (1.3)(a) amended and (3.1) and (3.5) added, (SB 18-239), ch. 309, p. 1864, § 1, effective August 8.

Editor's note: Section 3 of chapter 309 (SB 18-239), Session Laws of Colorado 2018, provides that the act changing this section applies to conduct occurring on or after August 8, 2018.

12-33-103. State board of chiropractic examiners - subject to termination - repeal of article. (1) There is hereby created a Colorado state board of chiropractic examiners, referred to in this article as the "board", consisting of seven members who are citizens of the United States, five of whom must have practiced chiropractic in the state of Colorado for five years before their appointment and two of whom shall be appointed from the public at large. The governor shall appoint members of the board for a term of four years. Any board member may be removed by the governor for misconduct, incompetence, or neglect of duty. No member shall serve more than two consecutive terms.

(2) Repealed.

(3) (a) The provisions of section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the Colorado state board of chiropractic examiners created by this section.

(b) This article is repealed, effective July 1, 2020.

Source: L. 59: p. 294, § 1. **CRS 53:** § 23-2-3. **C.R.S. 1963:** § 23-1-3. **L. 73:** p. 1367, § 10. **L. 75:** (2) amended, p. 453, § 1, effective July 14. **L. 76:** (3) added, p. 623, § 17, effective July 1. **L. 79:** (1) and (2) amended and (2) repealed, pp. 488, 912, §§ 2, 16, effective July 1. **L. 85:** (1) amended, p. 508, § 2, effective July 1. **L. 87:** (1) amended, p. 904, § 6, effective June 15. **L. 91:** (3) amended, p. 682, § 24, effective April 20. **L. 95:** (3)(b) amended, p. 1319, § 11, effective July 1. **L. 2003:** (1) amended, p. 911, § 10, effective August 6. **L. 2007:** (3)(b) amended, p. 382, § 1, effective August 3. **L. 2009:** (1) and (3)(b) amended, (SB 09-167), ch. 366, pp. 1917, 1916, §§ 5, 1, effective June 1. **L. 2013:** (1) amended, (SB 13-204), ch. 275, p. 1438, § 1, effective May 24.

12-33-104. Oath. (Repealed)

Source: L. 59: p. 295, § 1. **CRS 53:** § 23-2-4. **C.R.S. 1963:** § 23-1-4. **L. 2004:** Entire section repealed, p. 1824, § 63, effective August 4.

12-33-105. Board meetings - election of officers. The board shall elect from the membership thereof a president, a vice-president, and a secretary-treasurer. The board shall meet

at such times and at such places as the board deems necessary, but in no case less than annually. A majority of the board shall constitute a quorum. An annual election of officers shall occur.

Source: L. 59: p. 295, § 1. **CRS 53:** § 23-2-5. **C.R.S. 1963:** § 23-1-5. **L. 79:** Entire section amended, p. 489, § 3, effective July 1. **L. 81:** Entire section amended, p. 2024, § 10, effective July 14.

12-33-106. Bond. (Repealed)

Source: L. 59: p. 295, § 1. **CRS 53:** § 23-2-6. **C.R.S. 1963:** § 23-1-6. **L. 73:** p. 1367, § 11. **L. 79:** Entire section repealed, p. 495, § 18, effective July 1.

12-33-107. Board powers. (1) The board is authorized to and shall:

(a) Adopt, promulgate, and from time to time revise such rules and regulations not inconsistent with the law as may be necessary to enable it to carry out the provisions of this article; except that the board shall not adopt the code of ethics of any professional group or association by rule or regulation;

(b) Examine, license, and renew licenses of duly qualified chiropractic applicants;

(c) Approve or refuse to approve chiropractic schools and colleges;

(d) Conduct hearings upon complaints concerning the disciplining of chiropractors;

(e) Cause the prosecution of and seek injunctions against all persons violating this article;

(f) Employ investigators, issue subpoenas, compel the attendance of witnesses, compel the production of records, books, papers, and documents, and administer oaths to persons giving testimony at hearings;

(g) Repealed.

(h) Identify and proscribe, by rule, chiropractic practices which are untrue, deceptive, or misleading.

Source: L. 59: p. 295, § 1. **CRS 53:** § 23-2-7. **C.R.S. 1963:** § 23-1-7. **L. 79:** (1)(a) amended and (1)(h) added, p. 489, § 4, effective July 1. **L. 85:** (1)(g) repealed, p. 511, § 10, effective July 1. **L. 95:** (1)(h) amended, p. 1311, § 1, effective July 1.

12-33-107.5. Limitation on authority. The authority granted the board under the provisions of this article shall not be construed to authorize the board to arbitrate or adjudicate fee disputes between licensees or between a licensee and any other party.

Source: L. 89: Entire section added, p. 670, § 6, effective July 1.

Cross references: For the legislative declaration contained in the 1989 act enacting this section, see section 1 of chapter 111, Session Laws of Colorado 1989.

12-33-108. Board publications.

(1) Repealed.

(2) Publications of the board circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136, C.R.S.

Source: L. 59: p. 296, § 1. **CRS 53:** § 23-2-8. **C.R.S. 1963:** § 23-1-8. **L. 64:** p. 132, § 46. **L. 79:** (1) amended, p. 436, § 12, effective July 1. **L. 83:** Entire section amended, p. 829, § 17, effective July 1. **L. 96:** (1) repealed, p. 1227, § 41, effective August 7.

Cross references: For the legislative declaration contained in the 1996 act repealing subsection (1), see section 1 of chapter 237, Session Laws of Colorado 1996.

12-33-109. Disposition of fees. All examination and renewal fees under this article shall be collected by the board and transmitted to the state treasurer pursuant to law.

Source: L. 59: p. 296, § 1. **CRS 53:** § 23-2-9. **C.R.S. 1963:** § 23-1-9. **L. 73:** p. 1367, § 12. **L. 79:** Entire section R&RE, p. 489, § 5, effective July 1.

12-33-110. Records. The board shall keep a record of its proceedings and a register of all applications for licensing and all licensed chiropractors, such to be public records and prima facie evidence of the proceedings of the board set forth therein.

Source: L. 59: p. 296, § 1. **CRS 53:** § 23-2-10. **C.R.S. 1963:** § 23-1-10.

12-33-111. Licensure - minimum education requirements. (1) (a) A minimum educational requirement shall include a knowledge of the basic sciences and for original licensure shall include graduation from a high school or its educational equivalent and graduation from an approved chiropractic school or college which teaches a course of not less than four thousand resident classroom hours in a period of four academic years. All applicants for licensure who matriculate in a chiropractic school or college shall present evidence of having graduated from a chiropractic school or college having status with the commission on accreditation of the council on chiropractic education, or its successor, or from a chiropractic school or college which meets equivalent standards. The schedule of minimum educational requirements to enable any person to practice chiropractic in the state of Colorado is, except as otherwise provided, as follows:

Group 1. Anatomy, including embryology and histology
Group 2. Physiology and psychology
Group 3. Biochemistry, inorganic and organic chemistry
Group 4. Pathology, bacteriology, and toxicology
Group 5. Public health, hygiene, sanitation, and first aid
Group 6. Diagnosis (to include, but not be limited to, physical, clinical, laboratory, and all other recognized diagnostic procedures), pediatrics, dermatology, syphilology, psychiatry, and X ray
Group 7. Obstetrics, gynecology

Group 8. Principles and practice of chiropractic, adjustive technic. Electives including dietetics, nutrition, posture, physiotherapy, electrotherapy, and surgical, optometric, and dental indications

(b) Any chiropractic college or school meeting the requirements of this section and the rules and regulations adopted by the board shall be eligible for approval.

Source: L. 59: p. 296, § 1. **CRS 53:** § 23-2-11. **C.R.S. 1963:** § 23-1-11. **L. 76:** IP(1) amended, p. 412, § 3, effective July 1. **L. 79:** IP(1) and (1)(a) amended, p. 489, § 6, effective July 1.

12-33-111.5. Display of license required. Every licensed practitioner of chiropractic shall conspicuously display his or her license to practice in this state. If a chiropractor practices at several locations, his or her name and license number shall be displayed in a manner that can be easily recognized by patients. Persons who engage in the practice of chiropractic under the name of a partnership, association, or other entity shall conspicuously display at the entrance of their place of business the name of each member or associate of such entity who is engaged in the practice of chiropractic.

Source: L. 95: Entire section added, p. 1311, § 2, effective July 1.

12-33-112. Application for license - fee - examination. Any person who fulfills the minimum educational requirements prescribed by this article and by the board, who is not less than twenty-one years of age, who desires to obtain a license to practice chiropractic in this state, and who is not entitled to a license therefor under other provisions of this article may make application for such license upon such forms and in such manner as prescribed by the board, which application shall be accompanied by an examination fee. The board may refuse to examine or license an applicant if the applicant has committed any act that would be grounds for disciplinary action against a licensed chiropractor. Such applicant shall be examined by the board or the board's designee in the subjects outlined in section 12-33-111 to determine the applicant's qualifications to practice chiropractic. A license shall be granted to all applicants who on such examination are found qualified by attaining a passing grade on the examinations adopted by the board. Qualification in that portion of the examination relating to the basic sciences shall be established by the applicant submitting proof satisfactory to the board of successfully passing the examination in the basic sciences given by the national board of chiropractic examiners. The board may adopt the practical examination developed and administered by the national board of chiropractic examiners as the practical portion of the examination. If the board adopts such practical examination developed and administered by the national board of chiropractic examiners, qualification in the practical portion of the examination shall be established by the applicant submitting proof satisfactory to the board of successfully passing the practical examination given by the national board of chiropractic examiners, and the passing score for such practical examination shall be as set by the national board of chiropractic examiners. Any chiropractic applicant who desires to practice electrotherapy shall present evidence that he or she has successfully completed a course of not less than one hundred twenty classroom hours in this subject at a school approved by the board or under the instruction of an approved provider.

Source: L. 59: p. 298, § 1. **CRS 53:** § 23-2-14. **C.R.S. 1963:** § 23-1-14. **L. 73:** p. 517, § 20. **L. 75:** Entire section amended, p. 453, § 2, effective July 14. **L. 76:** Entire section amended, p. 412, § 4, effective July 1. **L. 79:** Entire section amended, p. 490, § 7, effective July 1. **L. 85:** Entire section amended, p. 508, § 3, effective July 1. **L. 95:** Entire section amended, p. 1312, § 3, effective July 1. **L. 98:** Entire section amended, p. 687, § 1, effective May 18.

12-33-112.5. Temporary licensure. (Repealed)

Source: L. 95: Entire section added, p. 1312, § 4, effective July 1. **L. 2010:** Entire section repealed, (HB 10-1128), ch. 172, p. 610, § 3, effective April 29.

12-33-113. Licensure by endorsement. (1) Upon application for a license to practice chiropractic in this state, accompanied by the required fee, the board shall issue such license to any person who furnishes, upon such form and in such manner as the board prescribes, evidence satisfactory to the board that:

(a) The applicant is licensed to practice chiropractic in another state, a territory of the United States, the District of Columbia, the commonwealth of Puerto Rico, or a province of Canada; and

(b) At the time of application under this section, the applicant possesses credentials and qualifications that are, in the judgment of the board, equivalent to this state's requirements for licensure by examination; and

(c) (I) The applicant has been engaged in the full-time practice of chiropractic, or has taught general clinical chiropractic subjects at an accredited school of chiropractic, as set forth in section 12-33-111 (1)(a), in one of the jurisdictions referred to in paragraph (a) of this subsection (1) for at least three of the five years immediately preceding the date of the receipt of the application; or

(II) The applicant has demonstrated competency as a chiropractor as determined by the board; and

(d) The applicant has not been convicted of a crime that would be grounds for the refusal, suspension, or revocation of a license to practice chiropractic in this state if committed in this state; and

(e) The applicant's license to practice chiropractic is in good standing.

Source: L. 59: p. 298, § 1. **CRS 53:** § 23-2-13. **C.R.S. 1963:** § 23-1-13. **L. 67:** p. 719, § 1. **L. 76:** Entire section amended, p. 412, § 5, effective July 1. **L. 79:** Entire section amended, p. 491, § 8, effective July 1. **L. 83:** Entire section R&RE, p. 533, § 1, effective July 1. **L. 2010:** Entire section amended, (HB 10-1175), ch. 46, p. 173, § 1, effective July 1, 2011.

12-33-114. Renewal of license. (1) Licenses shall be renewed or reinstated pursuant to a schedule established by the director of the division of professions and occupations within the department of regulatory agencies and shall be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director of the division of professions and occupations within the department of regulatory agencies may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license pursuant to the schedule established by the director of the division of professions and occupations, such license

shall expire. Any person whose license has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

(1.2) (Deleted by amendment, L. 2004, p. 1824, § 64, effective August 4, 2004.)

(1.3) A renewal fee paid pursuant to subsection (1) of this section shall not be refunded.

(2) (Deleted by amendment, L. 2004, p. 1824, § 64, effective August 4, 2004.)

Source: L. 59: p. 299, § 1. **CRS 53:** § 23-2-15. **C.R.S. 1963:** § 23-1-15. **L. 75:** Entire section amended, p. 454, § 4, effective July 14. **L. 79:** Entire section R&RE, p. 491, § 9, effective July 1. **L. 85:** Entire section amended, p. 509, § 4, effective July 1. **L. 95:** (1) amended and (1.2) and (1.3) added, p. 1313, § 5, effective July 1. **L. 2004:** (1), (1.2), and (2) amended, p. 1824, § 64, effective August 4.

12-33-114.5. Change of address - reporting required. Each person licensed under this article, upon changing his or her address, shall inform the board of their new address within thirty days after such change. The address change shall be reflected on the next license or renewal certificate issued to the licensee.

Source: L. 95: Entire section added, p. 1313, § 6, effective July 1.

12-33-115. Persons licensed under previous laws. Any person holding a valid license to practice chiropractic in Colorado on or after May 18, 1959, shall be licensed under the provisions of this article without further application by said person.

Source: L. 59: p. 302, § 1. **CRS 53:** § 23-2-20. **C.R.S. 1963:** § 23-1-20.

12-33-116. Continuing education. It is hereby expressly declared to be the purpose of this section to provide for an increase in the annual scientific educational requirements of licensed Colorado chiropractors. Each licensed Colorado chiropractor in active practice within the state of Colorado shall be required annually to attend not less than fifteen hours of scientific clinics, forums, or chiropractic educational study consisting of subjects basic to the field of the healing arts as set forth in section 12-33-111. Each year at the time of its regular June meeting the board shall prepare an educational schedule of minimum postgraduate requirements of subjects as set forth in section 12-33-111 that shall be met by any school, clinic, forum, or convention giving such educational work, and such minimum standards must be complied with by such school, clinic, forum, or convention before the board issues a postgraduate attendance certificate. Credit hours shall be determined by the board. Applicants shall apply to the board prior to or after the course and present proof of attendance and synopsis of the course content for approval of credit hours. This provision is made mandatory in the best interest of public health and welfare and to provide progress in the field of chiropractic. If any licensed chiropractor is unable to comply with this section on account of dire emergency and for good cause shown, the board may waive the provisions of this section.

Source: L. 59: p. 297, § 1. **CRS 53:** § 23-2-12. **C.R.S. 1963:** § 23-1-12. **L. 79:** Entire section amended, p. 491, § 10, effective July 1.

12-33-116.5. Professional liability insurance required. (1) (a) It is unlawful for any person to practice chiropractic within this state unless the person purchases and maintains professional liability insurance in an amount not less than three hundred thousand dollars per claim with an aggregate liability limit for all claims during the year of one million dollars.

(b) Professional liability insurance required by this section shall cover all acts within the scope of practice as defined by section 12-33-102. Professional liability coverage shall cover acupuncture and electrotherapy only if the licensee is authorized to perform these acts.

(2) Notwithstanding subsection (1) of this section, the board may by rule exempt or establish lesser liability insurance requirements for any class of licensee which:

(a) Practices chiropractic as employees of the United States government;

(b) Renders limited or occasional chiropractic services;

(c) Performs less than full-time active chiropractic services because of administrative or other nonclinical duties of partial or complete retirement;

(d) Provides uncompensated chiropractic care to patients but does not otherwise provide compensated chiropractic care to patients; or

(e) Practices chiropractic in such a manner that renders the amounts provided in subsection (1) of this section unreasonable or unattainable.

Source: L. 95: Entire section added, p. 1313, § 6, effective July 1. **L. 2006:** (1) amended, p. 300, § 1, effective August 7. **L. 2009:** (1)(a) amended, (SB 09-167), ch. 366, p. 1917, § 3, effective June 1.

12-33-117. Discipline of licensees - letters of admonition, suspension, revocation, denial, and probation - grounds. (1) Upon any of the following grounds, the board may issue a letter of admonition to a licensee or may revoke, suspend, deny, refuse to renew, or impose conditions on such licensee's license:

(a) Using fraud, misrepresentation, or deceit in applying for, securing, renewing, or seeking reinstatement of a license or in taking an examination provided for in this article;

(b) An act or omission that constitutes negligent chiropractic practice or fails to meet generally accepted standards of chiropractic practice;

(c) Conviction of a felony or any crime that would constitute a violation of this article. For purposes of this subsection (1), "conviction" includes the acceptance of a guilty plea or a plea of nolo contendere or the imposition of a deferred sentence.

(d) A substance use disorder, as defined in section 27-82-102, or excessive use by the licensee of a controlled substance, as defined in section 18-18-102 (5), or a habit-forming drug;

(e) An alcohol use disorder, as defined in section 27-81-102, or excessive use of alcohol by the licensee;

(f) Disobedience to a lawful rule or order of the board;

(g) Persisting in maintaining an unsanitary office or practicing under unsanitary conditions after warning from the board;

(h) Repealed.

(i) False or misleading advertising;

(j) Failure to report malpractice judgments or settlements within sixty days;

(k) Violation of abuse of health insurance pursuant to section 18-13-119, C.R.S., or commission of a fraudulent insurance act, as defined in section 10-1-128, C.R.S.;

(l) Treating a patient by colonic irrigation or allowing colonic irrigation to be performed at the licensee's premises;

(m) Practicing with a suspended or expired license;

(n) Willfully deceiving or attempting to deceive the board of examiners or their agents with reference to any matter under investigation by the board;

(o) Practicing under an assumed name;

(p) Unethical advertising, as defined in subsection (3) of this section, or advertising through any medium that the licensee will perform an act prohibited by section 18-13-119 (3), C.R.S.;

(q) Violating this article or aiding any person to violate this article;

(r) Knowingly practicing in the employment of or in association with any person who is practicing in an unlawful or unprofessional manner;

(s) Offering, giving, or receiving commissions, rebates, or other forms of remuneration for the referral of clients; except that a licensee may compensate an independent advisory or marketing agent for advertising or marketing services, which services may include the referral of patients identified through such services, and a licensee may give an incidental gift to a patient in appreciation for a referral;

(t) Conducting any enterprise other than the regular practice of chiropractic whereby the holder's license is used as a means of attracting patients or attaining prestige or patronage in the conduct of such enterprise;

(u) Permitting the practice of chiropractic, the holding out of such practice, or the maintenance of an office for such by an unlicensed person in association with himself or herself;

(v) Engaging in any of the following activities and practices: Willful and repeated ordering or performance, without clinical justification, of demonstrably unnecessary laboratory tests or studies; the administration, without clinical justification, of treatment which is demonstrably unnecessary; the failure to obtain consultations or perform referrals when failing to do so is not consistent with the standard of care for the profession; or ordering or performing, without clinical justification, any service, X ray, or treatment which is contrary to recognized standards of the practice of chiropractic as interpreted by the board;

(w) Falsifying or making incorrect essential entries or failing to make essential entries on patient records;

(x) Violating section 8-42-101 (3.6), C.R.S.;

(y) Violating section 12-33-202 or any rule adopted pursuant to said section;

(z) Failing to report to the board the surrender of a license to, or adverse action taken against a license by, a licensing agency in another state, territory, or country, a governmental agency, a law enforcement agency, or a court for acts or conduct that would constitute grounds for discipline pursuant to this article;

(aa) Engaging in a sexual act with a patient during the course of such patient's care or within six months immediately following the termination of the chiropractor's professional relationship with the patient. "Sexual act", as used in this paragraph (aa), means sexual contact, sexual intrusion, or sexual penetration, as defined in section 18-3-401, C.R.S.

(bb) Abandoning a patient by any means, including, but not limited to, failing to provide a referral to another chiropractor or other appropriate health care practitioner when such referral was necessary to meet generally accepted standards of chiropractic care;

(cc) Failing to provide adequate or proper supervision when employing unlicensed persons in a chiropractic practice;

(dd) Having a physical or mental disability that makes him or her unable to render chiropractic services with reasonable skill and safety;

(ee) Performing a procedure in the course of patient care that is beyond the chiropractor's training or competence or the scope of authorized chiropractic services under this article;

(ff) Failing to respond to a board-generated complaint letter.

(1.5) In addition to any other penalty that may be imposed pursuant to this section, a chiropractor violating any provision of this article or any rule promulgated pursuant to this article may be fined no less than one thousand dollars for a first violation proven by the board, up to three thousand dollars for a second violation proven by the board, and up to five thousand dollars for a third or subsequent violation proven by the board. The board shall establish guidelines for the imposition of such fines. All fines collected pursuant to this subsection (1.5) shall be transferred to the state treasurer, who shall credit such moneys to the general fund.

(2) Disciplinary action taken against a licensee's ability to practice in another state or country shall be prima facie evidence of a violation of this article and shall constitute grounds for discipline if the acts giving rise to such disciplinary action would violate this article if committed in this state.

(2.5) When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the board and, in the opinion of the board, the complaint should be dismissed, but the board has noticed indications of possible errant conduct by the licensee that could lead to serious consequences if not corrected, a confidential letter of concern may be issued and sent to the licensee.

(3) (a) For purposes of this section, the term "unethical advertising" shall include, but not be limited to, advertising, through newspapers, magazines, circulars, direct mail, directories, radio, television, or otherwise, which:

(I) Contains false or misleading statements;

(II) Holds out or promises cures or guarantees results;

(III) Contains claims which cannot be substantiated by standard laboratory or diagnostic procedures.

(IV) and (V) Repealed.

(b) Repealed.

(4) Any doctor of chiropractic proven to be incompetent or negligent may be required to take an examination, given by the board, in the subjects outlined in section 12-33-111. In addition, the board may order the doctor of chiropractic to take such therapy or courses of training or education as may be needed to correct deficiencies found in the hearing.

(5) In the event any person holding a license to practice chiropractic in this state is determined to be mentally incompetent or insane by a court of competent jurisdiction and a court enters, pursuant to part 3 or 4 of article 14 of title 15 or section 27-65-109 (4) or 27-65-127, C.R.S., an order specifically finding that the mental incompetency or insanity is of such a degree that the person holding a license is incapable of continuing to practice chiropractic, his or her license shall automatically be suspended by the board, and, anything in this article to the contrary notwithstanding, such suspension shall continue until the licentiate is found by such court to be competent to practice chiropractic.

Source: L. 59: p. 301, § 1. **CRS 53:** § 23-2-19. **C.R.S. 1963:** § 23-1-19. **L. 73:** pp. 402, 518, §§ 1-3, 21. **L. 79:** (1)(b) and (1)(i) amended, (1)(h), (2)(e), and (3)(a)(IV) repealed, and (1)(j), (4), and (5) added, pp. 492, 495, §§ 11, 18, 12, effective July 1. **L. 81:** (1)(d) amended, p. 735, § 8, effective July 1. **L. 83:** IP(1) amended, p. 534, § 2, effective July 1. **L. 85:** (1)(k) added, p. 682, § 3, effective June 2; (1)(c) and (4)(a) amended, (1)(l) and (2)(l) added, and (2)(h), (3)(a)(V), and (3)(b) repealed, pp. 509, 511, §§ 5, 10, 4, effective July 1. **L. 89:** (2)(m) to (2)(o) added, p. 671, § 7, effective July 1. **L. 91:** (2)(p) added and (5) amended, pp. 1782, 1336, §§ 6, 50, effective July 1; (2)(q) added, p. 1616, § 6, effective January 1, 1993. **L. 95:** IP(1), (1)(a), (1)(b), (1)(c), (1)(e), (1)(j), (1)(k), (1)(l), (2), and (4) amended and (1)(z), (1)(aa), (1)(bb), and (1)(cc) added, p. 1314, § 7, effective July 1. **L. 2003:** (1)(k) amended, p. 620, § 28, effective July 1; (1)(d), (1)(e), and (1)(w) amended and (1)(dd) and (1)(ee) added, p. 796, § 1, effective August 6. **L. 2004:** (1)(d) amended, p. 1194, § 34, effective August 4. **L. 2006:** (2.5) added, p. 791, § 22, effective July 1; (1.5) added, p. 300, § 2, effective August 7. **L. 2009:** (1)(ff) added and (1.5) amended, (SB 09-167), ch. 366, pp. 1917, 1919, §§ 4, 7, effective June 1. **L. 2010:** (5) amended, (SB 10-175), ch. 188, p. 778, § 8, effective April 29. **L. 2017:** (1)(d) and (1)(e) amended, (SB 17-242), ch. 263, p. 1270, § 49, effective May 25.

Cross references: (1) For an alternative disciplinary action for persons licensed pursuant to this article, see § 24-34-106; for an exception to the provisions of subsection (1)(u) of this section, see § 6-18-303.

(2) For the legislative declaration contained in the 1989 act enacting subsections (2)(m) to (2)(o), as said subsections existed prior to 1995, see section 1 of chapter 111, Session Laws of Colorado 1989.

(3) For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-33-117.5. Mental and physical examination of licensees. (1) If the board has reasonable cause to believe a licensee is unable to practice with reasonable skill and safety, it may require such licensee to take a mental or physical examination given by a physician or other qualified provider designated by the board. If the licensee refuses to undergo such examination or to release all medical records necessary to determine his or her ability to practice safely, unless such refusal or failure is due to circumstances beyond the licensee's control, the board may suspend such licensee's license until the results of such examination are known and the board has made a determination of the licensee's fitness to practice. The board shall proceed with an order for examination and make its determination in a timely manner.

(2) An order for examination issued by the board pursuant to subsection (1) of this section shall include the board's reasons for believing the licensee is unable to practice with reasonable skill and safety.

(3) For purposes of any disciplinary proceeding authorized under this article, a licensee shall be deemed to have waived all objections to the admissibility of an examining physician's testimony and examination reports on the basis of privilege.

(4) A licensee may submit to the board testimony and examination reports received from a physician chosen by the licensee, if such testimony and reports pertain to a condition that the board has alleged may preclude the licensee from practicing with reasonable skill and safety.

(5) The results of a mental or physical examination ordered by the board shall not be used as evidence in any proceeding other than one held before the board and shall not be a public record nor made available to the public.

Source: L. 95: Entire section added, p. 1317, § 8, effective July 1.

12-33-118. Use of title. A license to practice chiropractic entitles the holder to use the title "Doctor" or "Dr." when accompanied by the word "Chiropractor" or the letters "D.C.", and to use the title of "Doctor of Chiropractic". Such license shall not confer upon the licensee the right to practice surgery or obstetrics or to prescribe, compound, or administer drugs, or to administer anesthetics. Nothing in this article shall be construed to prohibit or to require a license for bona fide chiropractic students or interns in attendance upon a regular course of instruction in a lawfully operated chiropractic school or hospital with respect to performing chiropractic services within such school or hospital while under the direct supervision of a licensed chiropractor.

Source: L. 59: p. 300, § 1. **CRS 53:** § 23-2-18. **C.R.S. 1963:** § 23-1-18. **L. 79:** Entire section amended, p. 492, § 13, effective July 1.

12-33-119. Disciplinary proceedings. (1) The board, through the department of regulatory agencies, may employ administrative law judges, on a full-time or part-time basis, to conduct hearings as provided by this article or on any matter within the board's jurisdiction upon such conditions and terms as the board may determine.

(2) A proceeding for the discipline of a licensee may be commenced when the board has reasonable grounds to believe that a licensee under the board's jurisdiction has committed an act that may violate section 12-33-117.

(3) The attendance of witnesses and the production of books, patient records, papers, and other pertinent documents at the hearing may be summoned by subpoenas issued by the board, which shall be served in the manner provided by the Colorado rules of civil procedure for service of subpoenas.

(3.5) (Deleted by amendment, L. 2004, p. 1825, § 65, effective August 4, 2004.)

(4) Disciplinary proceedings and hearings shall be conducted in the manner prescribed by article 4 of title 24, C.R.S.

(5) A previously issued license to engage in the practice of chiropractic shall not be revoked or suspended until after a hearing conducted pursuant to section 24-4-105, C.R.S., except in the case of a deliberate and willful violation of this article or if the public health, safety, and welfare require emergency action under section 24-4-104 (4), C.R.S. The denial of an application to renew an existing license shall be treated in all respects as a revocation. If an application for a new license is denied, the applicant, within sixty days after the giving of notice of such action, may request a hearing as provided in section 24-4-105, C.R.S.

(6) Repealed.

(7) (a) The board or an administrative law judge shall have the power to administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board. The board may

appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the board. The person providing such copies shall prepare them from the original record and shall delete from the copy provided pursuant to the subpoena the name of the patient, but he or she shall identify the patient by a numbered code, to be retained by the custodian of the records from which the copies were made.

(b) Upon certification of the custodian that the copies are true and complete except for the patient's name, they shall be deemed authentic, subject to the right to subpoena the originals for the limited purpose of ascertaining the accuracy of the copies. The originals shall remain confidential and be returned to the custodian as soon as the accuracy of the copy is ascertained or as soon as the case is concluded if the original is needed as evidence of falsification. No privilege of confidentiality shall exist with respect to such copies, and no liability shall lie against the board or the custodian for furnishing or using such copies in accordance with this subsection (7).

(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 licensee resides or conducts business, upon application by the board or director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the board or 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 to obey the order of the court may be punished by the court as a contempt of court.

(8) If a licensee has committed an act which violates section 12-33-117, the board shall withhold, revoke, or suspend an existing license, issue a letter of admonition, or grant probation on terms and conditions set by the board, or otherwise discipline a licensee as provided for in this article. A revoked or suspended license may thereafter be reissued by the board. The board may dismiss or terminate probation prior to the completion of the probationary period.

(9) (a) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, does not warrant formal action by the board but that should not be dismissed as being without merit, a letter of admonition may be sent by certified mail to the chiropractor against whom the complaint was made and a copy also sent to the person making the complaint. When a letter of admonition is sent by certified mail by the board to a chiropractor complained against, such chiropractor shall be advised that he or she has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based. If such request is timely made, the letter of admonition shall be deemed vacated, and the matter shall be processed by means of formal disciplinary proceedings.

(b) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(10) Notwithstanding other laws to the contrary, investigations, examinations, meetings, and other proceedings of the board conducted pursuant to this section are not required to be conducted publically and minutes of the board need not be open to public inspection; except that final action of the board taken pursuant to this section shall be open to the public.

Source: L. 59: p. 299, § 1. **CRS 53:** § 23-2-16. **C.R.S. 1963:** § 23-1-16. **L. 77:** (4) added, p. 662, § 4, effective July 1. **L. 79:** Entire section R&RE, p. 493, § 14, effective July 1. **L. 85:** (4) and (8) amended, (6) repealed, and (9) added, pp. 510, 511, §§ 6, 10, effective July 1. **L. 87:** (1) amended, p. 946, § 33, effective March 13. **L. 89:** (3.5) added, p. 671, § 8, effective July 1. **L. 95:** (9) amended, p. 1318, § 9, effective July 1. **L. 2003:** (2), (5), and (7) amended and (10) added, p. 797, § 2, effective August 6. **L. 2004:** (3.5), (7), and (9) amended, p. 1825, § 65, effective August 4.

Cross references: For the legislative declaration contained in the 1989 act enacting subsection (3.5), as said subsection existed prior to 2004, see section 1 of chapter 111, Session Laws of Colorado 1989.

12-33-119.1. Immunity in professional review. (1) If a professional review committee is established pursuant to this section to investigate the quality of care, including utilization review, being given by a person licensed pursuant to this article, it shall include in its membership at least three persons licensed under this article, but such committee may be authorized to act only by:

(a) The board; or

(b) A society or an association of persons licensed pursuant to this article whose membership includes not less than one-third of the persons licensed pursuant to this article residing in this state if the licensee whose services are the subject of review is a member of such society or association.

(2) Any member of the board or professional review committee, the board's or professional review committee's staff, any person acting as a witness or consultant to the board or committee, 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 liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as board or professional review committee member, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this article shall be immune from any civil or criminal liability that may result from such participation.

Source: L. 79: Entire section added, p. 494, § 15, effective July 1. **L. 90:** IP(1)(a) amended, p. 813, § 1, effective April 9. **L. 2004:** (2) amended, p. 1826, § 66, effective August 4.

Editor's note: The provisions in this section, as enacted by Senate Bill 182 in 1979, were renumbered on revision in 1997 for ease of location.

12-33-119.2. Cease-and-desist orders. (1) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a 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 license, the board may issue an order to cease and desist such

activity. 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 unlicensed practices immediately cease.

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

(2) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this part 1, then, in addition to any specific powers granted pursuant to this part 1, the board may issue to such person an order to show cause as to why the board should not issue a final order directing such person to cease and desist from the unlawful act or unlicensed practice.

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

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

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (2) does not appear at the hearing, the board may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (2) and such other evidence related to the matter as the board deems appropriate. The board shall issue the order within ten days after the board's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the board reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required license or has or is about to engage in acts or practices constituting violations of this part 1, a final cease-and-desist order may be issued directing such person to cease and desist from further unlawful acts or unlicensed practices.

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

(3) If it appears to the board, based upon credible evidence presented to the board, that a person has engaged in or is about to engage in any unlicensed act or practice, any act or practice

constituting a violation of this part 1, any rule promulgated pursuant to this part 1, any order issued pursuant to this part 1, or any act or practice constituting grounds for administrative sanction pursuant to this part 1, the board may enter into a stipulation with such person.

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

(5) A person aggrieved by the final cease-and-desist order may seek judicial review of the board's determination or of the board's final order as provided in section 12-33-121.

Source: L. 95: Entire section added, p. 1318, § 10, effective July 1. **L. 2006:** Entire section amended, p. 791, § 23, effective July 1.

12-33-120. Unauthorized practice - penalties - exemption. (1) Except as specified in subsection (2) or (3) of this section, any person who practices or offers or attempts to practice chiropractic 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 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(2) A chiropractor who lawfully practices chiropractic in another state or territory and whose license is in good standing in such other state or territory may practice chiropractic in this state for the limited purpose of treating members, coaches, and staff of a visiting sports team while in Colorado without having a license issued pursuant to this article. An unlicensed chiropractor practicing pursuant to this subsection (2) shall not:

(a) Practice in Colorado more than ten days in a twelve-month period;

(b) Enter Colorado to practice more than three times in a twelve-month period; or

(c) Hold himself or herself out as a chiropractor to or practice chiropractic with members of the general public.

(3) A chiropractor who lawfully practices chiropractic in another state or territory may provide chiropractic services to athletes or team personnel registered to train at the United States Olympic training center in Colorado Springs or to provide chiropractic services at an event in this state sanctioned by the United States Olympic committee. The chiropractor's services shall be contingent upon the requirements and approvals of the United States Olympic committee and shall not exceed ninety days per calendar year.

Source: L. 59: p. 302, § 1. **CRS 53:** § 23-2-21. **C.R.S. 1963:** § 23-1-21. **L. 85:** Entire section amended, p. 407, § 8, effective July 1. **L. 2002:** Entire section amended, p. 1477, § 72, effective October 1. **L. 2006:** Entire section amended, p. 87, § 24, effective August 7. **L. 2009:** Entire section amended, (SB 09-167), ch. 366, p. 1920, § 8, effective June 1. **L. 2010:** (1) amended and (3) added, (HB 10-1128), ch. 172, p. 611, § 4, effective April 29.

Cross references: (1) For a provision making it an unlawful act for a chiropractor to treat cancer or prescribe for the treatment of cancer, see § 25-50-106.

(2) For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

12-33-121. Judicial review. The court of appeals shall have initial jurisdiction to review all final actions and orders that are subject to judicial review of the board. Such proceeding shall be conducted in accordance with section 24-4-106 (11), C.R.S.

Source: L. 59: p. 300, § 1. **CRS 53:** § 23-2-17. **C.R.S. 1963:** § 23-1-17. **L. 79:** Entire section repealed, p. 495, § 18, effective July 1. **L. 85:** Entire section RC&RE, p. 510, § 7, effective July 1.

12-33-122. Duty of district attorneys - duty of department of regulatory agencies. It is the duty of the several district attorneys of this state to prosecute all persons charged with the violation of any of the provisions of this article. It is the duty of the secretary-treasurer of the board, under the direction of the board, to aid said attorneys in the enforcement of this article. It is the duty of the attorney general to advise the board upon all legal matters and to represent the board in all actions brought by or against it. It is the duty of the department of regulatory agencies to forward to the board a copy of any correspondence concerning the professional conduct or competence of any licensed chiropractor which the department either transmits or receives.

Source: L. 59: p. 302, § 1. **CRS 53:** § 23-2-22. **C.R.S. 1963:** § 23-1-22. **L. 79:** Entire section amended, p. 494, § 16, effective July 1.

12-33-123. Application of article. (Repealed)

Source: L. 59: p. 303, § 3. **CRS 53:** § 23-2-24. **C.R.S. 1963:** § 23-1-24. **L. 79:** Entire section repealed, p. 1633, § 10, effective July 19.

12-33-124. Professional service corporations, limited liability companies, and registered limited liability partnerships for the practice of chiropractic - definitions. (1) Persons licensed to practice chiropractic by the board may form professional service corporations for the practice of chiropractic under the "Colorado Corporation Code", if such corporations are organized and operated in accordance with the provisions of this section. The articles of incorporation of such corporations shall contain provisions complying with the following requirements:

(a) The name of the corporation shall contain the words "professional company" or "professional corporation" or abbreviations thereof.

(b) The corporation shall be organized solely for the purposes of conducting the practice of chiropractic only through persons licensed by the board to practice chiropractic in the state of Colorado.

(c) The corporation may exercise the powers and privileges conferred upon corporations by the laws of Colorado only in furtherance of and subject to its corporate purpose.

(d) All shareholders of the corporation shall be persons licensed by the board to practice chiropractic in the state of Colorado, and who at all times own their shares in their own right.

They shall be individuals who, except for illness, accident, time spent in the armed services, on vacations, and on leaves of absence not to exceed one year, are actively engaged in the practice of chiropractic in the offices of the corporation.

(e) Provisions shall be made requiring any shareholder who ceases to be or for any reason is ineligible to be a shareholder to dispose of all his shares forthwith, either to the corporation or to any person having the qualifications described in paragraph (d) of this subsection (1).

(f) The president shall be a shareholder and a director, and to the extent possible, all other directors and officers shall be persons having the qualifications described in paragraph (d) of this subsection (1). Lay directors and officers shall not exercise any authority whatsoever over professional matters.

(g) The articles of incorporation shall provide, and all shareholders of the corporation shall agree, that all shareholders of the corporation shall be jointly and severally liable for all acts, errors, and omissions of the employees of the corporation, or that all shareholders of the corporation shall be jointly and severally liable for all acts, errors, and omissions of the employees of the corporation except during periods of time when the corporation maintains in good standing professional liability insurance which shall meet the following minimum standards:

(I) The insurance shall insure the corporation against liability imposed upon the corporation by law for damages resulting from any claim made against the corporation arising out of the performance of professional services for others by those officers and employees of the corporation who are licensed by the board to practice chiropractic.

(II) Such policies shall insure the corporation against liability imposed upon it by law for damages arising out of the acts, errors, and omissions of all nonprofessional employees.

(III) The insurance shall be in an amount for each claim of at least fifty thousand dollars multiplied by the number of persons licensed to practice chiropractic employed by the corporation. The policy may provide for an aggregate top limit of liability per year for all claims of one hundred fifty thousand dollars also multiplied by the number of persons licensed to practice chiropractic employed by the corporation, but no firm shall be required to carry insurance in excess of three hundred thousand dollars for each claim with an aggregate top limit of liability for all claims during the year of nine hundred thousand dollars.

(IV) The policy may provide that it does not apply to: Any dishonest, fraudulent, criminal, or malicious act or omission of the insured corporation or any stockholder or employee thereof; the conduct of any business enterprise, as distinguished from the practice of chiropractic, in which the insured corporation under this section is not permitted to engage but which nevertheless may be owned by the insured corporation or in which the insured corporation may be a partner or which may be controlled, operated, or managed by the insured corporation in its own or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith; when not resulting from breach of professional duty, bodily injury to, or sickness, disease, or death of any person, or to injury to or destruction of any tangible property, including the loss of use thereof; and such policy may contain reasonable provisions with respect to policy periods, territory, claims, conditions, and other usual matters.

(2) Repealed.

(3) The corporation shall do nothing which, if done by a person licensed to practice chiropractic in the state of Colorado employed by it, would violate the standards of professional

conduct as provided for in section 12-33-117. Any violation by the corporation of this section shall be grounds for the board to terminate or suspend its right to practice chiropractic.

(4) Nothing in this section shall be deemed to diminish or change the obligation of each person licensed to practice chiropractic employed by the corporation to conduct his practice in accordance with the standards of professional conduct provided for in section 12-33-117. Any person licensed by the board to practice chiropractic who by act or omission causes the corporation to act or fail to act in a way which violates such standards of professional conduct, including any provision of this section, shall be deemed personally responsible for such act or omission and shall be subject to discipline therefor.

(5) A professional service corporation may adopt a pension, profit-sharing (whether cash or deferred), health and accident insurance, or welfare plan for all or part of its employees including lay employees if such plan does not require or result in the sharing of specific or identifiable fees with lay employees, and if any payments made to lay employees, or into any such plan in behalf of lay employees, are based upon their compensation or length of service, or both, rather than the amount of fees or income received.

(6) Except as provided in this section, corporations shall not practice chiropractic.

(7) As used in this section, unless the context otherwise requires:

(a) "Articles of incorporation" includes operating agreements of limited liability companies and partnership agreements of registered limited liability partnerships.

(b) "Corporation" includes a limited liability company organized under the "Colorado Limited Liability Company Act", article 80 of title 7, C.R.S., and a limited liability partnership registered under section 7-60-144 or 7-64-1002, C.R.S.

(c) "Director" and "officer" of a corporation includes a member and a manager of a limited liability company and a partner in a registered limited liability partnership.

(d) "Employees" includes employees, members, and managers of a limited liability company and employees and partners of a registered limited liability partnership.

(e) "Share" includes a member's rights in a limited liability company and a partner's rights in a registered limited liability partnership.

(f) "Shareholder" includes a member of a limited liability company and a partner in a registered limited liability partnership.

Source: L. 73: p. 404, § 1. **C.R.S. 1963:** § 23-1-25. **L. 85:** (2) repealed, p. 511, § 10, effective July 1. **L. 95:** (7) added, p. 812, § 31, effective May 24. **L. 97:** (7)(b) amended, p. 918, § 12, effective January 1, 1998.

Editor's note: The "Colorado Corporation Code", articles 1 to 10 of title 7, referred to in the introductory portion to subsection (1) was repealed, effective July 1, 1994, and was replaced on that date by the "Colorado Business Corporation Act", articles 101 to 117 of title 7.

12-33-125. Reporting requirements. A person licensed to practice chiropractic in this state shall report to the board any chiropractor known or believed to have violated this article.

Source: L. 95: Entire section added, p. 1318, § 10, effective July 1.

12-33-126. Confidentiality - exceptions. (1) A licensee shall not disclose confidential communications made between such licensee and a patient in the course of such licensee's professional employment unless such patient gives his or her consent prior to the disclosure. An employee or associate of a licensee shall not disclose any knowledge of confidential communications acquired in his or her capacity as an employee or associate, unless a patient gives his or her consent prior to the disclosure.

(2) Subsection (1) of this section shall not apply when:

(a) A patient or an heir, executor, or administrator of a patient files a complaint or suit against a licensee with respect to any cause of action arising out of or connected with:

(I) The care or treatment of such patient by such licensee; or

(II) The consultation by such licensee with another health care practitioner who provided care or treatment to the patient.

(b) A review of the services of a licensee is conducted by:

(I) The board, or a person or group authorized by the board;

(II) The governing board of a hospital where said licensee practices, which hospital is licensed pursuant to part 1 of article 3 of title 25, C.R.S., or the medical staff of such hospital if said staff operates pursuant to written bylaws approved by the governing board of the hospital; or

(III) A professional review committee established pursuant to section 12-33-119.1, if the licensee has signed a release authorizing such review.

(3) The records and information produced and used in a review described in paragraph (b) of subsection (2) of this section shall not become public records solely because of the use of such records and information in such review, and the identity of a patient whose records are reviewed pursuant to said paragraph (b) shall not be disclosed to any person not directly involved in the review process. The board shall adopt procedures to ensure that the identity of patients remains confidential during the review process.

(4) Nothing in this section shall be deemed to prohibit any disclosure required by law.

Source: L. 95: Entire section added, p. 1318, § 10, effective July 1.

12-33-127. Animal chiropractic - registration - qualifications - continuing education - collaboration with veterinarian - discipline - title restriction - rules. (1) (a) A licensed chiropractor who is registered under this section is authorized to perform animal chiropractic when the chiropractic diagnosis and treatment is consistent with the scope of practice for chiropractors and the licensed chiropractor performs animal chiropractic in accordance with all state and local requirements regarding animal licensing and vaccinations, including compliance with part 6 of article 4 of title 25 and section 30-15-101. A chiropractor must have the knowledge, skill, ability, and documented competency to perform an act that is within the scope of practice for chiropractors.

(b) In recognition of the special authority granted by this section, the performance of animal chiropractic in accordance with this section shall not be deemed a violation of section 12-64-104.

(c) A licensed chiropractor who is not registered under this section may perform animal chiropractic if performed under the direct, on-premises supervision of a licensed veterinarian.

(d) An individual who is not licensed as a chiropractor or a veterinarian may not perform animal chiropractic.

(2) The state board of chiropractic examiners shall regulate animal chiropractic and diagnosis, including, without limitation, educational and clinical requirements for the performance of animal chiropractic and the procedure for referring complaints to the department of regulatory agencies regarding animal chiropractic diagnosis and therapy.

(3) **Registry.** (a) The state board of chiropractic examiners shall maintain a database of all licensed chiropractors that are registered pursuant to this section and rules promulgated pursuant to this article to practice animal chiropractic in this state. Information in the database shall be open to public inspection at all times and shall be easily accessible in electronic form.

(b) A licensed chiropractor who chooses to practice animal chiropractic and who seeks registration in animal chiropractic shall provide the state board of chiropractic examiners with registration information as required by the board, which shall include the chiropractor's name, current address, education and training in the field of animal chiropractic, active Colorado chiropractic license, and qualifications to perform animal chiropractic and treatment. Forms for chiropractors to provide such information shall be provided by the board.

(4) **Educational qualifications.** A licensed chiropractor who seeks registration in animal chiropractic must obtain education in the field of animal chiropractic from an accredited college of veterinary medicine, an accredited college of chiropractic, or an educational program deemed equivalent by mutual agreement of the state board of chiropractic examiners and the state board of veterinary medicine. The educational program must consist of no fewer than two hundred ten hours, include both classroom instruction and clinical experience, and culminate with a proficiency evaluation. The educational program must include the following subjects:

(a) Chiropractic topics, including:

(I) History and systems review;

(II) Subluxation and vertebral subluxation; and

(III) Adjustment techniques for dogs and equids;

(b) Veterinary topics specific to dogs and equids, including:

(I) Anatomy, including sacropelvic, thoracolumbar, cervical, and extremity, including normal hoof anatomy and care;

(II) Physiology;

(III) Behavior;

(IV) Knowledge of breed anomalies;

(V) Restraint;

(VI) Biomechanics, gait, and lameness;

(VII) Neurology, neuroanatomy, and neurological conditions;

(VIII) Differential diagnosis of neuromusculoskeletal conditions;

(IX) Motion palpation;

(X) Pathology; and

(XI) Radiographic interpretation;

(c) Recognition of dog and equid zoonotic and contagious diseases;

(d) Animal-specific case management, outcome assessment, and documentation; and

(e) Animal-specific professional ethics and legalities.

(4.5) **One-time education requirements.** (a) A licensed chiropractor who is registered to perform animal chiropractic or who applies to be registered to perform animal chiropractic shall successfully complete the following one-time courses:

(I) A one-hour jurisprudence course that includes information about statutes, rules, and procedures concerning notification requirements governing the identification of contagious, infectious, and zoonotic diseases; and

(II) An eight-hour course on contagious, infectious, and zoonotic diseases that covers recognition of early indicators and clinical signs of the following diseases:

(A) In dog patients: Rabies virus; West Nile virus; canine brucellosis, also known as brucella canis; plague, also known as yersinia pestis; and tularemia, also known as francisella tularensis; and

(B) In equid patients: Rabies virus; West Nile virus; and equine herpesvirus myeloencephalopathy.

(b) For each of the diseases listed in subsection (4.5)(a)(II) of this section, the course must address:

(I) Pathology;

(II) Clinical presentation;

(III) Biosecurity issues;

(IV) Public health concerns in Colorado; and

(V) Herd health concerns in Colorado.

(c) After a licensed chiropractor has successfully completed the jurisprudence and contagious, infectious, and zoonotic diseases courses required under this subsection (4.5), he or she need not take the courses again as a condition of registration renewal or reinstatement.

(d) Until a licensed chiropractor successfully completes the courses required under this subsection (4.5), the licensed chiropractor must obtain veterinary medical clearance from a licensed veterinarian to perform animal chiropractic.

(5) **Continuing education.** (a) A licensed chiropractor who is registered to perform animal chiropractic shall complete twenty hours of continuing education per licensing period that is specific to the diagnosis and treatment of animals. All continuing education courses must be in the fields of study listed in subsections (4) and (4.5) of this section.

(b) On and after November 1, 2019, the twenty hours of continuing education required under this subsection (5) must include a two-hour course on contagious, infectious, and zoonotic diseases, including current information about the incidence rates of rabies virus, West Nile virus, equine herpesvirus myeloencephalopathy, canine brucellosis, plague, and tularemia in Colorado and in other locations that might affect a licensed chiropractor's animal patients.

(5.5) **Initiation of treatment notification and reporting requirements.** (a) Within seven business days after initiating treatment of an animal patient, a licensed chiropractor registered to perform animal chiropractic must notify the animal patient's veterinarian of the initiation of treatment if a licensed veterinarian is treating the animal patient. If the animal patient is not being treated by a licensed veterinarian, the licensed chiropractor may satisfy this subsection (5.5)(a) by providing the individual who brought in the animal patient with a written summary of the treatment performed or anticipated to be performed, which written summary may be kept with any health documents maintained for the animal patient.

(b) If, before, during, or after performing animal chiropractic on an animal patient, a licensed chiropractor suspects that the animal patient:

(I) Has a reportable disease, as defined in section 35-50-103, the licensed chiropractor shall immediately report the disease to the state veterinarian and, if the animal patient is being treated by a licensed veterinarian, to the animal patient's licensed veterinarian; or

(II) Has potentially had contact with a rabies reservoir species; has indicators of canine brucellosis, plague, tularemia, or other indicators of a contagious, infectious, or zoonotic disease; or exhibits ataxia, paralysis, proprioceptive deficit, or incontinence that might be a result of a contagious, infectious, or zoonotic disease, the licensed chiropractor shall:

(A) Immediately decline or stop performing chiropractic adjustment on the animal patient;

(B) Immediately notify the state veterinarian and the animal patient's licensed veterinarian or, if the animal patient is not being treated by a licensed veterinarian, notify only the state veterinarian, of the suspected contact, indicators, or exhibited condition; and

(C) Delay any further chiropractic adjustment until disease can be ruled out or the chiropractor, in collaboration with the animal patient's licensed veterinarian or the state veterinarian, determines appropriate actions to prevent the spread of the contagious, infectious, or zoonotic disease.

(c) Any licensed chiropractor who, in good faith and in the normal course of business, reports his or her suspicion of disease pursuant to subsection (5.5)(b) of this section is immune from liability in any civil or criminal action brought against the licensed chiropractor for reporting.

(6) **Records and professional collaboration.** (a) A licensed veterinarian who provides veterinary medical clearance for animal chiropractic may require a veterinarian's presence at any chiropractic treatment rendered pursuant to the veterinary medical clearance.

(b) The chiropractor and the veterinarian shall continue professional collaboration as necessary for the well-being of the animal patient. The veterinarian shall provide the animal patient's medical record to the chiropractor upon request.

(c) The chiropractor shall maintain an animal patient record that includes the written veterinary medical clearance, if clearance was required, including the name of the licensed veterinarian, date, and time the clearance was received. The chiropractor shall furnish a copy of the medical record to the licensed veterinarian upon the licensed veterinarian's request.

(d) A licensed chiropractor registered to perform animal chiropractic shall maintain complete and accurate records or patient files in the chiropractor's office for a minimum of three years.

(7) **Discipline.** Complaints received in the office of the state board of chiropractic examiners that include allegations of a violation related to animal chiropractic shall be forwarded to the state board of veterinary medicine for its review and advisory recommendation to the state board of chiropractic examiners. The state board of chiropractic examiners retains the final authority for decisions related to the discipline of a chiropractor.

(8) **Separate treatment room.** A licensed chiropractor who provides animal chiropractic diagnosis and treatment in the same facility where human patients are treated shall maintain a separate, noncarpeted room for the purpose of adjusting animals. The table and equipment used for animals shall not be used for human patients.

(9) **Use of title.** Only a licensed chiropractor qualified and registered in Colorado to perform animal chiropractic may use the titles "animal chiropractor", "animal adjuster", "equine chiropractor", or "equine adjuster". No chiropractor shall use the titles "veterinary chiropractor"

or "veterinary adjuster" unless the chiropractor is also licensed to practice veterinary medicine in Colorado. Nothing in this section shall prohibit a licensed veterinarian from using the titles "animal adjuster" or "equine adjuster".

(10) **Rules.** The state board of chiropractic examiners, in consultation with the state board of veterinary medicine, may establish by rule any additional requirements to be met by a chiropractor regarding required documentation and any other rules necessary for the implementation of this section.

(11) Nothing in this section shall be construed to prohibit, limit, or alter the privileges or practices of any other licensed profession, including veterinarians, from performing spinal, extremity, or other aspects of adjustment, manipulation, or mobilization on animals as allowed for in the scope of their respective practice acts.

Source: L. 2009: Entire section added, (SB 09-167), ch. 366, p. 1920, § 9, effective June 1. **L. 2018:** (1)(a), (1)(c), IP(4), (4)(a)(III), IP(4)(b), (4)(c), (5), and (6)(c) amended and (4.5) and (5.5) added, (SB 18-239), ch. 309, p. 1864, § 2, effective August 8.

Editor's note: Section 3 of chapter 309 (SB 18-239), Session Laws of Colorado 2018, provides that the act changing this section applies to conduct occurring on or after August 8, 2018.

12-33-128. Chiropractic assistants. A chiropractor may supervise up to five unlicensed persons as chiropractic assistants if such persons have received appropriate training as established by the board by rule promulgated pursuant to section 12-33-107. A chiropractic assistant may perform his or her duties only under the direct supervision of a chiropractor and only in those areas in which the chiropractic assistant has the requisite skill and training. A chiropractic assistant shall not perform a diagnosis, an adjustment, or acupuncture.

Source: L. 2009: Entire section added, (SB 09-167), ch. 366, p. 1923, § 9, effective June 1.

PART 2

SAFETY TRAINING FOR UNLICENSED X-RAY TECHNICIANS

Cross references: For similar provisions in article 32 of this title regulating podiatrists, see part 2 of said article; for similar provisions in article 35 of this title regulating dentists, see part 2 of said article.

12-33-201. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that public exposure to the hazards of ionizing radiation used for diagnostic purposes should be minimized wherever possible. Accordingly, the general assembly finds, determines, and declares that for any licensed chiropractor to allow an untrained person to operate a machine source of ionizing radiation, including without limitation a device commonly known as an "X-ray machine", or to administer such radiation to a patient for diagnostic purposes is a threat to the public health and safety.

(2) It is the intent of the general assembly that licensed chiropractors utilizing unlicensed persons in their practices provide those persons with a minimum level of education and training before allowing them to operate machine sources of ionizing radiation; however, it is not the general assembly's intent to discourage education and training beyond this minimum. It is further the intent of the general assembly that established minimum training and education requirements correspond as closely as possible to the requirements of each particular work setting as determined by the Colorado state board of chiropractic examiners pursuant to this part 2.

(3) The general assembly seeks to ensure, and accordingly declares its intent, that in promulgating the rules and regulations authorized by this part 2, the board will make every effort, consistent with its other statutory duties, to avoid creating a shortage of qualified individuals to operate machine sources of ionizing radiation for beneficial medical purposes in any area of the state.

Source: L. 91: Entire part added, p. 1611, § 2, effective May 1.

12-33-202. Board authorized to issue rules. (1) (a) The Colorado state board of chiropractic examiners shall adopt rules and regulations prescribing minimum standards for the qualifications, education, and training of unlicensed persons operating machine sources of ionizing radiation and administering such radiation to patients for diagnostic chiropractic use. No licensed chiropractor shall allow any unlicensed person to operate any machine source of ionizing radiation or to administer such radiation to any patient unless such person has met the standards then in effect under rules and regulations adopted pursuant to this section. The board may adopt rules and regulations allowing a grace period in which newly hired operators of machine sources of ionizing radiation shall receive the training required pursuant to this section.

(b) For purposes of this part 2, "unlicensed person" means any person who does not hold a current and active license entitling the person to practice chiropractic under the provisions of this article.

(2) The board shall seek the assistance of licensed chiropractors in developing and formulating the rules and regulations promulgated pursuant to this section.

(3) The required number of hours of training and education for all unlicensed persons operating machine sources of ionizing radiation and administering such radiation to patients shall be established by the board by rule on or before July 1, 1992. This standard shall apply to all persons in chiropractic settings other than hospitals and similar facilities licensed by the department of public health and environment pursuant to section 25-1.5-103, C.R.S. Such training and education may be obtained through programs approved by the appropriate authority of any state or through equivalent programs and training experience including on-the-job training as determined by the board.

Source: L. 91: Entire part added, p. 1611, § 2, effective May 2. **L. 94:** (3) amended, p. 2727, § 332, effective July 1. **L. 2003:** (3) amended, p. 700, § 8, effective July 1.

ARTICLE 34

Dead Human Bodies

12-34-101 to 12-34-209. (Repealed)

Source: L. 2017: Entire article repealed, (SB 17-223), ch. 158, p. 565, § 21, effective August 9.

Editor's note: Part 1 of this article 34 was numbered as article 9 of chapter 91, C.R.S. 1963, and part 2 of this article 34 was numbered as article 3 of chapter 91, C.R.S. 1963. For amendments to this article 34 prior to its repeal in 2017, consult the 2016 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume. This article 34 was relocated to parts 2 and 3 of article 19 of title 15. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article 34, see the comparative tables located in the back of the index.

ARTICLE 35

Dentists and Dental Hygienists

Editor's note: This article was numbered as article 1 of chapter 42, C.R.S. 1963. This article was repealed in 2003 and was subsequently recreated and reenacted in 2004, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 2003, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers prior to 2003 are shown in editor's notes following those sections that were relocated.

PART 1

GENERAL PROVISIONS

12-35-101. Short title. This article shall be known and may be cited as the "Dental Practice Act".

Source: L. 2004: Entire article RC&RE, p. 822, § 1, effective July 1. **L. 2014:** Entire section amended, (HB 14-1227), ch. 363, p. 1724, § 18, effective July 1.

12-35-102. Legislative declaration. The practice of dentistry and dental hygiene in this state is declared to affect the public health, safety, and welfare and to be subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the dental profession merit and receive the confidence of the public and that only qualified dentists and dental hygienists be permitted to practice dentistry or dental hygiene in this state. It is the purpose of this article to promote the public health, safety, and welfare by regulating the practice of dentistry and dental hygiene and to ensure that no one shall practice dentistry or dental hygiene without qualifying under this article. The provisions of this article relating to licensure by credentials are not intended to reduce competition or restrain trade with

respect to the oral health needs of the public. All provisions of this article relating to the practice of dentistry and dental hygiene shall be liberally construed to carry out these objects and purposes.

Source: L. 2004: Entire article RC&RE, p. 822, § 1, effective July 1.

12-35-103. Definitions. As used in this article 35, unless the context otherwise requires:

(1) "Accredited" means a program that is nationally recognized for specialized accrediting for dental, dental hygiene, and dental auxiliary programs by the United States department of education.

(2) "Board" means the Colorado dental board created in section 12-35-104.

(3) "Dental assistant" means any person not a dentist or dental hygienist licensed in Colorado who may be assigned or delegated to perform dental tasks or procedures as authorized by this article or by rules of the board.

(4) "Dental hygiene" means the delivery of preventive, educational, and clinical services supporting total health for the control of oral disease and the promotion of oral health provided by a dental hygienist within the scope of his or her education, training, and experience and in accordance with applicable law.

(4.5) "Dental hygiene diagnosis" means the identification of an existing oral health problem that a dental hygienist is qualified and licensed to treat within the scope of dental hygiene practice. The dental hygiene diagnosis focuses on behavioral risks and physical conditions that are related to oral health. A dentist shall confirm any dental hygiene diagnosis that requires treatment that is outside the scope of dental hygiene practice pursuant to sections 12-35-124, 12-35-125, and 12-35-128.

(5) "Dentistry" means the evaluation, diagnosis, prevention, or treatment, including nonsurgical, surgical, or related procedures, of diseases, disorders, or conditions of the oral cavity, maxillofacial area, or the adjacent and associated structures and the impact of the disease, disorder, or condition on the human body so long as a dentist is practicing within the scope of his or her education, training, and experience and in accordance with applicable law.

(6) (a) "Direct supervision" means the supervision of those tasks or procedures that do not require the presence of the dentist in the room where performed but require the dentist's presence on the premises and availability for prompt consultation and treatment.

(b) For purposes of this subsection (6) only, "premises" means within the same building, dental office, or treatment facility and within close enough proximity to respond in a timely manner to an emergency or the need for assistance.

(7) and (8) Repealed.

(9) "Independent advertising or marketing agent" means a person, firm, association, or corporation that performs advertising or other marketing services on behalf of licensed dentists, including referrals of patients to licensees resulting from patient-initiated responses to such advertising or marketing services.

(10) (a) "Indirect supervision" means the supervision of those tasks or procedures that do not require the presence of the dentist in the office or on the premises at the time such tasks or procedures are being performed, but do require that the tasks be performed with the prior knowledge and consent of the dentist.

(b) For purposes of this subsection (10) only, "premises" means within the same building, dental office, or treatment facility and within close enough proximity to respond in a timely manner to an emergency or the need for assistance.

(10.5) (a) "Interim therapeutic restoration" or "ITR" means a direct provisional restoration placed to stabilize a tooth until a licensed dentist can assess the need for further definitive treatment.

(b) (I) "Interim therapeutic restoration" involves the removal of soft material using hand instrumentation, without the use of rotary instrumentation, and the subsequent placement of a glass ionomer restoration.

(II) The board may promulgate rules regarding the use of new restorative materials in addition to the materials described in subparagraph (I) of this paragraph (b) that are appropriate to the interim therapeutic restoration procedure as they become available.

(c) "Interim therapeutic restoration" includes protective restoration for adults delivered in accordance with section 12-35-128.5.

(11) "Laboratory work order" means the written instructions of a dentist licensed in Colorado authorizing another person to construct, reproduce, or repair any prosthetic denture, bridge, appliance, or other structure to function in the oral cavity, maxillofacial area, or adjacent and associated regions.

(12) "License" means the grant of authority by the board to any person to engage in the practice of dentistry or dental hygiene. "License" includes an academic license to practice dentistry pursuant to section 12-35-117.5. A license is a privilege personal to the licensee, and the board may revoke, suspend, or impose disciplinary conditions on the license for a violation of this article.

(13) Repealed.

(14) "Proprietor" includes any person who:

(a) Employs dentists, dental hygienists, or dental assistants in the operation of a dental office, except as provided in sections 12-35-113 and 12-35-128;

(b) Places in possession of a dentist, dental hygienist, dental assistant, or other agent such dental material or equipment as may be necessary for the management of a dental office on the basis of a lease or any other agreement for compensation for the use of such material, equipment, or offices; or

(c) Retains the ownership or control of dental equipment or material or a dental office and makes the same available in any manner for use by dentists, dental hygienists, dental assistants, or other agents; except that nothing in this paragraph (c) shall apply to bona fide sales of dental equipment or material secured by a chattel mortgage or retain-title agreement or to the loan of articulators.

(15) Repealed.

(16) "Telehealth by store-and-forward transfer" means an asynchronous transmission of medical or dental information to be reviewed by a dentist at a later time at a distant site without the patient present in real time.

(17) "Telehealth supervision" means indirect supervision by a dentist of a dental hygienist performing a statutorily authorized procedure using telecommunications systems.

Source: L. 2004: Entire article RC&RE, p. 823, § 1, effective July 1. **L. 2009:** (4.5) added, (SB 09-129), ch. 181, p. 797, § 1, effective April 22; (12) amended, (HB 09-1128), ch.

21, p. 104, § 1, effective August 5. **L. 2014:** (2) and (12) amended and (7), (8), (13), and (15) repealed, (HB 14-1227), ch. 363, p. 1705, § 2, effective July 1. **L. 2015:** (10.5), (16), and (17) added, (HB 15-1309), ch. 326, p. 1330, § 1, effective August 5. **L. 2018:** IP and (17) amended, (HB 18-1045), ch. 67, p. 622, § 1, effective March 22.

12-35-104. Colorado dental board - subject to termination - immunity - repeal of article. (1) (a) (I) The Colorado dental board is hereby created as the agency of this state for the regulation of the practice of dentistry in this state and to carry out the purposes of this article. The board is subject to the supervision and control of the division of professions and occupations as provided by section 24-34-102, C.R.S.

(II) The board consists of seven dentist members, three dental hygienist members, and three members from the public at large. The governor shall appoint each member for a term of four years, and each member shall have the qualifications provided in this article. No member shall serve more than two consecutive terms of four years. Each board member shall hold office until his or her term expires or until the governor appoints a successor.

(III) In making appointments to the board, the governor shall attempt to create geographical, political, urban, and rural balance among the board members. If a vacancy occurs in any board membership before the expiration of the member's term, the governor shall fill the vacancy by appointment for the remainder of the term in the same manner as in the case of original appointments.

(IV) The governor may remove any member of the board for misconduct, incompetence, or neglect of duty.

(b) (Deleted by amendment, L. 2014.)

(2) The board shall organize annually by electing one of its members as chairperson and one as vice-chairperson. It may adopt such rules for its government as it may deem proper. The board shall meet at least quarterly, and more often if necessary, at such times and places as it may from time to time designate.

(3) Repealed.

(4) (a) Section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, applies to the board. Prior to the repeal of this article, the department of regulatory agencies shall review all functions of the board as provided in section 24-34-104, C.R.S.

(b) This article is repealed, effective September 1, 2025.

Source: L. 2004: Entire article RC&RE, p. 825, § 1, effective July 1. **L. 2014:** (1) and (4) amended and (3) repealed, (HB 14-1227), ch. 363, p. 1706, § 3, effective July 1.

12-35-105. Qualifications of board members. (1) A person shall be qualified to be appointed to the board if such person:

(a) Is a legal resident of Colorado;

(b) Is currently licensed as a dentist or dental hygienist, if fulfilling that position on the board; and

(c) Has been actively engaged in a clinical practice in this state for at least five years immediately preceding the appointment, if fulfilling the position of dentist or dental hygienist on the board.

(2) Repealed.

Source: L. 2004: Entire article RC&RE, p. 826, § 1, effective July 1. **L. 2014:** (2) repealed, (HB 14-1227), ch. 363, p. 1724, § 17, effective July 1.

12-35-106. Quorum of board - panel. A majority of the members of the board shall constitute a quorum for the transaction of business, but if less than a quorum is present on the day appointed for a meeting, those present may adjourn until a quorum is present. Any action taken by a quorum of the assigned panel shall constitute action by the board; except that, for disciplinary matters concerning a dentist, a majority of dentist members is required for a quorum.

Source: L. 2004: Entire article RC&RE, p. 826, § 1, effective July 1.

12-35-107. Powers and duties of board. (1) The board shall exercise, in accordance with this article 35, the following powers and duties:

(a) Repealed.

(b) Make, publish, declare, and periodically review reasonable rules as necessary to carry out and make effective the powers and duties of the board as vested in it by this article 35, including rules regarding:

(I) The use of lasers for dental and dental hygiene purposes within defined scopes of practice, subject to appropriate education and training, and with appropriate supervision, as applicable;

(II) Minimum training, experience, and equipment requirements to obtain an anesthesia or sedation permit under section 12-35-140;

(III) Criteria and procedures consistent with section 12-35-140 for an office inspection program to be completed upon application and renewal of sedation and anesthesia permits pursuant to section 12-35-140;

(IV) A uniform system and schedule of fines pursuant to section 12-35-129.1 (6)(b).

(c) Conduct hearings to revoke, suspend, or deny the issuance of a license or renewal of a license granted under the authority of this article or of previous laws; issue a confidential letter of concern; issue a letter of admonition; impose an administrative fine; or reprimand, censure, or place on probation a licensee when evidence has been presented showing violation of any of the provisions of this article by a holder of or an applicant for a license. The board may elect to hear the matter itself pursuant to the provisions of section 12-35-129.1 (1), or it may elect to hear the matter with the assistance of an administrative law judge or an advisory attorney from the office of the attorney general, and, in such case, the advisor or administrative law judge shall advise the board on legal and procedural matters and rule on evidence and otherwise conduct the course of the hearing.

(d) Conduct investigations and inspections for compliance with the provisions of this article;

(e) Grant and issue licenses and renewal certificates in conformity with this article to such applicants as have been found qualified. The board may also grant and issue temporary licenses. The board shall promulgate rules concerning the granting of temporary licenses, which

rules shall include, but not be limited to, restrictions with respect to effective dates, areas of practice that may be performed, and licensing fees that may be charged to the applicant.

(f) Repealed.

(g) Through the department of regulatory agencies and subject to appropriations made to the department of regulatory agencies, employ hearing officers or administrative law judges on a full-time or part-time basis to conduct any hearings required by this article. The hearing officers and administrative law judges shall be appointed pursuant to part 10 of article 30 of title 24, C.R.S.

(h) (I) In accordance with section 12-35-140, issue anesthesia and sedation permits to licensed dentists and dental hygienists and set and collect fees for permit issuance; except that the board shall only collect fees for local anesthesia permits issued to dental hygienists on or after July 1, 2014.

(II) (Deleted by amendment, L. 2014.)

(i) Repealed.

(2) The board may recognize those dental specialties defined by the American dental association.

(3) To facilitate the licensure of qualified applicants, the board may, in its discretion, establish a subcommittee of at least six board members to perform licensing functions in accordance with this article. Four subcommittee members shall constitute a quorum of the subcommittee. The chairperson of the board may serve on a subcommittee as deemed necessary by the chairperson. Any action taken by a quorum of the subcommittee shall constitute action by the board.

Source: L. 2004: Entire article RC&RE, p. 826, § 1, effective July 1. **L. 2014:** IP(1), (1)(b), (1)(c), and (1)(h) amended and (1)(a), (1)(f), and (1)(i) repealed, (HB 14-1227), ch. 363, p. 1724, § 19, effective July 1. **L. 2017:** IP(1), IP(1)(b), and (1)(b)(I) amended, (HB 17-1010), ch. 13, p. 38, § 1, effective August 9.

12-35-108. Limitation on authority. The authority granted the board under the provisions of this article shall not be construed to authorize the board to arbitrate or adjudicate fee disputes between licensees or between a licensee and any other party.

Source: L. 2004: Entire article RC&RE, p. 828, § 1, effective July 1.

Editor's note: This section is similar to former § 12-35-107.5 as it existed prior to 2003, and the former § 12-35-108 was relocated to § 12-35-109.

12-35-109. Power of board to administer oaths - issue subpoenas - service - penalty for refusing to obey subpoena. (1) The board or an administrative law judge shall have the power to administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board. The board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the board.

(2) Upon failure of any witness to comply with such subpoena or process, the board may petition the district court in the county in which the proceeding is pending setting forth that due notice has been given of the time and place of attendance of the witness and the service of the subpoena, in which event, the district court, after hearing evidence in support of or contrary to the petition, may enter an order as in other civil actions compelling the witness to attend and testify or produce books, records, or other evidence.

(3) Any member of the board, any member of the board's staff, any person acting as a witness or consultant to the board, any witness testifying in a proceeding authorized under this part 1, and any person who lodges a complaint pursuant to this part 1 shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as board member, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this part 1 shall be immune from any civil or criminal liability that may result from such participation.

Source: L. 2004: Entire article RC&RE, p. 828, § 1, effective July 1.

Editor's note: This section is similar to former § 12-35-108 as it existed prior to 2003, and the former § 12-35-109 was relocated to § 12-35-112.

12-35-110. Disposition of fees. (1) The board shall not have the power to create any indebtedness on behalf of the state. All examination and other fees under this article shall be collected by the board and transmitted to the state treasurer, who shall credit the same pursuant to section 24-34-105, C.R.S., and the general assembly shall make annual appropriations pursuant to said section for the uses and purposes of this article. Expenditures from such appropriations shall be made upon vouchers and warrants drawn pursuant to law.

(2) Appropriations made to the board may be applied only to the payment of:

(a) The necessary traveling, hotel, and clerical expenses of the members of the board in the performance of their duties;

(b) Dues for membership in the American association of dental boards, or its successor association, and the expense of sending delegates to the association's convention; and

(c) Other expenditures necessary or proper to carry out and execute the powers and duties of the board and implement this article.

(3) Publications of the board circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136, C.R.S.

Source: L. 2004: Entire article RC&RE, p. 829, § 1, effective July 1. **L. 2014:** (2) amended, (HB 14-1227), ch. 363, p. 1726, § 20, effective July 1.

Editor's note: This section is similar to former § 12-35-121 as it existed prior to 2003, and the former § 12-35-110 was relocated to § 12-35-113.

12-35-111. Change of address - duplicate licenses and certificates. (1) Every person licensed under this article, upon changing the licensee's place of business, shall furnish to the board the licensee's new mailing address within thirty days.

(2) The board may issue a duplicate of any license upon attestation by the licensee of loss or destruction and shall charge a fee established pursuant to section 24-34-105, C.R.S., for a duplicate.

Source: L. 2004: Entire article RC&RE, p. 829, § 1, effective July 1.

Editor's note: This section is similar to former § 12-35-119 as it existed prior to 2003, and the former § 12-35-111 was relocated to § 12-35-115.

12-35-112. Persons entitled to practice dentistry or dental hygiene. (1) It is unlawful for any person to practice dentistry or dental hygiene in this state except those:

(a) Who are duly licensed as dentists or dental hygienists pursuant to this article;

(b) Who are designated by this article as dental assistants, but only to the extent of the procedures authorized by this article and the rules adopted by the board.

Source: L. 2004: Entire article RC&RE, p. 829, § 1, effective July 1.

Editor's note: This section is similar to former § 12-35-109 as it existed prior to 2003, and the former § 12-35-112 was relocated to § 12-35-116.

12-35-113. What constitutes practicing dentistry - authority to electronically prescribe. (1) A person is practicing dentistry if the person:

(a) Performs, or attempts or professes to perform, any dental operation, oral surgery, or dental diagnostic or therapeutic services of any kind; except that nothing in this paragraph (a) shall be construed to prohibit a dental hygienist or dental assistant from providing preventive dental or nutritional counseling, education, or instruction services;

(b) Is a proprietor of a place where dental operation, oral surgery, or dental diagnostic or therapeutic services are performed; except that nothing in this paragraph (b) shall be construed to prohibit a dental hygienist or dental assistant from performing those tasks and procedures consistent with section 12-35-128;

(c) Directly or indirectly, by any means or method, takes impression of the human tooth, teeth, jaws, maxillofacial area, or adjacent and associated structures, performs any phase of any operation incident to the replacement of a part of a tooth, or supplies artificial substitutes for the natural teeth, jaws, or adjacent and associated structures; except that nothing in this paragraph (c) prohibits a dental hygienist or dental assistant from performing tasks and procedures consistent with sections 12-35-124 (1)(d) and 12-35-128 (3)(b)(III);

(d) Furnishes, supplies, constructs, reproduces, or repairs any prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth or upon the jaws, maxillofacial area, or adjacent and associated structures other than on the written laboratory work order of a duly licensed and practicing dentist;

(e) Places an appliance or structure described in paragraph (d) of this subsection (1) in the human mouth;

(f) Adjusts or attempts or professes to adjust an appliance or structure described in paragraph (d) of this subsection (1);

(g) Delivers an appliance or structure described in paragraph (d) of this subsection (1) to any person other than the dentist upon whose laboratory work order the work was performed;

(h) Professes to the public by any method to furnish, supply, construct, reproduce, or repair any prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth or upon the jaws, maxillofacial area, or adjacent and associated structures;

(i) Examines, diagnoses, plans treatment of, or treats natural or artificial structures or conditions associated with, adjacent to, or functionally related to the oral cavity, jaws, maxillofacial area, or adjacent and associated structures and their impact on the human body;

(j) Extracts, or attempts to extract, human teeth or corrects, or attempts to correct, malformations of human teeth or jaws;

(k) Repairs or fills cavities in human teeth;

(l) Prescribes ionizing radiation or the use of an X ray for the purpose of taking dental X rays or roentgenograms; except that nothing in this paragraph (l) shall be construed to prohibit these procedures from being delegated to appropriately trained personnel in accordance with this article and rules of the board;

(m) Gives, or professes to give, interpretations or readings of dental X rays or roentgenograms, CT scans, or other diagnostic methodologies; except that nothing in this paragraph (m) shall be construed to prohibit a dental hygienist from performing tasks and procedures consistent with sections 12-35-124 and 12-35-125;

(n) Represents himself or herself to an individual or the general public as practicing dentistry, by using the words "dentist" or "dental surgeon", or by using the letters "D.D.S.", "D.M.D.", "D.D.S./M.D.", or "D.M.D./M.D.". Nothing in this paragraph (n) prohibits a dental hygienist or dental assistant from performing tasks and procedures consistent with section 12-35-128 (2) or (3)(b).

(o) States, permits to be stated, or professes by any means or method whatsoever that he or she can perform or will attempt to perform dental operations or render a diagnosis connected therewith;

(p) Prescribes drugs or medications and administers local anesthesia, analgesia including nitrous oxide/oxygen inhalation, medication prescribed or administered for the relief of anxiety or apprehension, minimal sedation, moderate sedation, deep sedation, or general anesthesia as necessary for the proper practice of dentistry; except that nothing in this paragraph (p) shall be construed to prohibit a dental hygienist from performing those tasks and procedures consistent with sections 12-35-124 (1)(e) and (1)(g), 12-35-125 (1)(f), and 12-35-128, and in accordance with rules promulgated by the board;

(q) Prescribes, induces, and sets dosage levels for inhalation anesthesia; except that nothing in this paragraph (q) shall be construed to prohibit the delegation of monitoring and administration to appropriately trained personnel in accordance with this article and rules of the board;

(r) Gives or professes to give interpretations or readings of dental charts or records or gives treatment plans or interpretations of treatment plans derived from examinations, patient records, dental X rays, or roentgenograms; except that nothing in this paragraph (r) shall be construed to prohibit a dental hygienist or dental assistant from performing tasks and procedures consistent with sections 12-35-124, 12-35-125, and 12-35-128 (2) and (3).

(2) A licensed dentist may prescribe orders electronically.

Source: L. 2004: Entire article RC&RE, p. 830, § 1, effective July 1. **L. 2014:** IP(1), (1)(c), (1)(n), (1)(p), and (1)(q) amended and (2) added, (HB 14-1227), ch. 363, p. 1726, § 21, effective July 1.

Editor's note: This section is similar to former § 12-35-110 as it existed prior to 2003, and the former § 12-35-113 was relocated to § 12-35-117.

12-35-114. Dentists may prescribe drugs - surgical operations - anesthesia - limits on opioid prescriptions - repeal. (1) A licensed dentist is authorized to prescribe drugs or medicine; perform surgical operations; administer, pursuant to board rules, local anesthesia, analgesia including nitrous oxide/oxygen inhalation, medication prescribed or administered for the relief of anxiety or apprehension, minimal sedation, moderate sedation, deep sedation, or general anesthesia; and use appliances as necessary to the proper practice of dentistry. A dentist shall not prescribe, distribute, or give to any person, including himself or herself, any habit-forming drug or any controlled substance, as defined in section 18-18-102 (5) or as contained in schedule II of 21 U.S.C. sec. 812, other than in the course of legitimate dental practice and pursuant to the rules promulgated by the board regarding controlled substance record keeping.

(2) (a) A dentist shall not prescribe more than a seven-day supply of an opioid to a patient who has not had an opioid prescription in the last twelve months by that dentist, and may exercise discretion to include a second fill for a seven-day supply. The limits on initial prescribing do not apply if, in the judgment of the dentist, the patient:

(I) Has chronic pain that typically lasts longer than ninety days or past the time of normal healing, as determined by the dentist, or following transfer of care from another dentist who prescribed an opioid to the patient;

(II) Has been diagnosed with cancer and is experiencing cancer-related pain; or

(III) Is experiencing post-surgical pain that, because of the nature of the procedure, is expected to last more than fourteen days.

(b) Prior to prescribing the second fill of any opioid prescription pursuant to this section, a dentist must comply with the requirements of section 12-42.5-404 (3.6). Failure to comply with section 12-42.5-404 (3.6) constitutes grounds for discipline under section 12-35-129 only if the dentist repeatedly fails to comply.

(c) A dentist licensed pursuant to this article 35 may prescribe opioids electronically.

(d) A violation of this subsection (2) does not create a private right of action or serve as the basis of a cause of action. A violation of this section does not constitute negligence per se or contributory negligence per se and does not alone establish a standard of care. Compliance with this section does not alone establish an absolute defense to any alleged breach of the standard of care.

(e) This subsection (2) is repealed, effective September 1, 2021.

Source: L. 2004: Entire article RC&RE, p. 832, § 1, effective July 1. **L. 2014:** Entire section amended, (HB 14-1227), ch. 363, p. 1727, § 22, effective July 1. **L. 2018:** Entire section amended, (SB 18-022), ch. 221, p. 1402, § 2, effective May 21.

Editor's note: This section is similar to former § 12-35-122 as it existed prior to 2003, and the former § 12-35-114 was relocated to § 12-35-119.

12-35-115. Persons exempt from operation of this article. (1) This article does not apply to the following practices, acts, and operations:

(a) Practice of his or her profession by a physician or surgeon licensed as such under the laws of this state unless the physician or surgeon practices dentistry as a specialty;

(b) The administration of an anesthetic by a qualified anesthetist or registered nurse for a dental operation;

(c) The practice of dentistry or dental hygiene in the discharge of their official duties by graduate dentists or dental surgeons or dental hygienists in the United States armed forces, public health service, Coast Guard, or veterans administration;

(d) Students or residents regularly employed by a private hospital or by a city, county, city and county, or state hospital under an advanced dental education program accredited by the commission on dental accreditation or its successor commission and approved and registered by the board;

(e) The practice of dental hygiene by instructors and students or the practice of dentistry by students or residents in schools or colleges of dentistry, schools of dental hygiene, or schools of dental assistant education while such instructors, students, or residents are participating in accredited programs of such schools or colleges;

(f) The practice of dentistry or dental hygiene by dentists or dental hygienists licensed in good standing by other states or countries while appearing in programs of dental education or research at the invitation of any group of licensed dentists or dental hygienists in this state who are in good standing, so long as such practice is limited to five consecutive days in a twelve-month period and the name of each person engaging in such practice is submitted to the board, in writing and on a form approved by the board, at least ten days before the person performs such practice;

(g) The filling of laboratory work orders of a licensed dentist, as provided by section 12-35-133, by any person, association, corporation, or other entity for the construction, reproduction, or repair of prosthetic dentures, bridges, plates, or appliances to be used or worn as substitutes for natural teeth or for restoration of natural teeth, or replacement of structures relating to the jaws, maxillofacial area, or adjacent and associated structures;

(h) The performance of acts by a person under the direct or indirect supervision of a dentist licensed in Colorado when authorized pursuant to the rules of the board or when authorized under other provisions of this article;

(i) The practicing of dentistry or dental hygiene by an examiner representing a testing agency approved by the board, during the administration of an examination; or

(j) (Deleted by amendment, L. 2010, (HB 10-1128), ch. 172, p. 611, § 5, effective April 29, 2010.)

(k) The practice of dentistry or dental hygiene by dentists or dental hygienists licensed in good standing by other states while providing care as a volunteer, at the invitation of any group of licensed dentists or dental hygienists in this state who are in good standing, so long as such practice is limited to five consecutive days in a twelve-month period and the name of each person engaging in such practice is submitted to the board, in writing and on a form approved by the board, at least ten days before the person performs such practice.

Source: L. 2004: Entire article RC&RE, p. 832, § 1, effective July 1. **L. 2007:** (1)(k) added, p. 691, § 1, effective August 3. **L. 2009:** (1)(e) amended, (HB 09-1128), ch. 21, p. 104, § 2, effective August 5. **L. 2010:** (1)(e), (1)(i), and (1)(j) amended, (HB 10-1128), ch. 172, p. 611, § 5, effective April 29. **L. 2014:** IP(1), (1)(b), and (1)(d) amended, (HB 14-1227), ch. 363, p. 1727, § 23, effective July 1.

Editor's note: This section is similar to former § 12-35-111 as it existed prior to 2003, and the former § 12-35-115 was relocated to § 12-35-130.

12-35-116. Names and status under which dental practice may be conducted. (1) The conduct of the practice of dentistry or dental hygiene in a corporate capacity is prohibited, but such prohibition shall not be construed to prevent the practice of dentistry or dental hygiene by a professional service corporation of licensees so constituted that they may be treated under the federal internal revenue laws as a corporation for tax purposes only. Any such professional service corporation may exercise such powers and shall be subject to such limitations and requirements, insofar as applicable, as are provided in section 12-36-134, relating to professional service corporations for the practice of medicine.

(2) The group practice of dentistry or dental hygiene is permitted.

(3) The practice of dentistry or dental hygiene by a limited liability company of licensees or by a limited liability partnership of licensees is permitted subject to the limitations and requirements, insofar as are applicable, set forth in section 12-36-134, relating to a limited liability company or limited liability partnership for the practice of medicine.

Source: L. 2004: Entire article RC&RE, p. 833, § 1, effective July 1.

Editor's note: This section is similar to former § 12-35-112 as it existed prior to 2003, and the former § 12-35-116 was relocated to § 12-35-121.

12-35-116.5. Ownership of dental or dental hygiene practice - information to be posted - heir to serve as temporary proprietor - limitations. (1) (a) Only a dentist licensed to practice dentistry in this state pursuant to this article may be the proprietor of a dental practice in this state.

(b) Only a dentist licensed to practice dentistry in this state pursuant to this article or a dental hygienist licensed to practice dental hygiene in this state pursuant to this article may be the proprietor of a dental hygiene practice in this state.

(c) (I) Notwithstanding paragraphs (a) and (b) of this subsection (1), a nonprofit organization may be the proprietor of a dental or dental hygiene practice if:

(A) The organization is a community health center, as defined in the federal "Public Health Service Act", 42 U.S.C. sec. 254b; or

(B) At least fifty percent of the patients served by the organization are low income. As used in this sub-subparagraph (B), "low income" means the patient's income does not exceed the income level specified for determining eligibility for the children's basic health plan established in article 8 of title 25.5, C.R.S.

(II) Notwithstanding paragraphs (a) and (b) of this subsection (1), a political subdivision of the state may be the proprietor of a dental or dental hygiene practice. As used in this

subparagraph (II), "political subdivision of the state" means a county, city and county, city, town, service authority, special district, or any other kind of municipal, quasi-municipal, or public corporation, as defined in section 7-49.5-103, C.R.S.

(III) The proprietorship of a dental or dental hygiene practice by a nonprofit organization that meets the criteria in subparagraph (I) of this paragraph (c) or by a political subdivision of the state shall not affect the exercise of the independent professional judgment of the licensed dentist or dental hygienist providing care to patients on behalf of the organization or political subdivision.

(d) (I) A dentist may conduct a dental or dental hygiene business collaboratively as a provider network in accordance with part 3 of article 18 of title 6, C.R.S.

(II) A dental hygienist may conduct a dental hygiene business collaboratively as a provider network in accordance with part 3 of article 18 of title 6, C.R.S.

(2) (a) The name, license number, ownership percentage, and other information, as required by the board, of each proprietor of a dental or dental hygiene practice, including an unlicensed heir who is the temporary proprietor of the practice, as specified in subsection (3) of this section, shall be available at the reception desk of the dental or dental hygiene practice during the practice's hours of operation. The information required by this paragraph (a) shall be available in a format approved by the board.

(b) Upon request, the dental or dental hygiene practice shall promptly make available to the requesting person a copy of the information required by paragraph (a) of this subsection (2).

(c) The dental or dental hygiene practice shall ensure that the information required by paragraph (a) of this subsection (2) is accurate and current. Any change in the information shall be updated within thirty days after the change.

(3) (a) Notwithstanding sections 12-35-129 (1)(h) and 12-35-129.4 (1) and (2), if a dentist or dental hygienist who was the proprietor of a dental or dental hygiene practice and was engaged in the active practice of dentistry or dental hygiene dies:

(I) An heir to the dentist may serve as a proprietor of the deceased dentist's dental or dental hygiene practice for up to one year after the date of the dentist's death, regardless of whether the heir is licensed to practice dentistry or dental hygiene; or

(II) An heir to the dental hygienist may serve as a proprietor of the deceased dental hygienist's dental hygiene practice for up to one year after the date of the dental hygienist's death, regardless of whether the heir is licensed to practice dentistry or dental hygiene.

(b) Upon good cause shown by the heir or the heir's representative, the board may extend the period described in paragraph (a) of this subsection (3) by up to an additional twelve months, if necessary, to allow the heir sufficient time to sell or otherwise dispose of the practice.

(c) If an heir to a deceased dentist or dental hygienist serves as a proprietor of the deceased dentist's or dental hygienist's practice as specified in paragraph (a) of this subsection (3), all patient care provided during the time the heir is a proprietor of the practice shall be provided by an appropriately licensed dentist or dental hygienist.

(d) The temporary proprietorship of a dental or dental hygiene practice by an unlicensed heir shall not affect the exercise of the independent professional judgment of the licensed dentist or dental hygienist providing care to patients on behalf of the practice.

Source: L. 2008: Entire section added, p. 147, § 1, effective August 5. **L. 2014:** (1)(d) added and IP(3)(a) amended, (HB 14-1227), ch. 363, p. 1722, § 13, effective July 1.

12-35-117. Application for license - fee. (1) Every person not currently holding a license to practice dentistry in this state who desires to practice dentistry in this state shall file with the board an application for a license on a form provided by the board, verified by the oath of the applicant, and accompanied by a fee required by section 12-35-138 (1)(a) or established pursuant to section 24-34-105, C.R.S., indicating that the applicant:

(a) Has attained the age of twenty-one years;

(b) Is a graduate of a dental school or college that, at the time of the applicant's graduation, was accredited. An official transcript prepared by the dental college or school attended shall be submitted to the board.

(c) Has listed any act the commission of which would be grounds for disciplinary action under section 12-35-129 against a licensed dentist, along with an explanation of the circumstances of such act;

(d) Repealed.

(e) Has proof that he or she has not been subject to final or pending disciplinary action by any state in which the applicant is or has been previously licensed; except that, if the applicant has been subject to disciplinary action, the board may review such disciplinary action to determine whether it warrants grounds for refusal to issue a license; and

(f) Has proof that he or she has met any more stringent criteria established by the board.

(2) An applicant for licensure shall demonstrate to the board that he or she has maintained the professional ability and knowledge required by this article when such applicant has not graduated from an accredited dental school or college within the twelve months immediately preceding the application and has not, for at least one year of the five years immediately preceding the application, engaged in:

(a) The active clinical practice of dentistry;

(b) Teaching dentistry in an accredited program; or

(c) Service as a dentist in the military.

(3) The board may require other pertinent information on the application that the board deems necessary to process the application, including demonstration of compliance with the financial responsibility requirements set forth in section 13-64-301 (1)(a), C.R.S.

Source: L. 2004: Entire article RC&RE, p. 833, § 1, effective July 1. **L. 2014:** IP(1) and (3) amended and (1)(d) repealed, (HB 14-1227), ch. 363, p. 1722, § 14, effective July 1.

Editor's note: This section is similar to former § 12-35-113 as it existed prior to 2003, and the former § 12-35-117 was relocated to § 12-35-121.

12-35-117.5. Academic license. (1) (a) A dentist who is employed at an accredited school or college of dentistry in this state and who practices dentistry in the course of his or her employment responsibilities shall either make written application to the board for an academic license in accordance with this section or shall otherwise become licensed pursuant to sections 12-35-117 and 12-35-119, as applicable.

(b) Nothing in this section shall require a dentist who appears in a program of dental education or research, as described in section 12-35-115 (1)(f), to obtain an academic license pursuant to this section.

(2) A person who applies for an academic license shall submit proof to the board that he or she:

(a) Graduated from a school of dentistry located in the United States or another country; and

(b) Is employed by an accredited school or college of dentistry in this state.

(c) (Deleted by amendment, L. 2014.)

(3) An applicant for an academic license shall satisfy the credentialing standards of the accredited school or college of dentistry that employs the applicant.

(4) An academic license shall authorize the licensee to practice dentistry only while engaged in the performance of his or her official duties as an employee of the accredited school or college of dentistry and only in connection with programs affiliated or endorsed by the school or college. An academic licensee may not use an academic license to practice dentistry outside of his or her academic responsibilities.

(5) In addition to the requirements of this section, an applicant for an academic license shall complete all procedures for academic licensing established by the board to become licensed, including payment of any fee imposed pursuant to section 12-35-117 (1).

Source: L. 2009: Entire section added, (HB 09-1128), ch. 21, p. 105, § 3, effective August 5. **L. 2014:** (1)(a) and (2) amended, (HB 14-1227), ch. 363, p. 1727, § 24, effective July 1.

12-35-118. Graduates of foreign dental schools. (Repealed)

Source: L. 2004: Entire article RC&RE, p. 834, § 1, effective July 1. **L. 2014:** Entire section repealed, (HB 14-1227), ch. 363, p. 1728, § 25, effective July 1.

12-35-119. Examination - how conducted - license issued to successful applicants. (1) Applicants for dental licensure shall submit to the board proof of having successfully passed the following:

(a) The examination administered by the joint commission on national dental examinations; and

(b) (Deleted by amendment, L. 2014.)

(c) An examination or other methodology, as determined by the board, designed to test the applicant's clinical skills and knowledge, which may include residency and portfolio models.

(2) All examination results required by the board must be filed with the board and kept for reference for a period of not less than one year. If the applicant successfully completes the examinations and is otherwise qualified, the board shall grant a license to the applicant and shall issue a license certificate to the applicant.

(3) (Deleted by amendment, L. 2014.)

Source: L. 2004: Entire article RC&RE, p. 835, § 1, effective July 1. **L. 2014:** Entire section amended, (HB 14-1227), ch. 363, p. 1707, § 4, effective July 1.

Editor's note: This section is similar to former § 12-35-114 as it existed prior to 2003, and the former § 12-35-119 was relocated to § 12-35-111.

12-35-120. Licensure by endorsement. (1) The board shall provide for licensure upon application of any person licensed in good standing to practice dentistry in another state or territory of the United States who provides the credentials and meets the qualifications set forth in this section in the manner prescribed by the board.

(2) The board shall issue a license to an applicant licensed as a dentist in another state or territory of the United States if the applicant has submitted credentials and qualifications for licensure that include:

(a) Proof of graduation from an accredited dental school;

(b) Proof the applicant is currently licensed in another state or United States territory;

(c) Proof the applicant has been in practice or teaching dentistry, which involves personally providing care to patients for not less than three hundred hours annually in an accredited dental school for a minimum of five years out of the seven years immediately preceding the date of the receipt of the application, or evidence that the applicant has demonstrated competency as a dentist as determined by the board;

(d) Proof the applicant has not been subject to final or pending disciplinary action by any state in which the applicant is or has been previously licensed; except that, if the applicant has been subject to disciplinary action, the board may review such disciplinary action to determine whether the underlying conduct warrants refusal to issue a license;

(e) Repealed.

(f) Proof the applicant has passed an entry level examination acceptable to the board; and

(g) Proof the applicant has met any more stringent criteria established by the board.

Source: L. 2004: Entire article RC&RE, p. 835, § 1, effective July 1. **L. 2010:** (2)(c) amended, (HB 10-1175), ch. 46, p. 174, § 2, effective July 1, 2011. **L. 2014:** IP(2) amended and (2)(e) repealed, (HB 14-1227), ch. 363, p. 1728, § 26, effective July 1.

Editor's note: This section is similar to former § 12-35-114.5 as it existed prior to 2003.

12-35-121. Renewal of dental and dental hygienist licenses - fees. Licenses must be renewed or reinstated pursuant to a schedule established by the director of the division of professions and occupations within the department of regulatory agencies, referred to in this section as the director, and pursuant to section 24-34-102 (8), C.R.S. The director may establish renewal fees, delinquency fees for late renewal, and fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license pursuant to the schedule established by the director, the license expires. Any person whose license expires is subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

Source: L. 2004: Entire article RC&RE, p. 836, § 1, effective July 1. **L. 2014:** Entire section amended, (HB 14-1227), ch. 363, p. 1728, § 27, effective July 1.

Editor's note: This section is similar to former §§ 12-35-116, 12-35-117, and 12-35-127 as they existed prior to 2003, and the former § 12-35-121 was relocated to § 12-35-110.

12-35-122. Inactive dental or dental hygienist license. (1) Any person licensed to practice dentistry or dental hygiene pursuant to this article may apply to the board to be transferred to an inactive status. The licensee shall submit an application in the form and manner designated by the board. The board may grant inactive status by issuing an inactive license or deny the application for any of the causes set forth in section 12-35-129.

(2) Any person applying for a license under this section shall:

(a) Provide an affidavit to the board that the applicant, after a date certain, will not practice dentistry or dental hygiene in this state unless he or she is issued a license to practice dentistry or dental hygiene pursuant to subsection (5) of this section;

(b) Pay the license fee as authorized pursuant to section 24-34-105, C.R.S.; and

(c) Comply with any financial responsibility or professional liability insurance requirements established by the board under section 12-35-141, as applicable.

(3) Such inactive status shall be plainly indicated on the face of any inactive license certificate issued under this section.

(4) The board is authorized to conduct disciplinary proceedings as set forth in section 12-35-129 against any person licensed under this section for any act committed while the person was licensed pursuant to this article.

(5) Any person licensed under this section who wishes to resume the practice of dentistry or dental hygiene shall file an application in the form and manner the board designates, pay the license fee promulgated by the board pursuant to section 24-34-105, C.R.S., and meet the financial responsibility requirements or the professional liability insurance requirements in section 12-35-141, as applicable. The board may approve the application and issue a license to practice dentistry or dental hygiene or may deny the application for any of the causes set forth in section 12-35-129.

Source: L. 2004: Entire article RC&RE, p. 836, § 1, effective July 1. **L. 2014:** (1), (2)(a), (2)(c), and (5) amended, (HB 14-1227), ch. 363, p. 1723, § 15, effective July 1. **L. 2016:** (2)(c) amended, (HB 16-1327), ch. 124, p. 352, § 1, effective August 10.

Editor's note: This section is similar to former § 12-35-135 as it existed prior to 2003, and the former § 12-35-122 was relocated to § 12-35-114.

12-35-123. Retired dental and dental hygienist licenses. (1) Any person licensed to practice dentistry or dental hygiene pursuant to this article may apply to the board for retired licensure status. Any such application shall be in the form and manner designated by the board. The board may grant such status by issuing a retired license, or it may deny the application if the licensee has been disciplined for any of the causes set forth in section 12-35-129.

(2) Any person applying for a license under this section shall:

(a) Provide an affidavit to the board stating that, after a date certain, the applicant shall not practice dentistry or dental hygiene, shall no longer earn income as a dentist or dental hygiene administrator or consultant, and shall not perform any activity that constitutes practicing dentistry or dental hygiene pursuant to sections 12-35-113, 12-35-124, and 12-35-125 unless said applicant is issued a license to practice dentistry or dental hygiene pursuant to subsection (5) of this section; and

(b) Pay the license fee authorized by section 24-34-105, C.R.S., which fee shall not exceed fifty dollars.

(3) The retired status of a licensee shall be plainly indicated on the face of any retired license certificate issued under this section.

(4) The board may take disciplinary action pursuant to sections 12-35-129.1 to 12-35-129.5 against any person licensed under this section for an act committed while such person was licensed pursuant to this article.

(5) Any person licensed under this section may apply to the board for a return to active licensure status by filing an application in the form and manner the board designates, paying the appropriate license fee established pursuant to section 24-34-105, C.R.S., and meeting the financial responsibility requirements or the professional liability insurance requirements in section 12-35-141, as applicable. The board may approve the application and issue a license to practice dentistry or dental hygiene or may deny the application if the licensee has been disciplined for any of the causes set forth in section 12-35-129.

(6) A dentist or dental hygienist on retired status may provide dental or dental hygiene services on a voluntary basis to the indigent if the retired dentist or dental hygienist provides the services on a limited basis and does not charge a fee for the services. A retired dentist or dental hygienist providing voluntary care pursuant to this subsection (6) is immune from any liability resulting from the voluntary care he or she provided.

Source: L. 2004: Entire article RC&RE, p. 837, § 1, effective July 1. **L. 2014:** (4), (5), and (6) amended, (HB 14-1227), ch. 363, p. 1723, § 16, effective July 1.

Editor's note: This section is similar to former § 12-35-136 as it existed prior to 2003, and the former § 12-35-123 was relocated to § 12-35-126.

12-35-124. What constitutes practicing unsupervised dental hygiene. (1) Unless licensed to practice dentistry, a person shall be deemed to be practicing unsupervised dental hygiene who, within the scope of the person's education, training, and experience:

(a) Removes deposits, accretions, and stains by scaling with hand, ultrasonic, or other devices from all surfaces of the tooth and smooths and polishes natural and restored tooth surfaces, including root planing;

(b) Removes granulation and degenerated tissue from the gingival wall of a periodontal pocket;

(c) Provides preventive measures including the application of fluorides, sealants, and other recognized topical agents for the prevention of oral disease;

(d) Gathers and assembles information including, but not limited to:

(I) Fact-finding and patient history;

(II) Preparation of study casts for the purpose of fabricating a permanent record of the patient's present condition; as a visual aid for patient education, dental hygiene diagnosis, and dental hygiene treatment planning; and to provide assistance during forensic examination;

(III) Extra- and intra-oral inspection;

(IV) Dental and periodontal charting; and

(V) Radiographic and X-ray survey for the purpose of assessing and diagnosing dental hygiene-related conditions for treatment planning for dental hygiene services as described in this section and identifying dental abnormalities for immediate referral to a dentist;

(e) Administers a topical anesthetic to a patient in the course of providing dental care;

(f) Performs dental hygiene assessment, dental hygiene diagnosis, and dental hygiene treatment planning for dental hygiene services as described in this section and identifies dental abnormalities for immediate referral to a dentist; or

(g) (I) Prescribes, administers, and dispenses fluoride, fluoride varnish, antimicrobial solutions for mouth rinsing, other nonsystemic antimicrobial agents, and related emergency drugs and reversal agents in collaboration with a licensed dentist. The board may, by rule, further define the permissible and appropriate emergency drugs and reversal agents. Dental hygienists shall maintain clear documentation in the patient record of the drug or agent prescribed, administered, or dispensed; the date of the action; and the rationale for prescribing, administering, or dispensing the drug or agent.

(II) A dental hygienist shall not prescribe, administer, or dispense the following:

(A) Drugs whose primary effect is systemic, with the exception of fluoride supplements permitted under sub-subparagraph (A) of subparagraph (III) of this paragraph (g); and

(B) Dangerous drugs or controlled substances, as defined in section 18-18-102 (5), C.R.S.

(III) A dental hygienist may prescribe the following:

(A) Fluoride supplements as follows, all using sodium fluoride: Tablets: 0.5 mg, 1.1 mg, or 2.2 mg; lozenges: 2.21 mg; and drops: 1.1 mL;

(B) Topical anti-caries treatments as follows, all using sodium fluoride unless otherwise indicated: Toothpastes: 1.1 % or less (or stannous fluoride 0.4%); topical gels: 1.1% or less (or stannous fluoride 0.4%); oral rinses: 0.05%, 0.2%, 0.44%, or 0.5%; oral rinse concentrate used in periodontal disease: 0.63% stannous fluoride; fluoride varnish: 5%; and prophy pastes containing approximately 1.23% sodium fluoride and used for polishing procedures as part of professional dental prophylaxis treatment;

(C) Topical anti-infectives as follows: Chlorhexidine gluconate rinses: 0.12%; chlorhexidine gluconate periodontal chips for subgingival insertion into a periodontal pocket/sulcus; tetracycline impregnated fibers, inserted subgingivally into a periodontal pocket/sulcus; doxycycline hyclate periodontal gel, inserted subgingivally into a periodontal pocket/sulcus; and minocycline hydrochloride periodontal powder, inserted subgingivally into a periodontal pocket/sulcus; and

(D) Related emergency drugs and reversal agents as authorized by the collaborating dentist.

(1.5) A dental hygienist shall state in writing and require a patient to acknowledge by signature that any diagnosis or assessment is for the purpose of determining necessary dental hygiene services only and that it is recommended by the American dental association, or any successor organizations, that a thorough dental examination be performed by a dentist twice each year.

(2) Unsupervised dental hygiene may be performed by licensed dental hygienists without the supervision of a licensed dentist.

(3) (a) Notwithstanding section 12-35-103 (14) or 12-35-113 (1)(b), a dental hygienist may be the proprietor of a place where supervised or unsupervised dental hygiene is performed

and may purchase, own, or lease equipment necessary to perform supervised or unsupervised dental hygiene.

(b) A dental hygienist proprietor, or a professional corporation or professional limited liability corporation of dental hygienists, in addition to providing dental hygiene services, may enter into an agreement with one or more dentists for the lease or rental of equipment or office space in the same physical location as the dental hygiene practice, but only if the determination of necessary dental services provided by the dentist and professional responsibility for those services, including but not limited to dental records, appropriate medication, and patient payment, remain with the treating dentist. It shall be the responsibility of the dental hygienist to inform the patient as to whether there is a supervisory relationship between the dentist and the dental hygienist. Such an agreement shall not constitute employment and shall not constitute cause for discipline pursuant to section 12-35-129 (1)(h).

Source: L. 2004: Entire article RC&RE, p. 838, § 1, effective July 1. **L. 2006:** (3) amended, p. 1165, § 1, effective May 25. **L. 2009:** IP(1), (1)(a), and (1)(d) amended and (1)(f), (1)(g), and (1.5) added, (SB 09-129), ch. 181, pp. 797, 798, §§ 2, 3, effective April 22. **L. 2014:** (1)(b), (1)(f), (1)(g), and (2) amended, (HB 14-1227), ch. 363, p. 1729, § 28, effective July 1. **L. 2017:** (1)(b), (1)(g)(I), (1)(g)(III)(B), and (1)(g)(III)(C) amended and (1)(g)(III)(D) added, (HB 17-1010), ch. 13, p. 38, § 2, effective August 9.

Editor's note: This section is similar to former § 12-35-122.5 as it existed prior to 2003, and the former § 12-35-124 was relocated to § 12-35-127.

12-35-125. What constitutes practicing supervised dental hygiene. (1) Unless licensed to practice dentistry, a person who performs any of the following tasks under the supervision of a licensed dentist is deemed to be practicing supervised dental hygiene:

(a) Any task described in section 12-35-124 (1);

(b) Prepares study casts;

(c) to (e) (Deleted by amendment, L. 2014.)

(f) Administers local anesthesia under the indirect supervision of a licensed dentist pursuant to rules of the board, including minimum education requirements and procedures for local anesthesia administration;

(g) and (h) (Deleted by amendment, L. 2014.)

(i) Places interim therapeutic restorations pursuant to section 12-35-128.5; or

(j) Applies silver diamine fluoride pursuant to section 12-35-128.8.

(2) (Deleted by amendment, L. 2014.)

Source: L. 2004: Entire article RC&RE, p. 838, § 1, effective July 1. **L. 2009:** (1)(d) and (1)(f) amended and (1)(g) and (1)(h) added, (SB 09-129), ch. 181, p. 798, § 4, effective April 22. **L. 2014:** Entire section amended, (HB 14-1227), ch. 363, p. 1730, § 29, effective July 1. **L. 2015:** (1)(i) added, (HB 15-1309), ch. 326, p. 1331, § 2, effective August 5. **L. 2018:** (1)(j) added, (HB 18-1045), ch. 67, p. 622, § 2, effective March 22.

Editor's note: This section is similar to former § 12-35-122.6 as it existed prior to 2003, and the former § 12-35-125 was relocated to § 12-35-128.

12-35-126. Application for dental hygienist license - fee. (1) Every person who desires to qualify for practice as a dental hygienist within this state shall file with the board:

(a) A written application for a license, on which application such applicant shall list:

(I) Any act the commission of which would be grounds for disciplinary action under section 12-35-129 against a licensed dental hygienist; and

(II) An explanation of the circumstances of such act; and

(b) Satisfactory proof of graduation from a school of dental hygiene that, at the time of the applicant's graduation, was accredited, and proof that the program offered by the accredited school of dental hygiene was at least two academic years or the equivalent of two academic years.

(2) Such application must be on the form prescribed and furnished by the board, verified by the oath of the applicant, and accompanied by a fee established pursuant to section 24-34-105, C.R.S.

(3) An applicant for licensure who has not graduated from an accredited school or program of dental hygiene within the twelve months immediately preceding application, or who has not engaged either in the active clinical practice of dental hygiene or in teaching dental hygiene in an accredited program for at least one year during the five years immediately preceding the application, shall demonstrate to the board that the applicant has maintained the professional ability and knowledge required by this article.

(4) Repealed.

Source: L. 2004: Entire article RC&RE, p. 839, § 1, effective July 1. **L. 2014:** (1)(b) amended and (4) repealed, (HB 14-1227), ch. 363, p. 1709, § 8, effective July 1.

Editor's note: This section is similar to former § 12-35-123 as it existed prior to 2003.

12-35-127. Dental hygienist examinations - license. (1) Every applicant for dental hygiene licensure shall submit to the board proof of having successfully completed the following:

(a) An examination administered by the joint commission on national dental examinations; and

(b) An examination designed to test the applicant's clinical skills and knowledge, which must be administered by a regional testing agency composed of at least four states or an examination of another state, or a methodology adopted by the board by rule that is designed to test the applicant's clinical skills and knowledge.

(c) (Deleted by amendment, L. 2014.)

(2) All examination results required by the board must be filed with the board and kept for reference for a period of not less than one year. If an applicant successfully completes the examinations and is otherwise qualified, the board shall grant a license to the applicant and shall issue a license certificate signed by the officers of the board.

(3) and (4) Repealed.

Source: L. 2004: Entire article RC&RE, p. 840, § 1, effective July 1. **L. 2009:** (4) added, (SB 09-129), ch. 181, p. 799, § 5, effective April 22. **L. 2010:** (3)(b)(III) amended, (HB 10-

1175), ch. 46, p. 174, § 3, effective July 1, 2011. **L. 2014:** (1) and (2) amended and (3) and (4) repealed, (HB 14-1227), ch. 363, pp. 1708, 1709, §§ 5, 7, effective July 1.

Editor's note: This section is similar to former § 12-35-124 as it existed prior to 2003, and the former § 12-35-127 was relocated to § 12-35-121.

12-35-127.5. Dental hygienist - licensure by endorsement. (1) The board shall provide for licensure upon application of any person licensed in good standing to practice dental hygiene in another state or territory of the United States who has met the requirements of section 12-35-126, and provides the credentials and meets the qualifications set forth in this section in the manner prescribed by the board.

(2) The board shall issue a license to an applicant duly licensed as a dental hygienist in another state or territory of the United States who has submitted credentials and qualifications for licensure in Colorado that include:

(a) Verification of licensure from any other jurisdiction where the applicant has held a dental hygiene or other health care license;

(b) Evidence of the applicant's successful completion of the national board dental examination administered by the joint commission on national dental examinations;

(c) (I) Verification that the applicant has been engaged either in clinical practice or in teaching dental hygiene or dentistry in an accredited program for at least one year during the three years immediately preceding the date of the receipt of the application; or

(II) Evidence that the applicant has demonstrated competency as a dental hygienist as determined by the board;

(d) A report of any pending or final disciplinary actions against any health care license held by the applicant at any time; and

(e) A report of any pending or final malpractice actions against the applicant.

Source: L. 2014: Entire section added with relocations, (HB 14-1227), ch. 363, p. 1708, § 6, effective July 1.

Editor's note: This section is similar to former § 12-35-127 (3) as it existed prior to 2014.

12-35-128. Tasks authorized to be performed by dental assistants or dental hygienists. (1) (a) (I) Except as provided in subparagraph (II) of this paragraph (a), the responsibility for dental diagnosis, dental treatment planning, or the prescription of therapeutic measures in the practice of dentistry remains with a licensed dentist and may not be assigned to any dental hygienist.

(II) A dental hygienist may:

(A) Perform dental hygiene assessment, dental hygiene diagnosis, and dental hygiene treatment planning for dental hygiene services pursuant to section 12-35-124 (1)(f);

(B) Identify dental abnormalities for immediate referral to a dentist as described in section 12-35-124 (1)(f);

(C) In collaboration with a licensed dentist, prescribe, administer, and dispense, as described in section 12-35-124 (1)(g): Fluoride; fluoride varnish; antimicrobial solutions for

mouth rinsing; other nonsystemic antimicrobial agents; and resorbable antimicrobial agents pursuant to rules of the board; and

(D) In collaboration with a licensed dentist, apply silver diamine fluoride pursuant to section 12-35-128.8.

(b) A dental procedure that involves surgery or that will contribute to or result in an irremediable alteration of the oral anatomy shall not be assigned to anyone other than a licensed dentist.

(2) Except as provided in subsection (1) of this section, a dental hygienist may perform any dental task or procedure assigned to the hygienist by a licensed dentist that does not require the professional skill of a licensed dentist; except that the dental hygienist may perform the task or procedure only under the indirect supervision of a licensed dentist or as authorized in sections 12-35-124 and 12-35-125.

(3) (a) A dental assistant shall not perform the following tasks:

(I) Diagnosis;

(II) Treatment planning;

(III) Prescription of therapeutic measures;

(IV) Any procedure that contributes to or results in an irremediable alteration of the oral anatomy;

(V) Administration of local anesthesia;

(VI) Scaling (supra and sub-gingival), as it pertains to the practice of dental hygiene;

(VII) Root planing;

(VIII) Soft tissue curettage;

(IX) Periodontal probing.

(b) A dental assistant may perform the following tasks under the indirect supervision of a licensed dentist:

(I) Smoothing and polishing natural and restored tooth surfaces;

(II) Provision of preventive measures, including the application of fluorides and other recognized topical agents for the prevention of oral disease;

(III) Gathering and assembling information including, but not limited to, fact-finding and patient history, oral inspection, and dental and periodontal charting;

(IV) Administering topical anesthetic to a patient in the course of providing dental care;

(V) Any other task or procedure that does not require the professional skill of a licensed dentist;

(VI) Repairing and relining dentures pursuant to a dental laboratory work order signed by a licensed dentist.

(c) A dental assistant may, under the direct supervision of a licensed dentist in accordance with rules promulgated by the board, administer and monitor the use of nitrous oxide on a patient.

(d) (I) A dental assistant may perform intraoral and extraoral tasks and procedures necessary for the fabrication of a complete or partial denture under the direct supervision of a licensed dentist. These tasks and procedures shall include:

(A) Making of preliminary and final impressions;

(B) Jaw relation records and determination of vertical dimensions;

(C) Tooth selection;

(D) A preliminary try-in of the wax-up trial denture prior to and subject to a try-in and approval in writing of the wax-up trial denture by the licensed dentist;

(E) Denture adjustments that involve the periphery, occlusal, or tissue-bearing surfaces of the denture prior to the final examination of the denture.

(II) The tasks and procedures in subparagraph (I) of this paragraph (d) shall be performed in the regularly announced office location of a licensed practicing dentist, and the dentist shall be personally liable for all treatment rendered to the patient. A dental assistant performing these tasks and procedures shall be properly identified as a dental assistant. No dentist shall utilize more than the number of dental assistants the dentist can reasonably supervise.

(III) Prior to any work being performed pursuant to subparagraph (I) of this paragraph (d), the patient shall first be examined by the treating dentist licensed to practice in this state who shall certify that the patient has no pathologic condition that requires surgical correction or other treatment prior to complete denture service.

(4) Repealed.

(5) The board may make such reasonable rules as may be necessary to implement and enforce the provisions of this section.

Source: L. 2004: Entire article RC&RE, p. 841, § 1, effective July 1. **L. 2009:** (1) and (2) amended, (SB 09-129), ch. 181, p. 799, § 6, effective April 22. **L. 2014:** (1), (2), and IP(3)(b) amended, (3)(b)(VI) added with relocations, and (4) repealed, (HB 14-1227), ch. 363, p. 1731, § 30, effective July 1. **L. 2018:** (1)(a)(II)(B) and (1)(a)(II)(C) amended and (1)(a)(II)(D) added, (HB 18-1045), ch. 67, p. 624, § 4, effective March 22.

Editor's note: (1) This section is similar to former § 12-35-125 as it existed prior to 2003, and the former § 12-35-128 was relocated to § 12-35-131.

(2) Subsection (3)(b)(VI) is similar to former § 12-35-128 (4) as it existed prior to 2014.

12-35-128.3. Interim therapeutic restorations advisory committee - rules - repeal. (Repealed)

Source: L. 2015: Entire section added, (HB 15-1309), ch. 326, p. 1331, § 3, effective August 5.

Editor's note: Subsection (8) provided for the repeal of this section, effective December 31, 2016. (See L. 2015, p. 1331.)

12-35-128.5. Interim therapeutic restorations by dental hygienists - permitting process - repeal. (1) Upon application, accompanied by a fee in an amount determined by the director of the division of professions and occupations, the board shall grant a permit to place interim therapeutic restorations to any dental hygienist applicant who:

(a) Holds a license in good standing to practice dental hygiene in Colorado;

(b) Has completed a course developed at the postsecondary educational level that complies with the rules adopted by the board. The course must be offered under the direct supervision of a member of the faculty of a Colorado dental or dental hygiene school accredited

by the commission on dental accreditation or its successor agency. All faculty responsible for clinical evaluation of students must be dentists with a faculty appointment at an accredited Colorado dental or dental hygiene school.

(c) Carries current professional liability insurance in the amount specified in section 12-35-141; and

(d) Has completed the following hours of dental hygiene practice as evidenced in documentation required by the board:

(I) Two thousand hours of supervised dental hygiene practice after initial dental hygiene licensure;

(II) Four thousand hours of unsupervised dental hygiene practice after initial dental hygiene licensure; or

(III) A combination of the hours specified in subparagraphs (I) and (II) of this paragraph (d) as determined by the board by rule.

(2) The board may waive the requirement in paragraph (d) of subsection (1) of this section for a dental hygienist who performs interim therapeutic restorations exclusively under the direct supervision of a dentist.

(3) A dental hygienist shall not use local anesthesia for the purpose of placing interim therapeutic restorations.

(4) (a) A dental hygienist may place an interim therapeutic restoration only after a dentist provides a diagnosis, treatment plan, and instruction to perform the procedure.

(b) If an interim therapeutic restoration is authorized by a supervising dentist at a location other than the dentist's practice location, the dental hygienist shall provide the patient or the patient's representative with written notification that the care was provided at the direction of the supervising dentist. The dental hygienist shall include in the written notification the dentist's name, practice location address, and telephone number.

(c) A dental hygienist who obtains a dentist's diagnosis, treatment plan, and instruction to perform an ITR utilizing telehealth by store-and-forward transfer shall notify the patient of the patient's right to receive interactive communication with the distant dentist upon request. Communication with the distant dentist may occur either at the time of the consultation or within thirty days after the dental hygienist notifies the patient of the results of the consultation.

(5) A dental hygienist who obtains a permit pursuant to this section may place interim therapeutic restorations in a dental office setting under the direct or indirect supervision of a dentist or through telehealth supervision for purposes of communication with the dentist.

(6) A dentist shall not supervise more than five dental hygienists who place interim therapeutic restorations under telehealth supervision. A dentist who supervises a dental hygienist who provides interim therapeutic restorations under telehealth supervision must have a physical practice location in Colorado for purposes of patient referral for follow-up care.

(7) A dental hygienist shall inform the patient or the patient's legal guardian, in writing, and require the patient or the patient's legal guardian to acknowledge by signature, that the interim therapeutic restoration is a temporary repair to the tooth and that appropriate follow-up care with a dentist is necessary.

(8) This section is repealed, effective September 1, 2021. Prior to the repeal, the department of regulatory agencies shall review the permitting of dental hygienists to place interim therapeutic restorations as provided in section 24-34-104, C.R.S.

Source: L. 2015: Entire section added, (HB 15-1309), ch. 326, p. 1332, § 4, effective August 5. **L. 2017:** (1)(b) amended, (SB 17-294), ch. 264, p. 1386, § 12, effective May 25; IP(1) and (1)(c) amended, (HB 17-1010), ch. 13, p. 39, § 3, effective August 9.

12-35-128.7. Interim therapeutic restorations - gifts, grants, and donations - repeal. (Repealed)

Source: L. 2015: Entire section added, (HB 15-1309), ch. 326, p. 1334, § 5, effective August 5.

Editor's note: Subsection (2) provided for the repeal of this section, effective December 31, 2016. (See L. 2015, p. 1334.)

12-35-128.8. Application of silver diamine fluoride by dental hygienists - authorization - limitations - rules - repeal. (1) A dental hygienist may apply silver diamine fluoride if the dental hygienist:

(a) Holds a license in good standing to practice dental hygiene in Colorado;

(b) Has completed a postsecondary course or continuing education course developed at the postsecondary level that satisfies the requirements established by the board by rule and that provides instruction on the use and limitations of applying silver diamine fluoride;

(c) Is covered by professional liability insurance in the amount established by the board pursuant to section 12-35-141; and

(d) Has a collaborative agreement with a dentist that describes the silver diamine fluoride protocols, any restrictions or limitations, follow-up and referral mechanisms, and any other requirements established by the board by rule.

(2) (a) If the application of silver diamine fluoride is authorized by a supervising dentist at a location other than the dentist's practice location, the dental hygienist shall provide the patient or the patient's representative with written notification that the application of silver diamine fluoride is being provided in collaboration with the supervising dentist. The dental hygienist shall include in the written notification the dentist's name, practice location address, and telephone number.

(b) A dental hygienist who applies silver diamine fluoride in collaboration with a supervising dentist utilizing telehealth by store-and-forward transfer shall notify the patient or the patient's representative of the patient's right to receive interactive communication with the distant dentist upon request. Communication with the distant dentist may occur either at the time of the consultation or within thirty days after the dental hygienist notifies the patient of the results of the consultation.

(3) A dental hygienist who meets the requirements of subsections (1) and (2) of this section may apply silver diamine fluoride under the direct or indirect supervision of a dentist or through telehealth supervision for purposes of communication with the dentist.

(4) (a) Not later than ninety days after March 22, 2018, the board shall promulgate rules to:

(I) Define requirements for the education course required in subsection (1)(b) of this section, including qualifications for entities offering the course and faculty oversight requirements; and

(II) Address appropriate indications and limitations for the application of silver diamine fluoride by a dental hygienist.

(b) The board may establish additional requirements for the collaborative agreement required by subsection (1)(d) of this section.

(5) This section is repealed, effective September 1, 2021. Prior to the repeal, the department of regulatory agencies shall review the application of silver diamine fluoride by dental hygienists as provided in section 24-34-104.

Source: L. 2018: Entire section added, (HB 18-1045), ch. 67, p. 622, § 3, effective March 22.

12-35-129. Grounds for disciplinary action. (1) The board may take disciplinary action against an applicant or licensee in accordance with section 12-35-129.1 for any of the following causes:

(a) Engaging in fraud, misrepresentation, or deception in applying for, securing, renewing, or seeking reinstatement of a license to practice dentistry or dental hygiene in this state, in applying for professional liability coverage required pursuant to section 12-35-141, or in taking the examinations provided for in this article;

(b) Conviction of a felony or any crime that constitutes a violation of this article. For purposes of this paragraph (b), conviction includes the entry of a plea of guilty or nolo contendere or a deferred sentence.

(c) Administering, dispensing, or prescribing a habit-forming drug or controlled substance, as defined in section 18-18-102 (5), C.R.S., to a person, including the applicant or licensee, other than in the course of legitimate professional practice;

(d) Conviction of a violation of a federal or state law regulating the possession, distribution, or use of a controlled substance, as defined in section 18-18-102 (5), C.R.S., and, in determining if a license should be denied, revoked, or suspended or if the licensee should be placed on probation, the board shall be governed by section 24-5-101, C.R.S.;

(e) Habitually abusing or excessively using alcohol, a habit-forming drug, or a controlled substance, as defined in section 18-18-102 (5), C.R.S.;

(f) Misusing a drug or controlled substance, as defined in section 18-18-102 (5), C.R.S.;

(g) Aiding or abetting, in the practice of dentistry or dental hygiene, a person who is not licensed to practice dentistry or dental hygiene under this article or whose license to practice dentistry or dental hygiene is suspended;

(h) Except as otherwise provided in sections 25-3-103.7, C.R.S., 12-35-116, and 12-35-124 (3), practicing dentistry or dental hygiene as a partner, agent, or employee of or in joint venture with any person who does not hold a license to practice dentistry or dental hygiene within this state or practicing dentistry or dental hygiene as an employee of or in joint venture with any partnership, association, or corporation. A licensee holding a license to practice dentistry or dental hygiene in this state may accept employment from any person, partnership, association, or corporation to examine, prescribe, and treat the employees of the person, partnership, association, or corporation.

(i) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision or term of this article or lawful rule or order of the board;

(j) (I) Failing to notify the board of a physical illness; a physical condition; or a behavioral, mental health, or substance use disorder that renders the licensee unable, or limits the licensee's ability, to perform dental or dental hygiene services with reasonable skill and with safety to the patient;

(II) Failing to act within the limitations created by a physical illness; a physical condition; or a behavioral, mental health, or substance use disorder that renders the licensee unable to practice dental or dental hygiene services with reasonable skill and safety or that may endanger the health or safety of persons under his or her care; or

(III) Failing to comply with the limitations agreed to under a confidential agreement entered pursuant to section 12-35-129.6;

(k) Committing an act or omission that constitutes grossly negligent dental or dental hygiene practice or that fails to meet generally accepted standards of dental or dental hygiene practice;

(l) Advertising in a manner that is misleading, deceptive, or false;

(m) Engaging in a sexual act with a patient during the course of patient care or within six months immediately following the termination of the licensee's professional relationship with the patient. "Sexual act", as used in this paragraph (m), means sexual contact, sexual intrusion, or sexual penetration as defined in section 18-3-401, C.R.S.

(n) Refusing to make patient records available to a patient pursuant to a written authorization-request under section 25-1-802, C.R.S.;

(o) False billing in the delivery of dental or dental hygiene services, including, but not limited to, performing one service and billing for another, billing for any service not rendered, or committing a fraudulent insurance act, as defined in section 10-1-128, C.R.S.;

(p) Committing abuse of health insurance in violation of section 18-13-119, C.R.S.;

(q) Failing to notify the board, in writing and within ninety days after a judgment is entered, of a final judgment by a court of competent jurisdiction in favor of any party and against the licensee involving negligent malpractice of dentistry or dental hygiene, which notice must contain the name of the court, the case number, and the names of all parties to the action;

(r) Failing to report a dental or dental hygiene malpractice judgment or malpractice settlement to the board by the licensee within ninety days;

(s) Failing to furnish unlicensed persons with laboratory work orders pursuant to section 12-35-133;

(t) Employing a solicitor or other agent to obtain patronage, except as provided in section 12-35-137;

(u) Willfully deceiving or attempting to deceive the board or its agents with reference to any matter relating to this article;

(v) Sharing any professional fees with anyone except those with whom the dentist or dental hygienist is lawfully associated in the practice of dentistry or dental hygiene; except that:

(I) A licensed dentist or dental hygienist may pay an independent advertising or marketing agent compensation for advertising or marketing services rendered by the agent for the benefit of the licensed dentist or dental hygienist, including compensation that is based on the results or performance of the services on a per-patient basis; and

(II) Nothing in this section prohibits a dentist or dental hygienist practice owned or operated by a proprietor authorized under section 12-35-116.5 from contracting with any person or entity for business management services or paying a royalty in accordance with a franchise

agreement if the terms of the contract or franchise agreement do not affect the exercise of the independent professional judgment of the dentist or dental hygienist.

(w) Failing to provide reasonably necessary referral of a patient to other licensed dentists or licensed health care professionals for consultation or treatment when the failure to provide referral does not meet generally accepted standards of dental care;

(x) Failure of a dental hygienist to recommend that a patient be examined by a dentist, or to refer a patient to a dentist, when the dental hygienist detects a condition that requires care beyond the scope of practicing supervised or unsupervised dental hygiene;

(y) Engaging in any of the following activities and practices:

(I) Willful and repeated ordering or performance, without clinical justification, of demonstrably unnecessary laboratory tests or studies;

(II) The administration, without clinical justification, of treatment that is demonstrably unnecessary;

(III) In addition to the provisions of paragraph (x) of this subsection (1), the failure to obtain consultations or perform referrals when failing to do so is not consistent with the standard of care for the profession;

(IV) Ordering or performing, without clinical justification, any service, X ray, or treatment that is contrary to recognized standards of the practice of dentistry or dental hygiene as interpreted by the board;

(z) Falsifying or repeatedly making incorrect essential entries or repeatedly failing to make essential entries on patient records;

(aa) Violating section 8-42-101 (3.6), C.R.S.;

(bb) Violating section 12-35-202 or any rule of the board adopted pursuant to that section;

(cc) Administering local anesthesia, minimal sedation, moderate sedation, or deep sedation/general anesthesia without obtaining a permit from the board in accordance with section 12-35-140;

(dd) Failing to report to the board, within ninety days after final disposition, the surrender of a license to, or adverse action taken against a license by, a licensing agency in another state, territory, or country, a governmental agency, a law enforcement agency, or a court for an act or conduct that would constitute grounds for discipline pursuant to this article;

(ee) Failing to provide adequate or proper supervision when employing unlicensed persons in a dental or dental hygiene practice;

(ff) Engaging in any conduct that constitutes a crime as defined in title 18, C.R.S., which conduct relates to the licensee's practice as a dentist or dental hygienist;

(gg) Practicing outside the scope of dental or dental hygiene practice;

(hh) Failing to establish and continuously maintain financial responsibility or professional liability insurance as required by section 12-35-141;

(ii) Advertising or otherwise holding oneself out to the public as practicing a dental specialty in which the dentist has not successfully completed the education specified for the dental specialty as defined by the American dental association;

(jj) Failing to respond in an honest, materially responsive, and timely manner to a complaint filed against the licensee pursuant to this article;

(kk) Committing an act or omission that fails to meet generally accepted standards for infection control;

(ll) Administering moderate sedation or deep sedation/general anesthesia without a licensed dentist or other licensed health care professional qualified to administer the relevant level of sedation or anesthesia present in the operatory;

(mm) Failing to complete and maintain records of completing continuing education as required by section 12-35-139;

(nn) Failing to comply with section 12-35-128.5 regarding the placement of interim therapeutic restorations; or

(oo) Failing to comply with section 12-35-128.8 regarding the application of silver diamine fluoride.

(2) to (18) Repealed.

Source: L. 2004: Entire article RC&RE, p. 843, § 1, effective July 1; IP(1) amended and (13) added, p. 1864, § 124, effective August 4. **L. 2006:** (1)(h) amended, p. 1166, § 2, effective May 25; (14) to (18) added, p. 793, § 24, effective July 1. **L. 2014:** (1) amended and (2) to (18) repealed, (HB 14-1227), ch. 363, pp. 1709, 1721, § § 9, 11, effective July 1. **L. 2015:** (1)(ll) and (1)(mm) amended and (1)(nn) added, (HB 15-1309), ch. 326, p. 1334, § 6, effective August 5. **L. 2016:** (1)(v) amended, (SB 16-009), ch. 7, p. 13, § 1, effective August 10. **L. 2017:** (1)(j)(I) and (1)(j)(II) amended, (SB 17-242), ch. 263, p. 1270, § 50, effective May 25. **L. 2018:** (1)(mm) and (1)(nn) amended and (1)(oo) added, (HB 18-1045), ch. 67, p. 624, § 5, effective March 22.

Editor's note: (1) This section is similar to former § 12-35-118 as it existed prior to 2003, and the former § 12-35-129 was relocated to § 12-35-132.

(2) Subsections (2) to (18) were relocated to sections 12-35-129.1 through 12-35-129.5 in 2014.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-35-129.1. Disciplinary actions. (1) (a) If, after notice and hearing conducted in accordance with article 4 of title 24, C.R.S., the board determines that an applicant or licensee has engaged in an act specified in section 12-35-129, the board may:

(I) Deny the issuance of, refuse to renew, suspend, or revoke any license provided for in this article;

(II) Reprimand, censure, or place on probation any licensed dentist or dental hygienist;

(III) Issue a letter of admonition; or

(IV) Impose an administrative fine.

(b) Hearings under this section must be conducted by the board or by an administrative law judge appointed pursuant to part 10 of article 30 of title 24, C.R.S.

(2) (a) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the board, does not warrant formal action by the board but should not be dismissed as being without merit, the board may issue and send to the licensee a letter of admonition.

(b) When the board sends a letter of admonition to a licensee pursuant to paragraph (a) of this subsection (2), the board shall also advise the licensee that he or she has the right to request in writing, within twenty days after receipt of the letter, that the board initiate formal disciplinary proceedings to adjudicate the propriety of the conduct upon which the letter of

admonition is based. If the licensee makes the request for adjudication in a timely manner, the board shall vacate the letter of admonition and shall process the matter by means of formal disciplinary proceedings.

(3) If an investigation discloses an instance of conduct that, in the opinion of the board, does not warrant formal board action and should be dismissed, but in which the board has noticed indications of possible errant conduct that could lead to serious consequences if not corrected, the board shall send a confidential letter of concern to the licensee against whom the complaint was made. The board shall send the person making the complaint a notice that the board has issued a letter of concern to the licensee.

(4) The board may include, in any disciplinary order that allows a dentist or dental hygienist to continue to practice, conditions the board deems appropriate to assure that the dentist or dental hygienist is physically, mentally, and otherwise qualified to practice dentistry or dental hygiene in accordance with generally accepted professional standards of practice. The order may include any or all of the following:

(a) A condition that the licensee submit to examinations to determine the licensee's physical or mental condition or professional qualifications;

(b) A condition that the licensee take therapy, courses of training, or education as needed to correct deficiencies found by the board or by examinations required pursuant to paragraph (a) of this subsection (4);

(c) Review or supervision of the licensee's practice as necessary to determine the quality of the practice and to correct any deficiencies;

(d) The imposition of restrictions on the licensee's practice to assure that the practice does not exceed the limits of the licensee's capabilities.

(5) The board may suspend the license of a dentist or dental hygienist who fails to comply with an order of the board issued in accordance with this section. The board may impose the license suspension until the licensee complies with the board's order.

(6) (a) In addition to any other penalty permitted under this article, when a licensed dentist or dental hygienist violates a provision of this article or of any rule promulgated pursuant to this article, the board may impose a fine on the licensee. If the licensee is a dentist, the fine must not exceed five thousand dollars. If the licensee is a dental hygienist, the fine must not exceed three thousand dollars.

(b) The board shall adopt rules establishing a uniform system and schedule of fines that set forth fine tiers based on the severity of the violation, the type of violation, and whether the licensee repeatedly violates this article, board rules, or board orders.

(7) If the board finds the charges proven and orders that discipline be imposed, the board may also order the licensee to take courses of training or education the board deems necessary to correct deficiencies found as a result of the hearing.

(8) Any person whose license to practice is revoked is ineligible to apply for any license under this article for at least two years after the date of revocation or surrender of the license. Any subsequent application for licensure is an application for a new license.

Source: L. 2014: Entire section added with relocations, (HB 14-1227), ch. 363, p. 1713, § 10, effective July 1.

Editor's note: This section is similar to several provisions of former § 12-35-129, as it existed prior to 2014.

12-35-129.2. Disciplinary proceedings. (1) (a) Any person may submit a complaint relating to the conduct of a dentist or dental hygienist, which complaint must be in writing and signed by the person. The board, on its own motion, may initiate a complaint. The board shall notify the dentist or dental hygienist of the complaint against him or her.

(b) (I) For complaints related to the standard of care delivered to a patient that are submitted by a person other than the patient, the person submitting the complaint shall notify the patient of the complaint before filing the complaint with the board.

(II) The requirements of this paragraph (b) do not apply when a complaint is submitted to the board by a state department or agency.

(2) (a) Except as provided in paragraph (b) of this subsection (2), investigations, examinations, hearings, meetings, and other proceedings of the board conducted pursuant to this section or section 12-35-129.1, 12-35-129.3, 12-35-129.4, or 12-35-129.5 are exempt from the provisions of any law requiring that proceedings of the board be conducted publicly or that the minutes or records of the board with respect to action of the board taken pursuant to this section are open to public inspection.

(b) The final action of the board taken pursuant to this section is open to the public.

(3) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, warrants formal action, the board shall not resolve the complaint by a deferred settlement, action, judgment, or prosecution.

(4) Any member of the board or professional review committee authorized by the board, any member of the board's or professional review committee's staff, any person acting as a witness or consultant to the board or committee, any witness testifying in a proceeding authorized under this article, and any person who lodges a complaint pursuant to this article is immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as board or committee member, staff, consultant, or witness, respectively, if the individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that his or her action was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this article is immune from any civil or criminal liability that may result from the participation.

(5) The discipline of a licensee by another state, territory, or country is deemed the equivalent of unprofessional conduct under this article; except that this subsection (5) applies only to discipline that is based upon an act or omission in the other state, territory, or country that is defined substantially the same as unprofessional conduct pursuant to this article.

(6) (a) Nothing in this section:

(I) Deprives a dental patient of the right to choose or replace any professionally recognized restorative material;

(II) Permits disciplinary action against a dentist solely for removing or placing any professionally recognized restorative material.

(b) Nothing in paragraph (a) of this subsection (6) prevents disciplinary action against a dentist for practicing dentistry in violation of this article.

(7) (a) If a professional review committee is established pursuant to this section to investigate complaints against a person licensed to practice dentistry under this article, the committee must include in its membership at least three persons licensed to practice dentistry under this article. The committee may be authorized to act only by:

(I) The board; or

(II) A society or an association of persons licensed to practice dentistry under this article whose membership includes not less than one-third of the persons licensed to practice dentistry under this article residing in this state, if the licensee whose services are the subject of review is a member of the society or association.

(b) Any member of the board or a professional review committee authorized by the board and any witness or consultant appearing before the board or professional review committee is immune from suit in any civil action brought by a licensee who is the subject of a professional review proceeding if the member, witness, or consultant acts in good faith within the scope of the function of the board or committee, has made a reasonable effort to obtain the facts of the matter as to which the member, witness, or consultant acts, and acts in the reasonable belief that his or her action is warranted by the facts. The immunity provided by this paragraph (b) extends to the members of an authorized professional review committee of a society or an association of persons licensed pursuant to this article and witnesses or consultants appearing before the committee if the committee is authorized to act as provided in subparagraph (II) of paragraph (a) of this subsection (7).

(c) A professional review committee of a society or an association of persons licensed pursuant to this article shall:

(I) Notify the board within sixty days after the review committee analyzes care provided by a licensee and determines that the care may not meet generally accepted standards or that the licensee has otherwise violated any provision of this article. The licensee may be subject to disciplinary action by the board.

(II) Allow the board or its designee to conduct a periodic audit of records of the review committee. A person designated by the board to conduct the audit must be a licensed or retired dentist from any state. The board or its designee shall conduct the audit no more than twice annually. If any pattern of behavior of a licensee is identified that may constitute reasonable grounds to believe there has been a violation of this article, all relevant records of the review committee are subject to a subpoena issued by the board.

(d) (I) The proceedings and records of a review committee must be held in confidence and are not subject to discovery or introduction into evidence in any civil action against a dentist arising out of the matters that are the subject of evaluation and review by the committee. However, records of closed proceedings and investigations are available to the particular licensee under review and the complainant involved in the proceedings.

(II) A person who was in attendance at a meeting of the committee shall not be permitted or required to testify in any civil action as to any evidence or other matters produced or presented during the proceedings of the committee or as to any findings, recommendations, evaluations, opinions, or other actions of the committee or any members of the committee. However, information, documents, or records otherwise available from original sources are not protected from discovery or use in a civil action merely because they were presented during proceedings of the committee, and any documents or records that have been presented to the review committee by any witness must be returned to the witness, if requested by the witness or

if ordered to be produced by a court in any action, with copies to be retained by the committee at its discretion.

(III) Any person who testifies before the committee or who is a member of the committee is not prevented from testifying as to matters within the person's knowledge, but the person may not be asked about his or her testimony before the committee or opinions he or she formed as a result of the committee hearings.

Source: L. 2014: Entire section added with relocations, (HB 14-1227), ch. 363, p. 1715, § 10, effective July 1.

Editor's note: This section is similar to several provisions of former § 12-35-129, as it existed prior to 2014.

12-35-129.3. Board panels. (1) The chairperson of the board shall divide the members of the board, other than the chairperson, into two panels of six members each.

(2) Each panel shall act as both an inquiry panel and a hearing panel. The chairperson may reassign members of the board from one panel to the other. The chairperson may be a member of both panels, but neither the chairperson nor any other member who has considered a complaint as a member of a panel acting as an inquiry panel shall take any part in the consideration of a formal complaint involving the same matter.

(3) If the inquiry panel refers a matter for formal hearing, the hearing panel or a committee of the hearing panel shall hear the matter. However, in its discretion, either inquiry panel may elect to refer a case for formal hearing to a qualified administrative law judge in lieu of a hearing panel of the board for an initial decision pursuant to section 24-4-105, C.R.S.

(4) A licensee who is the subject of an initial decision by an administrative law judge, or by the hearing panel that would have heard the case upon its own motion, may seek review of the initial decision pursuant to section 24-4-105 (14) and (15), C.R.S., by filing an exception to the initial decision with the hearing panel that would have heard the case if it had not been referred to an administrative law judge. The respondent or the board's counsel may file the exception.

(5) The inquiry panel to whom an investigation is assigned shall supervise the investigation, and the person conducting the investigation shall report the results of the investigation to the panel for appropriate action.

Source: L. 2014: Entire section added with relocations, (HB 14-1227), ch. 363, p. 1718, § 10, effective July 1.

Editor's note: This section is similar to several provisions of former § 12-35-129, as it existed prior to 2014.

12-35-129.4. Cease-and-desist orders. (1) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a 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 license, the board may issue an order to cease and desist the activity. The board shall set forth in the order the statutes and rules the person is alleged to have

violated, the facts alleged to constitute the violation, and the requirement that all unlawful acts or unlicensed practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (1), the respondent may request a hearing on the question of whether acts or practices in violation of this part 1 have occurred. The board or an administrative law judge, as applicable, shall conduct the hearing in accordance with sections 24-4-104 and 24-4-105, C.R.S.

(2) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this part 1, then, in addition to any specific powers granted pursuant to this part 1, the board may issue to the person an order to show cause as to why the board should not issue a final order directing the person to cease and desist from the unlawful act or unlicensed practice.

(b) The board shall promptly notify the person against whom it issues an order to show cause pursuant to paragraph (a) of this subsection (2) of the issuance of the order and shall include in the notice a copy of the order, the factual and legal basis for the order, and the date set by the board for a hearing on the order. The board may serve the notice by personal service, by first-class United States mail, postage prepaid, or by other means as may be practicable. Personal service or mailing of an order or document pursuant to this subsection (2) constitutes notice to the person.

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

(II) If the person against whom the board has issued the order to show cause pursuant to paragraph (a) of this subsection (2) does not appear at the hearing, the board may present evidence that notification was properly sent or served upon the person pursuant to paragraph (b) of this subsection (2) and other evidence related to the matter as the board deems appropriate. The board shall issue the order within ten days after the board's determination related to reasonable attempts to notify the respondent, and the order becomes final as to that person by operation of law. The board or an administrative law judge, as applicable, shall conduct the hearing in accordance with sections 24-4-104 and 24-4-105, C.R.S.

(III) If the board reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required license or has or is about to engage in acts or practices constituting violations of this part 1, the board may issue a final cease-and-desist order directing the person to cease and desist from further unlawful acts or unlicensed practices.

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

(3) If it appears to the board, based upon credible evidence presented to the board, that a person has engaged in or is about to engage in an unlicensed act or practice; an act or practice constituting a violation of this part 1, a rule promulgated pursuant to this part 1, or an order

issued pursuant to this part 1; or an act or practice constituting grounds for administrative sanction pursuant to this part 1, the board may enter into a stipulation with the person.

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

(5) A person aggrieved by the final cease-and-desist order may seek judicial review of the board's determination or of the board's final order as provided in section 12-35-130.

Source: L. 2014: Entire section added with relocations, (HB 14-1227), ch. 363, p. 1719, § 10, effective July 1.

Editor's note: This section is similar to several provisions of former § 12-35-129, as it existed prior to 2014.

12-35-129.5. Mental and physical examinations. (1) (a) If the board has reasonable cause to believe that a person licensed to practice dentistry or dental hygiene in this state is unable to practice dentistry or dental hygiene with reasonable skill and safety to patients because of a physical or mental disability or because of excessive use of alcohol, a habit-forming drug or substance, or a controlled substance, as defined in section 18-18-102 (5), C.R.S., the board may require the licensed dentist or dental hygienist to submit to a mental or physical examination by a qualified professional designated by the board.

(b) Upon the failure of the licensed dentist or dental hygienist to submit to a mental or physical examination required by the board, unless the failure is due to circumstances beyond the dentist's or dental hygienist's control, the board may suspend the dentist's or dental hygienist's license to practice dentistry or dental hygiene in this state until the dentist or dental hygienist submits to the examination.

(2) Every person licensed to practice dentistry or dental hygiene in this state is deemed, by so practicing or by applying for a renewal of the person's license to practice dentistry or dental hygiene in this state, to have:

(a) Given consent to submit to a mental or physical examination when directed in writing by the board; and

(b) Waived all objections to the admissibility of the examining qualified professional's testimony or examination reports on the ground of privileged communication.

(3) The results of any mental or physical examination ordered by the board cannot be used as evidence in any proceeding other than before the board.

Source: L. 2014: Entire section added with relocations, (HB 14-1227), ch. 363, p. 1720, § 10, effective July 1.

Editor's note: (1) Subsections IP(1)(c), (1)(c)(I), (1)(c)(II), and (1)(d) were renumbered on revision as subsections IP(2), (2)(a), (2)(b), and (3) respectively for ease of location.

(2) This section is similar to several provisions of former § 12-35-129, as it existed prior to 2014.

12-35-129.6. Confidential agreement to limit practice - violation - grounds for discipline. (1) If a licensed dentist or dental hygienist has a physical illness; a physical condition; or a behavioral or mental health disorder that renders him or her unable to practice dentistry or dental hygiene with reasonable skill and safety to clients, the dentist or dental hygienist shall notify the board of the physical illness; the physical condition; or the behavioral or mental health disorder in a manner and within a period determined by the board. The board may require the dentist or dental hygienist to submit to an examination to evaluate the extent of the physical illness; the physical condition; or the behavioral or mental health disorder and its impact on the dentist's or dental hygienist's ability to practice dentistry or dental hygiene with reasonable skill and safety to patients.

(2) (a) Upon determining that a dentist or dental hygienist with a physical illness; a physical condition; or a behavioral or mental health disorder is able to render limited services with reasonable skill and safety to patients, the board may enter into a confidential agreement with the dentist or dental hygienist in which the dentist or dental hygienist agrees to limit his or her practice based on the restrictions imposed by the physical illness; the physical condition; or the behavioral or mental health disorder, as determined by the board.

(b) As part of the agreement, the dentist or dental hygienist is subject to periodic reevaluations or monitoring as determined appropriate by the board.

(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 board pursuant to this section to limit his or her practice, a dentist or dental hygienist is not engaging in activities prohibited pursuant to section 12-35-129 (1). The agreement does not constitute a restriction or discipline by the board. However, if the dentist or dental hygienist fails to comply with the terms of an agreement entered into pursuant to this section, the failure constitutes a prohibited activity pursuant to section 12-35-129 (1)(j), and the dentist or dental hygienist is subject to discipline in accordance with section 12-35-129.

(4) This section does not apply to a dentist or dental hygienist subject to discipline for prohibited activities as described in section 12-35-129 (1)(e).

Source: L. 2014: Entire section added, (HB 14-1227), ch. 363, p. 1721, § 12, effective July 1. **L. 2017:** (1) and (2)(a) amended, (SB 17-242), ch. 263, p. 1271, § 51, effective May 25.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-35-130. Review of board action. (1) The court of appeals, by appropriate proceedings under section 24-4-106 (11), C.R.S., may review any final action of the board to:

(a) Deny or refuse to issue or renew a license;
(b) Suspend a license;
(c) Revoke a license;
(d) Censure a licensee;
(e) Issue a letter of admonition to a licensee;
(f) Place a licensee on probation;
(g) Issue a reprimand to a licensee; or

(h) Issue an order to cease and desist.

(2) The provisions of this section apply to a license issued to a dentist or dental hygienist.

Source: L. 2004: Entire article RC&RE, p. 851, § 1, effective July 1. **L. 2006:** (1)(h) added, p. 795, § 25, effective July 1.

Editor's note: This section is similar to former § 12-35-115 as it existed prior to 2003, and the former § 12-35-130 was relocated to § 12-35-133.

12-35-131. Use of forged or invalid diploma or certificate. It is unlawful for any person to use or attempt to use as his or her own a diploma of a dental college or school or school of dental hygiene, or a license or license renewal certificate, of any other person or to use or attempt to use a forged diploma, license, license renewal certificate, or identification. It is also unlawful for any person to file with the board a forged document in response to a request by the board for documentation of an applicant's qualifications for licensure.

Source: L. 2004: Entire article RC&RE, p. 851, § 1, effective July 1. **L. 2014:** Entire section amended, (HB 14-1227), ch. 363, p. 1732, § 31, effective July 1.

Editor's note: This section is similar to former § 12-35-128 as it existed prior to 2003, and the former § 12-35-131 was relocated to § 12-35-134.

12-35-132. Sale of forged or invalid diploma or license certificate. (1) It is unlawful to sell or offer to sell a diploma conferring a dental or dental hygiene degree or a license or license renewal certificate granted pursuant to this article or prior dental practice laws, or to procure such diploma or license or license renewal certificate:

(a) With the intent that it be used as evidence of the right to practice dentistry or dental hygiene by a person other than the one upon whom it was conferred or to whom such license or license renewal certificate was granted; or

(b) With fraudulent intent to alter the document and use or attempt to use it when it is so altered.

Source: L. 2004: Entire article RC&RE, p. 851, § 1, effective July 1.

Editor's note: This section is similar to former § 12-35-129 as it existed prior to 2003, and the former § 12-35-132 was relocated to § 12-35-135.

12-35-133. Construction of dental devices by unlicensed technician. (1) (a) A licensed dentist who uses the services of an unlicensed technician for the purpose of constructing, altering, repairing, or duplicating any denture, bridge, splint, or orthodontic or prosthetic appliance shall furnish the unlicensed technician with a written or electronic laboratory work order in a form approved by the board, which form must be dated and signed by the dentist for each separate and individual piece of work. The dentist shall make the laboratory work order in a reproducible form, and the dentist and the unlicensed technician shall each retain

a copy in a permanent file for two years. The permanent files of the licensed dentist and the unlicensed technician shall be open to inspection at any reasonable time by the board or its duly constituted agent. The licensed dentist that furnishes the laboratory work order shall have appropriate training, education, and experience related to the prescribed treatment and is responsible for directly supervising all intraoral treatment rendered to the patient.

(b) An unlicensed technician that possesses a valid laboratory work order may provide extraoral construction, manufacture, fabrication, supply, or repair of identified dental and orthodontic devices but shall not provide intraoral service in a human mouth except under the direct supervision of a licensed dentist in accordance with section 12-35-128 (3)(d).

(2) If the dentist fails to keep permanent records of laboratory work orders as required in paragraph (a) of subsection (1) of this section, the dentist is subject to disciplinary action as deemed appropriate by the board.

(3) If an unlicensed technician fails to have in his or her possession a laboratory work order signed by a licensed dentist with each denture, bridge, splint, or orthodontic or prosthetic appliance in his or her possession, the absence of the laboratory work order is prima facie evidence of a violation of this section and constitutes the practice of dentistry without an active license in violation of, and subject to the penalties specified in, section 12-35-135.

Source: L. 2004: Entire article RC&RE, p. 852, § 1, effective July 1. **L. 2014:** Entire section amended, (HB 14-1227), ch. 363, p. 1732, § 32, effective July 1.

Editor's note: This section is similar to former § 12-35-130 as it existed prior to 2003, and the former § 12-35-133 was relocated to § 12-35-136.

12-35-134. Soliciting or advertisements by unlicensed persons. It is unlawful for any unlicensed person, corporation, entity, partnership, or group of persons to solicit or advertise to the general public to construct, reproduce, or repair prosthetic dentures, bridges, plates, or other appliances to be used or worn as substitutes for natural teeth.

Source: L. 2004: Entire article RC&RE, p. 852, § 1, effective July 1.

Editor's note: This section is similar to former § 12-35-131 as it existed prior to 2003, and the former § 12-35-134 was relocated to § 12-35-137.

12-35-135. Unauthorized practice - penalties. (1) Any person who practices or offers or attempts to practice dentistry or dental hygiene 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 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(2) Repealed.

Source: L. 2004: Entire article RC&RE, p. 852, § 1, effective July 1. **L. 2006:** (2) repealed, p. 795, § 26, effective July 1; (1) amended, p. 87, § 25, effective August 7.

Editor's note: This section is similar to former § 12-35-132 as it existed prior to 2003, and the former § 12-35-135 was relocated to § 12-35-122.

12-35-136. Attorney general shall represent board and members. The attorney general of the state of Colorado shall counsel with and advise the board in connection with its duties and responsibilities under this article. If litigation is brought against the board or any of its individual members in connection with actions taken by it or them under the provisions of this article and such actions are free of malice, fraud, or willful neglect of duty, the attorney general shall defend such litigation without cost to the board or to any individual member thereof.

Source: L. 2004: Entire article RC&RE, p. 853, § 1, effective July 1.

Editor's note: This section is similar to former § 12-35-133 as it existed prior to 2003, and the former § 12-35-136 was relocated to § 12-35-123.

12-35-137. Independent advertising or marketing agent - injunctive proceedings. (1) Notwithstanding section 12-35-129 (1)(t), a licensed dentist or dental hygienist may employ an independent advertising or marketing agent to provide advertising or marketing services on the dentist's or dental hygienist's behalf, and the same shall not be considered unprofessional conduct.

(2) The board shall not have the authority to regulate, directly or indirectly, advertising or marketing activities of independent advertising or marketing agents except as provided in this section. The board may, in the name of the people of the state of Colorado, apply for an injunction in district court to enjoin any independent advertising or marketing agent from the use of advertising or marketing that the court finds on the basis of the evidence presented by the board to be misleading, deceptive, or false; except that a licensed dentist or dental hygienist shall not be subject to discipline by the board, injunction, or prosecution in the courts under this article or any other law for advertising or marketing by an independent advertising or marketing agent if the factual information that the licensed dentist or dental hygienist provides to the independent advertising or marketing agent is accurate and not misleading, deceptive, or false.

Source: L. 2004: Entire article RC&RE, p. 853, § 1, effective July 1.

Editor's note: This section is similar to former § 12-35-134 as it existed prior to 2003.

12-35-138. Dentist peer health assistance fund. (1) (a) Effective July 1, 2004, as a condition of renewal in this state, every renewal applicant shall pay to the administering entity that has been selected by the board pursuant to the provisions of paragraph (b) of this subsection (1) an amount not to exceed fifty-nine dollars per year, which maximum amount may be adjusted on January 1, 2005, and annually thereafter by the board to reflect changes in the United States bureau of statistics consumer price index for the Denver-Boulder consolidated metropolitan statistical area for all urban consumers or goods, or its successor index. Such fee shall be used to support designated providers that have been selected by the board to provide assistance to dentists needing help in dealing with physical, emotional, or psychological

problems that may be detrimental to their ability to practice dentistry. Such fee shall not exceed one hundred dollars per year per licensee.

(b) The board shall select one or more peer health assistance programs as designated providers. To be eligible for designation by the board, a peer health assistance program shall:

(I) Provide for the education of dentists with respect to the recognition and prevention of physical, emotional, and psychological problems and provide for intervention when necessary or under circumstances that may be established by rules promulgated by the board;

(II) Offer assistance to a dentist in identifying physical, emotional, or psychological problems;

(III) Evaluate the extent of physical, emotional, or psychological problems and refer the dentist for appropriate treatment;

(IV) Monitor the status of a dentist who has been referred for treatment;

(V) Provide counseling and support for the dentist and for the family of any dentist referred for treatment;

(VI) Agree to receive referrals from the board;

(VII) Agree to make its services available to all licensed Colorado dentists.

(c) The administering entity shall be a qualified, nonprofit private foundation that is qualified under section 501 (c)(3) of the federal "Internal Revenue Code of 1986", as amended, and shall be dedicated to providing support for charitable, benevolent, educational, and scientific purposes that are related to dentistry, dental education, dental research and science, and other dental charitable purposes.

(d) The responsibilities of the administering entity shall be to:

(I) Collect the required annual payments, directly or through the board;

(II) Verify to the board, in a manner acceptable to the board, the names of all dentist applicants who have paid the fee set by the board;

(III) Distribute the moneys collected, less expenses, to the designated provider, as directed by the board;

(IV) Provide an annual accounting to the board of all amounts collected, expenses incurred, and amounts disbursed; and

(V) Post a surety performance bond in an amount specified by the board to secure performance under the requirements of this section. The administering entity may recover the actual administrative costs incurred in performing its duties under this section in an amount not to exceed ten percent of the total amount collected.

(e) The board, at its discretion, may collect the required annual payments payable to the administering entity for the benefit of the administering entity and shall transfer all such payments to the administering entity. All required annual payments collected or due to the board for each fiscal year shall be deemed custodial funds that are not subject to appropriation by the general assembly, and such funds shall not constitute state fiscal year spending for purposes of section 20 of article X of the state constitution.

(2) (a) Any dentist who is a referred participant in a peer health assistance program shall enter into a written agreement with the board prior to such dentist becoming a participant in such program. Such agreement shall contain specific requirements and goals to be met by the participant, including the conditions under which the program will be successfully completed or terminated, and a provision that a failure to comply with such requirements and goals shall be

promptly reported to the board and that such failure shall result in disciplinary action by the board.

(b) Notwithstanding section 12-35-129 and section 24-4-104, C.R.S., the board may immediately suspend the license of any dentist who is referred to a peer health assistance program by the board and who fails to attend or to complete such program. If such dentist objects to such suspension, he or she may submit a written request to the board for a formal hearing on such suspension within ten days after receiving notice of such suspension, and the board shall grant such request. In such hearing the dentist shall bear the burden of proving that his or her license should not be suspended.

(c) Any dentist who is accepted into a peer health assistance program in lieu of disciplinary action by the board shall affirm that, to the best of his or her knowledge, information, and belief, he or she knows of no instance in which he or she has violated this article or the rules of the board, except in those instances affected by the dentist's physical, emotional, or psychological problems.

(2.5) If a dentist is arrested for a drug- or alcohol-related offense, the dentist shall refer himself or herself to the peer health assistance program within thirty days after the arrest for an evaluation and referral for treatment as necessary. If the dentist self-refers, the evaluation by the program is confidential and cannot be used as evidence in any proceeding other than before the board. If a dentist fails to comply with this subsection (2.5), the failure, alone, is not grounds for discipline under sections 12-35-129 and 12-35-129.1 unless the dentist has also committed an act or omission specified in section 12-35-129, other than an act or omission specified in section 12-35-129 (1)(e) or (1)(f).

(3) Nothing in this section shall be construed to create any liability on behalf of the board or the state of Colorado for the actions of the board members in making grants to peer assistance programs, and no civil action may be brought or maintained against the board or the state for an injury alleged to have been the result of the activities of any state-funded peer assistance program or the result of an act or omission of a dentist participating in or referred by a state-funded peer assistance program. However, the state shall remain liable under the provisions of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S., if an injury alleged to have been the result of an act or omission of a dentist participating in or referred by a state-funded peer assistance program occurred while such dentist was performing duties as an employee of the state.

(4) The board is authorized to promulgate rules necessary to implement the provisions of this section.

Source: L. 2004: Entire article RC&RE, p. 853, § 1, effective July 1. **L. 2010:** (1)(d)(I) amended and (1)(e) added, (HB 10-1128), ch. 172, p. 611, § 6, effective April 29. **L. 2014:** (2.5) added, (HB 14-1227), ch. 363, p. 1733, § 33, effective July 1.

Editor's note: This section is similar to former § 12-35-123.5 as it existed prior to 2003.

12-35-139. Continuing education requirements - rules. (1) As a condition of renewing, reactivating, or reinstating a license issued under this article, every dentist and dental hygienist shall obtain at least thirty hours of continuing education every two years to ensure patient safety and professional competency.

(2) The board may adopt rules establishing the basic requirements for continuing education, including the types of programs that qualify, exemptions for persons holding an inactive or retired license, requirements for courses designed to enhance clinical skills for certain licenses, and the manner by which dentists and dental hygienists are to report compliance with the continuing education requirements.

Source: L. 2014: Entire section added, (HB 14-1227), ch. 363, p. 1733, § 34, effective July 1.

12-35-140. Anesthesia and sedation permits - dentists and dental hygienists - training and experience requirements - office inspections - rules. (1) Upon application in a form and manner determined by the board and payment of the applicable fees established by the board, the board may issue an anesthesia or sedation permit to a licensed dentist or a local anesthesia permit to a dental hygienist in accordance with this section.

(2) (a) A licensed dentist who obtains an anesthesia or sedation permit pursuant to this section may administer minimal sedation, moderate sedation, or deep sedation/general anesthesia.

(b) A licensed dentist who administers minimal sedation, moderate sedation, or deep sedation/general anesthesia to pediatric dental patients shall obtain a permit designated by the board to allow for administration to pediatric dental patients.

(c) An anesthesia or sedation permit issued to a licensed dentist is valid for five years, unless the dentist's license expires. As a condition of renewing an anesthesia or sedation permit, a licensed dentist shall attest, when applying to renew the permit, that he or she completed seventeen continuing education credits specific to anesthesia or sedation administration during the five-year permit period. Continuing education credits obtained as required by this section may be used to satisfy the continuing education requirements in section 12-35-139.

(3) (a) A licensed dental hygienist who obtains a local anesthesia permit pursuant to this section may administer local anesthesia.

(b) A local anesthesia permit issued to a dental hygienist is valid as long as the dental hygienist's license is active.

(4) (a) The board shall establish, by rule, minimum training, experience, and equipment requirements for the administration of local anesthesia, analgesia including nitrous oxide/oxygen inhalation, and medication prescribed or administered for the relief of anxiety or apprehension, minimal sedation, moderate sedation, deep sedation, or general anesthesia, including procedures that may be used by and minimum training requirements for dentists, dental hygienists, and dental assistants.

(b) In order to fulfill the training and experience requirements for an anesthesia or sedation permit, an applicant must be the primary provider and directly provide care for all required case work.

(c) The rules relating to anesthesia and sedation are not intended to:

(I) Permit administration of local anesthesia, analgesia, medication prescribed or administered for the relief of anxiety or apprehension, minimal sedation, moderate sedation, deep sedation, or general anesthesia by dental assistants; except that this section does not prohibit a dental assistant from monitoring and administering nitrous oxide/oxygen inhalation

performed under the supervision of a licensed dentist pursuant to section 12-35-113 (1)(q) and board rules; or

(II) Reduce competition or restrain trade with respect to the dentistry needs of the public.

(5) The board shall establish, by rule, criteria and procedures for an office inspection program to be completed upon application and renewal of anesthesia or sedation permits, which must include:

(a) Designation of qualified inspectors who are experts in dental outpatient deep sedation/general anesthesia and moderate sedation;

(b) A requirement for each licensee that is inspected to bear the cost of inspection by allowing designated inspectors to charge a reasonable fee as established by the board;

(c) A requirement that an inspector notify the board in writing of the results of an inspection; and

(d) A requirement for reinspection of an office prior to the renewal of a moderate sedation or deep sedation/general anesthesia permit.

Source: L. 2014: Entire section added, (HB 14-1227), ch. 363, p. 1733, § 34, effective July 1.

12-35-141. Professional liability insurance required - rules. (1) A licensed dentist and a licensed dental hygienist must meet the financial responsibility requirements established by the board pursuant to section 13-64-301 (1)(a), C.R.S.

(2) Upon request of the board, a licensed dentist or licensed dental hygienist shall provide proof of professional liability insurance to the board.

(3) The board may, by rule, exempt from or establish lesser financial responsibility standards for licensed dentists and licensed dental hygienists who meet the criteria in section 13-64-301 (1)(a)(II), C.R.S.

Source: L. 2014: Entire section added with relocations, (HB 14-1227), ch. 363, p. 1735, § 35, effective July 1. **L. 2016:** Entire section amended, (HB 16-1327), ch. 124, p. 352, § 2, effective August 10.

Editor's note: Subsection (2) is similar to former § 12-35-127 (4) as it existed prior to 2014.

PART 2

SAFETY TRAINING FOR UNLICENSED X-RAY TECHNICIANS

Cross references: For similar provisions in article 32 of this title regulating podiatrists, see part 2 of said article; for similar provisions in article 33 of this title regulating chiropractors, see part 2 of said article.

12-35-201. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that public exposure to the hazards of ionizing radiation used for diagnostic purposes should be minimized wherever possible. Accordingly, the general assembly finds,

determines, and declares that for any dentist or dental hygienist to allow an untrained person to operate a machine source of ionizing radiation, including without limitation a device commonly known as an "X-ray machine", or to administer such radiation to a patient for diagnostic purposes is a threat to the public health and safety.

(2) It is the intent of the general assembly that dentists and dental hygienists utilizing unlicensed persons in their practices provide those persons with a minimum level of education and training before allowing them to operate machine sources of ionizing radiation; however, it is not the general assembly's intent to discourage education and training beyond this minimum. It is further the intent of the general assembly that established minimum training and education requirements correspond as closely as possible to the requirements of each particular work setting as determined by the Colorado dental board pursuant to this part 2.

(3) The general assembly seeks to ensure, and accordingly declares its intent, that in promulgating the rules authorized by this part 2, the board will make every effort, consistent with its other statutory duties, to avoid creating a shortage of qualified individuals to operate machine sources of ionizing radiation for beneficial medical purposes in any area of the state.

Source: L. 2004: Entire article RC&RE, p. 856, § 1, effective July 1. **L. 2014:** (2) amended, (HB 14-1227), ch. 363, p. 1736, § 39, effective July 1.

12-35-202. Board authorized to issue rules. (1) (a) The Colorado dental board shall adopt rules prescribing minimum standards for the qualifications, education, and training of unlicensed persons operating machine sources of ionizing radiation and administering radiation to patients for diagnostic medical use. A licensed dentist or dental hygienist shall not allow an unlicensed person to operate a machine source of ionizing radiation or to administer radiation to any patient unless the person meets standards then in effect under rules adopted pursuant to this section. The board may adopt rules allowing a grace period in which newly hired operators of machine sources of ionizing radiation are to receive the training required by this section.

(b) For purposes of this part 2, "unlicensed person" means a person who does not hold a current and active license entitling the person to practice dentistry or dental hygiene under the provisions of this article.

(2) The board shall seek the assistance of licensed dentists or licensed dental hygienists in developing and formulating the rules promulgated pursuant to this section.

(3) The required number of hours of training and education for all unlicensed persons operating machine sources of ionizing radiation and administering such radiation to patients shall be established by the board by rule. This standard shall apply to all persons in dental settings other than hospitals and similar facilities licensed by the department of public health and environment pursuant to section 25-1.5-103, C.R.S. Such training and education may be obtained through programs approved by the appropriate authority of any state or through equivalent programs and training experience, including on-the-job training as determined by the board.

Source: L. 2004: Entire article RC&RE, p. 856, § 1, effective July 1. **L. 2014:** (1)(a) amended, (HB 14-1227), ch. 363, p. 1736, § 40, effective July 1.

ARTICLE 35.5

12-35.5-101. Short title. This article shall be known and may be cited as the "Massage Therapy Practice Act".

Source: L. 2008: Entire article added, p. 1982, § 2, effective July 1.

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 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 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 licensed person.

Source: L. 2008: Entire article added, p. 1982, § 2, effective July 1. **L. 2013:** Entire section amended, (SB 13-151), ch. 286, p. 1505, § 3, effective August 7.

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

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

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

(3) "Approved massage school" means:

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

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

(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.

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

(5) "Director" means the director of the division.

(6) "Division" means the division of professions and occupations in the department of regulatory agencies.

(6.5) "Licensee" means a person licensed in this state to practice massage therapy.

(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 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.

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

(9) "Person" means a natural person only.

(10) Repealed.

Source: L. 2008: Entire article added, p. 1982, § 2, effective July 1. **L. 2013:** (2), (3), and (8) amended, (6.5) added, and (10) repealed, (SB 13-151), ch. 286, p. 1505, § 4, effective August 7. **L. 2016:** (7) amended, (HB 16-1320), ch. 265, p. 1097, § 2, effective June 8. **L. 2017:** IP and (3)(a) amended, (HB 17-1239), ch. 261, p. 1203, § 4, effective August 9.

Cross references: For the legislative declaration in HB 16-1320, see section 1 of chapter 265, Session Laws of Colorado 2016.

12-35.5-104. Use of massage titles restricted. Only a person licensed under this article to practice massage therapy may use the titles "massage therapist", "licensed massage therapist", "massage practitioner", "masseuse", "masseur", the letters "M.T." or "L.M.T.", or any other generally accepted terms, letters, or figures that indicate that the person is a massage therapist.

Source: L. 2008: Entire article added, p. 1983, § 2, effective July 1. **L. 2013:** Entire section amended, (SB 13-151), ch. 286, p. 1506, § 5, effective August 7.

12-35.5-105. Limitations on authority. (1) Nothing in this article shall be construed as authorizing a massage therapist to perform any of the following acts:

(a) The practice of medicine pursuant to article 36 of this title;

(b) The practice of physical therapy pursuant to article 41 of this title;

(c) The practice of chiropractic pursuant to article 33 of this title; or

(d) Any other forms of healing or healing arts not authorized by this article.

Source: L. 2008: Entire article added, p. 1983, § 2, effective July 1.

12-35.5-106. License required.

(1) Repealed.

(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.

Source: L. 2008: Entire article added, p. 1983, § 2, effective July 1. **L. 2013:** Entire section amended, (SB 13-151), ch. 286, p. 1506, § 6, effective August 7.

Editor's note: Subsection (1)(b) provided for the repeal of subsection (1), effective July 1, 2014. (See L. 2013, p. 1506.)

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

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

(b) Pass one of the following examinations:

(I) The massage and bodywork licensing examination offered by the federation of state massage therapy boards;

(II) A national certification examination offered by the national certification board for therapeutic massage and bodywork; or

(III) An examination approved by the director;

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

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

(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.

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

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

(4) Repealed.

(5) The director shall issue a 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:

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

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

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

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

(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, 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., 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.

Source: L. 2008: Entire article added, p. 1984, § 2, effective July 1. **L. 2010:** (6) amended, (HB 10-1128), ch. 172, p. 612, § 7, effective April 29. **L. 2013:** IP(1), (3), IP(5), and (6) amended and (4) repealed, (SB 13-151), ch. 286, p. 1506, §7, effective August 7. **L. 2016:** (1)(d), (1)(e), and (6) amended and (1)(f), (7), and (8) added, (HB 16-1320), ch. 265, p. 1098, § 3, effective June 8. **L. 2017:** (2) amended, (SB 17-189), ch. 149, p. 497, § 2, effective August 9.

Cross references: For the legislative declaration in HB 16-1320, see section 1 of chapter 265, Session Laws of Colorado 2016.

12-35.5-108. License expiration - effect - renewal - reinstatement - penalty. (1) Licenses issued pursuant to this article are valid for the period of time established by the director. 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) If a licensee fails to renew his or her license within the time period specified in the schedule established by the director, the license expires. A person in possession of an expired license shall not practice massage therapy until he or she reinstates the license.

(3) The director shall establish application forms and fee amounts for renewal of licenses and reinstatement of expired licenses in the manner authorized in section 24-34-105, C.R.S. A

person renewing or reinstating a 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.

Source: L. 2008: Entire article added, p. 1985, § 2, effective July 1. **L. 2013:** Entire section amended, (SB 13-151), ch. 286, p. 1507, § 8, effective August 7.

12-35.5-109. Fees. All fees collected pursuant to this article shall be determined, collected, and appropriated in the manner set forth in section 24-34-105, C.R.S., and periodically adjusted in accordance with section 24-75-402, C.R.S. The fees shall be adequate to cover the direct and indirect expenses incurred for implementation of this article.

Source: L. 2008: Entire article added, p. 1986, § 2, effective July 1.

12-35.5-110. Scope of article - exclusions - authority for clinical setting. (1) Nothing in this article 35.5 prohibits or requires a massage therapy 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 are to be identified as "student massage therapists" and shall not hold themselves out as licensed massage therapists. Student massage therapists shall practice massage therapy only under the immediate supervision of a massage therapist holding a valid and current license. Faculty members teaching nonclinical aspects of massage therapy are not required to be licensed under this article.

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

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

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

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

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

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

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

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

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

(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 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 meridians;

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

(V) The process of muscle activation techniques.

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

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

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

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

(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 is 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.

Source: L. 2008: Entire article added, p. 1986, § 2, effective July 1. **L. 2011:** IP(1) amended and (1)(f) added, (SB 11-091), ch. 207, p. 898, § 27, effective July 1. **L. 2013:** IP(1) and (1)(a) amended, (SB 13-151), ch. 286, p. 1508, § 9, effective August 7. **L. 2016:** (1)(e) amended and (2) and (3) added, (HB 16-1320), ch. 265, p. 1098, § 4, effective June 8. **L. 2017:** IP(1) and (1)(f)(I)(B) amended, (HB 17-1239), ch. 261, p. 1203, § 5, effective August 9. **L. 2018:** (1)(f)(I)(B) amended, (HB 18-1375), ch. 274, p. 1695, § 5, effective May 29.

Cross references: For the legislative declaration in HB 16-1320, see section 1 of chapter 265, Session Laws of Colorado 2016.

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 licensed massage therapist after the expiration, suspension, or revocation of his or her license;

(b) Engaged in a sexual act with a client while a therapeutic relationship exists. For the purposes of this paragraph (b):

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

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

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

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

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

(f) An alcohol use disorder, as defined in section 27-81-102, or a substance use disorder, as defined in section 27-82-102, or 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, but the director may take into account the licensee's participation in a substance use disorder treatment program when considering disciplinary action;

(g) (I) Failed to notify the director of a physical condition; a physical illness; or a behavioral, mental health, or substance use disorder 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 illness; a physical condition; or a behavioral, mental health, or substance use disorder 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;

(h) Refused to submit to a physical or mental examination when so ordered by the director pursuant to section 12-35.5-114;

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

(j) Been convicted of, 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 a document from a court of competent jurisdiction 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.

(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 licensed or exempt pursuant to this article;

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

(m) Been convicted of, 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., 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;

(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;

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

(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 subsection (1)(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) Repealed.

Source: L. 2008: Entire article added, p. 1987, § 2, effective July 1. **L. 2010:** (1)(k) and (1)(l) amended and (1)(m) added, (HB 10-1128), ch. 172, p. 612, § 8, effective April 29. **L. 2013:** (1)(a), (1)(d), (1)(e), (1)(f), (1)(g), (1)(j), and (1)(k) amended and (1)(n) and (1)(o) added, (SB 13-151), ch. 286, p. 1508, § 10, effective August 7. **L. 2016:** (1)(j) and (1)(m) amended and (1)(p) and (1)(q) added, (HB 16-1320), ch. 265, p. 1099, § 5, effective June 8. **L. 2017:** (1)(f), (1)(g)(I), and (1)(g)(II) amended, (SB 17-242), ch. 263, p. 1271, § 52, effective May 25; IP(1)(q) amended and (1)(q)(III) repealed, (SB 17-294), ch. 264, p. 1386, § 13, effective May 25.

Cross references: For the legislative declaration in HB 16-1320, see section 1 of chapter 265, Session Laws of Colorado 2016. For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-35.5-112. Disciplinary proceedings - injunctions - investigations - hearings - judicial review - fine. (1) The director may revoke, suspend, deny, or refuse to renew a license, issue a letter of admonition to a licensee, or place a licensee on probation in accordance with the disciplinary proceedings described in this section upon proof that the person committed a violation of section 12-35.5-111.

(2) The director may request the attorney general to seek an injunction, in any court of competent jurisdiction, to enjoin any person from engaging in or aiding and abetting an act or practice prohibited by this article. When seeking a temporary restraining order, preliminary injunction, or injunction under this subsection (2), the attorney general is not 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.

(3) (a) The director is authorized to investigate, hold hearings, and gather evidence in all matters related to the exercise and performance of the powers and duties of the director pursuant to article 4 of title 24, C.R.S., and this article.

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

(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 licensee resides or conducts business, upon application by the director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or 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. If a person or licensee fails to obey the order of the court, the court may hold the person or licensee in contempt of court.

(4) (a) The director, the director's staff, any person acting as a witness or 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 liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as director, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts.

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

(5) An employer of a massage therapist shall report to the director any disciplinary action taken against the massage therapist or the resignation of such massage therapist in lieu of disciplinary action for conduct that violates this article.

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

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

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

(c) The complaint discloses misconduct by the 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 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 when the director has reasonable grounds to believe that a licensee has committed any act that violates section 12-35.5-111.

(b) Disciplinary proceedings shall be conducted pursuant to article 4 of title 24, C.R.S., and the hearing and opportunity for review shall be conducted pursuant to that article by the director or by an administrative law judge, at the director's discretion.

(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 the discipline. The director may revoke, suspend, deny, or refuse to renew a license or place a licensee on probation.

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

(8) A final action of the director may be judicially reviewed by the court of appeals in accordance with section 24-4-106 (11), C.R.S., and judicial proceedings for the enforcement of an order of the director may be instituted in accordance with section 24-4-106, C.R.S.

(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.

(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.

Source: L. 2008: Entire article added, p. 1988, § 2, effective July 1. **L. 2013:** (1), (3)(c), (6)(c), (7)(a), (7)(c), and (7)(d) amended and (9) and (10) added, (SB 13-151), ch. 286, p. 1509, § 11, effective August 7. **L. 2016:** (2) amended and (11) added, (HB 16-1320), ch. 265, p. 1100, § 6, effective June 8.

Cross references: For the legislative declaration in HB 16-1320, see section 1 of chapter 265, Session Laws of Colorado 2016.

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.

Source: L. 2013: Entire section added, (SB 13-151), ch. 286, p. 1511, § 12, effective August 7.

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 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 license, the director may issue an order to cease and desist the activity and shall set forth in the order 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 unlicensed practices immediately cease.

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

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

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

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

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (2) does not appear at the hearing, the director may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (2) and such other evidence related to the matter as the director deems appropriate. The director shall issue the order within ten days after the director's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(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 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 directing the person to cease and desist from further unlawful acts or unlicensed practices.

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

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

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

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

Source: L. 2008: Entire article added, p. 1990, § 2, effective July 1. **L. 2013:** (1)(a) and (2)(c)(III) amended, (SB 13-151), ch. 286, p. 1511, § 13, effective August 7.

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

(b) 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, and the refusal is not due to circumstances beyond the licensee's control, the refusal constitutes grounds for discipline pursuant to section 12-35.5-111 (1)(h). When a licensee has refused to submit to an examination, the director may suspend the 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 licensee's fitness to practice.

(c) The director shall proceed with an order for examination and determination of a licensee's fitness to practice in a timely manner.

(2) In an order to a licensee pursuant to subsection (1) of this section to undergo a mental or physical examination, the director shall include the basis of the director's reasonable cause to believe that the licensee is unable to practice with reasonable skill and safety. For purposes of any disciplinary proceeding authorized under this article, the 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 licensee may submit to the director testimony or examination reports from a physician or other licensed health care professional chosen by the licensee and pertaining to any

condition that the director has alleged may preclude the licensee from practicing with reasonable skill and safety. The director may 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.

(4) The results of a mental or physical examination ordered by the director shall not be used as evidence in any proceeding other than one before the director and shall not be deemed public records nor made available to the public.

Source: L. 2008: Entire article added, p. 1992, § 2, effective July 1. **L. 2013:** (1) to (3) amended, (SB 13-151), ch. 286, p. 1511, § 14, effective August 7.

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.

Source: L. 2008: Entire article added, p. 1993, § 2, effective July 1. **L. 2013:** Entire section amended, (SB 13-151), ch. 286, p. 1512, § 15, effective August 7. **L. 2016:** Entire section amended, (HB 16-1320), ch. 265, p. 1100, § 7, effective June 8.

Cross references: For the legislative declaration in HB 16-1320, see section 1 of chapter 265, Session Laws of Colorado 2016.

12-35.5-116. Professional liability insurance required. It is unlawful for any person to practice massage therapy within this state unless the person purchases and maintains professional liability insurance in an amount not less than fifty thousand dollars per claim with an aggregate liability limit for all claims during the year of three hundred thousand dollars. Professional liability insurance required by this section shall cover all acts within the scope of massage therapy practice as defined by section 12-35.5-103.

Source: L. 2008: Entire article added, p. 1993, § 2, effective July 1.

12-35.5-116.5. Confidential agreement to limit practice - violation - grounds for discipline. (1) If a massage therapist has a physical illness; a physical condition; or a behavioral or mental health disorder 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 physical illness; the physical condition; or the behavioral or mental health disorder 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 physical illness; the physical condition; or the behavioral or mental health disorder 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 illness; a physical condition; or a behavioral or mental health disorder 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 physical illness; the physical condition; or the behavioral or mental health disorder, 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 massage 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 massage 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 massage therapist is subject to discipline in accordance with section 12-35.5-112.

(4) This section does not apply to a massage therapist subject to discipline for prohibited activities as described in section 12-35.5-111 (1)(f).

Source: L. 2013: Entire section added, (SB 13-151), ch. 286, p. 1512, § 16, effective August 7. **L. 2017:** (1) and (2)(a) amended, (SB 17-242), ch. 263, p. 1272, § 53, effective May 25.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

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.

Source: L. 2008: Entire article added, p. 1993, § 2, effective July 1. **L. 2013:** Entire section amended, (SB 13-151), ch. 286, p. 1513, § 17, effective August 7.

12-35.5-118. Local government - regulations - enforcement. (1) No city, county, city and county, or other political subdivision of this state shall enact or enforce any local ordinance that regulates the practice or the profession of massage therapy.

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

(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.

Source: L. 2008: Entire article added, p. 1993, § 2, effective July 1. **L. 2013:** (2) amended, (SB 13-151), ch. 286, p. 1513, § 18, effective August 7. **L. 2016:** (3) added, (HB 16-1320), ch. 265, p. 1101, § 8, effective June 8.

Cross references: For the legislative declaration in HB 16-1320, see section 1 of chapter 265, Session Laws of Colorado 2016.

12-35.5-119. Severability. If any provision of this article is held to be invalid, such invalidity shall not affect other provisions of this article that can be given effect without such invalid provision, and to this end the provisions of this article are declared to be severable.

Source: L. 2008: Entire article added, p. 1994, § 2, effective July 1.

12-35.5-120. Repeal of article - review of functions. (1) This article, and the functions of the director as set forth in this article, are repealed, effective September 1, 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) Repealed.

Source: L. 2008: Entire article added, p. 1994, § 2, effective July 1. **L. 2013:** (1) amended and (2) repealed, (SB 13-151), ch. 286, p. 1504, § 1, effective August 7.

ARTICLE 36

Medical Practice

Cross references: For the use of physical force by a physician, see § 18-1-703 (1)(e); for the "Colorado Medical Treatment Decision Act", see article 18 of title 15; for exemption of physicians and surgeons from civil liability for giving emergency assistance, see § 13-21-108; for the exemption from civil liability for persons administering tests to persons suspected of alcohol- or drug-related traffic offenses, see § 42-4-1301.1 (6); for the exemption from civil or criminal liability for physicians examining or treating minor victims of sexual assault, see § 13-22-106; for the exemption from civil or criminal liability for physicians acting pursuant to a declaration under the "Colorado Medical Treatment Decision Act", see § 15-18-110; for limitation on liability regarding transplants and transfusions of blood, see § 13-22-104; for the donation of human tissue, organ, or blood or a component thereof under the "Uniform Commercial Code", see § 4-2-102.

Law reviews: For article, "The Interprofessional Code", see 15 Colo. Law. 1795, 1977, and 2183 (1986) and 16 Colo. Law. 31 (1987); for article, "Administrative Subpoenas Under CRS Title 12: Defensing Potential Abuse", see 22 Colo. Law. (1993); for article, "The Physician

as the Hospital's Employee: SB 95-212", see 24 Colo. Law. 2345 (1995); for article, "Advance Medical Directives and the Authority to Compel Medical Treatment", see 29 Colo. Law. 59 (March 2000).

PART 1

GENERAL PROVISIONS

12-36-101. Short title. This article shall be known and may be cited as the "Colorado Medical Practice Act".

Source: L. 51: p. 562, § 2. **CSA:** C. 109, § 33(2). **CRS 53:** § 91-1-2. **C.R.S. 1963:** § 91-1-2. **L. 79:** Entire section amended, p. 507, § 1, effective July 1.

12-36-102. Legislative declaration. (1) The general assembly declares it to be in the interests of public health, safety, and welfare to enact laws regulating and controlling the practice of the healing arts to the end that the people shall be properly protected against unauthorized, unqualified, and improper practice of the healing arts in this state, and this article shall be construed in conformity with this declaration of purpose.

(2) Repealed.

Source: L. 51: p. 562, § 1. **CSA:** C. 109, § 33(1). **CRS 53:** § 91-1-1. **C.R.S. 1963:** § 91-1-1. **L. 93:** Entire section amended, p. 1697, § 10, effective July 1. **L. 2003:** (2) repealed, p. 911, § 11, effective August 6.

12-36-102.5. Definitions. As used in this article, unless the context otherwise requires:

(1) (a) "Approved fellowship" means a program that meets the following criteria:

(I) Is specialized, clearly defined, and delineated;

(II) Follows the completion of an approved residency;

(III) Provides additional training in a medical specialty or subspecialty; and

(IV) Is either:

(A) Performed in a hospital conforming to the minimum standards for fellowship training established by the accreditation council for graduate medical education or the American osteopathic association, or by a successor of either organization; or

(B) Any other program that is approved by the accreditation council for graduate medical education or the American osteopathic association or a successor of either organization.

(b) "Approved fellowship" includes any other fellowship that the board, upon its own investigation, approves for purposes of issuing a physician training license pursuant to section 12-36-122.

(2) (a) "Approved internship" means an internship:

(I) Of at least one year in a hospital conforming to the minimum standards for intern training established by the accreditation council for graduate medical education or the American osteopathic association or a successor of either organization; or

(II) Approved by either of the organizations specified in subparagraph (I) of this paragraph (a).

(b) "Approved internship" includes any other internship approved by the board upon its own investigation.

(3) (a) "Approved medical college" means a college that:

(I) Conforms to the minimum educational standards for medical colleges as established by the liaison committee on medical education or any successor organization that is the official accrediting body of educational programs leading to the degree of doctor of medicine and recognized for such purpose by the federal department of education and the council on postsecondary accreditation;

(II) Conforms to the minimum education standards for osteopathic colleges as established by the American osteopathic association or any successor organization that is the official accrediting body of education programs leading to the degree of doctor of osteopathy; or

(III) Is approved by either of the organizations specified in subparagraphs (I) and (II) of this paragraph (a).

(b) "Approved medical college" includes any other medical college approved by the board upon its own investigation of the educational standards and facilities of the medical college.

(4) (a) "Approved residency" means a residency:

(I) Performed in a hospital conforming to the minimum standards for residency training established by the accreditation council for graduate medical education or the American osteopathic association or any successor of either organization; or

(II) Approved by either of the organizations specified in subparagraph (I) of this paragraph (a).

(b) "Approved residency" means any other residency approved by the board upon its own investigation.

(5) "Board" means the Colorado medical board created in section 12-36-103 (1).

(6) "License" means the authority to practice medicine, practice as a physician assistant, or practice as an anesthesiologist assistant under this article.

(7) "Licensee" means any physician, physician assistant, or anesthesiologist assistant who is licensed pursuant to this article.

(8) "Telemedicine" means the delivery of medical services and any diagnosis, consultation, or treatment using interactive audio, interactive video, or interactive data communication.

Source: L. 2010: Entire section added with relocations, (HB 10-1260), ch. 403, p. 1972, § 41, effective July 1. **L. 2012:** (6) and (7) amended, (HB 12-1332), ch. 238, p. 1051, § 1, effective August 8.

Editor's note: Subsection (1) is similar to former § 12-36-110.5, subsection (2) is similar to former § 12-36-109, subsection (3) is similar to former § 12-36-108, subsection (4) is similar to former § 12-36-110, and subsection (7) is similar to former § 12-36-106 (6), as they existed prior to 2010.

12-36-103. Colorado medical board - immunity - subject to termination - repeal of article. (1) (a) (I) There is hereby created the Colorado medical board, referred to in this article

as the "board". The board shall consist of sixteen members appointed by the governor and possessing the qualifications specified in this article and as follows:

(A) Eleven physician members;

(B) One member licensed under this article as a physician assistant; and

(C) Four members from the public at large who have no financial or professional association with the medical profession.

(II) The terms of the members of the board shall be four years. For the two physician and one physician assistant appointees added to the board during the calendar year beginning January 1, 2010, the term for one of the physician member appointees shall expire four years after the appointment; the term for the other physician member appointee shall expire three years after the appointment; and the term for the physician assistant appointee shall expire two years after the appointment. Thereafter, the terms of the members of the board shall be four years.

(b) (Deleted by amendment, L. 2003, p. 911, § 12, effective August 6, 2003.)

(2) The board shall be comprised at all times of eight members having the degree of doctor of medicine, three members having the degree of doctor of osteopathy, and one physician assistant, all of whom shall have been licensed in good standing and actively engaged in the practice of their professions in this state for at least three years next preceding their appointments, and four members of the public at large.

(3) If a vacancy in the membership of the board occurs for any cause other than expiration of a term, the governor shall appoint a successor to fill the unexpired portion of the term of the member whose office has been so vacated and shall appoint the new member in the same manner as members for a full term. Members of the board shall remain in office until their successors have been appointed. A member of the board may be removed by the governor for continued neglect of duty, incompetence, or unprofessional or dishonorable conduct.

(4) The board shall elect biennially from its members a president and a vice-president. Meetings of the board or any panel established pursuant to this article shall be held as scheduled by the board in the state of Colorado. Except as provided in section 12-36-118 (6), a majority of the board shall constitute a quorum for the transaction of all business. All meetings of the board shall be deemed to have been duly called and regularly held, and all decisions, resolutions, and proceedings of the board shall be deemed to have been duly authorized, unless the contrary be proved.

(5) (Deleted by amendment, L. 2004, p. 1827, § 67, effective August 4, 2004.)

(6) (a) (I) The provisions of section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the Colorado medical board created by this section.

(II) The review required by this subsection (6) shall include an analysis of physician responsibilities related to recommendations for medical marijuana and the provisions of section 25-1.5-106, C.R.S.

(b) This article is repealed, effective July 1, 2019.

(7) (Deleted by amendment, L. 2010, (HB 10-1260), ch. 403, p. 1948, § 14, effective July 1, 2010.)

Source: L. 51: p. 562, § 3. **CSA:** C. 109, § 33(3). **CRS 53:** § 91-1-3. **C.R.S. 1963:** §§ 91-1-3, 91-1-39. **L. 67:** p. 812, § 1. **L. 73:** p. 1027, § 7. **L. 76:** (1), (2), and (4) amended and (7) added, p. 417, § 1, effective July 1; (6) added, p. 624, § 19, effective July 1. **L. 79:** (4) amended,

p. 507, § 2, effective July 1; (4) amended, p. 910, § 9, effective July 1. **L. 87:** (1) amended, p. 904, § 7, effective June 15. **L. 88:** (1) amended, p. 521, § 1, effective July 1. **L. 91:** (6) amended, p. 682, § 26, effective April 20. **L. 95:** (4), (5), and (6)(b) amended, p. 1056, § 1, effective July 1. **L. 2000:** (1)(a) amended, p. 173, § 2, effective March 17. **L. 2001:** (2) amended, p. 1269, § 12, effective June 5. **L. 2003:** (1) amended, p. 911, § 12, effective August 6. **L. 2004:** (3) and (5) amended, p. 1827, § 67, effective August 4. **L. 2010:** (6)(a) amended, (SB 10-109), ch. 356, p. 1696, § 5, effective June 7; (1)(a), (2), (3), (4), (6)(a), (6)(b), and (7) amended, (HB 10-1260), ch. 403, pp. 1948, 1943, §§ 14, 1, effective July 1.

Editor's note: Amendments to subsection (6)(a) by House Bill 10-1260 and Senate Bill 10-109 were harmonized.

Cross references: For the legislative declaration contained in the 2000 act amending subsection (1)(a), see section 1 of chapter 55, Session Laws of Colorado 2000.

12-36-104. Powers and duties of board. (1) In addition to all other powers and duties conferred and imposed upon the board by this article, the board has the following powers and duties to:

(a) Adopt and promulgate, under the provisions of section 24-4-103, C.R.S., such rules and regulations as the board may deem necessary or proper to carry out the provisions and purposes of this article which shall be fair, impartial, and nondiscriminatory;

(b) (I) Make investigations, hold hearings, and take evidence in all matters relating to the exercise and performance of the powers and duties vested in the board.

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

(III) Upon failure of any witness to comply with such subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board or director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the board or 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 to obey the order of the court may be punished by the court as a contempt of court.

(c) (Deleted by amendment, L. 2010, (HB 10-1260), ch. 403, p. 1951, § 16, effective July 1, 2010.)

(d) Repealed.

(e) Aid law enforcement in the enforcement of this article and in the prosecution of all persons, firms, associations, or corporations charged with the violation of any of its provisions.

(2) Repealed.

(3) To facilitate the licensure of qualified applicants and address the unlicensed practice of medicine, the unlicensed practice as a physician assistant, and the unlicensed practice as an

anesthesiologist assistant, the president of the board shall establish a licensing panel in accordance with section 12-36-111.3 to perform licensing functions in accordance with this article and review and resolve matters relating to the unlicensed practice of medicine, unlicensed practice as a physician assistant, and unlicensed practice as an anesthesiologist assistant. Two panel members constitute a quorum of the panel. Any action taken by a quorum of the panel constitutes action by the board.

(4) To facilitate the licensure of a physician under the "Interstate Medical Licensure Compact Act", part 36 of article 60 of title 24, C.R.S., the board shall obtain a set of fingerprints from an applicant for licensure under the compact and shall forward the fingerprints to the Colorado bureau of investigation for the purpose of obtaining a fingerprint-based criminal history record check. Upon receipt of fingerprints and payment for the costs, the Colorado bureau of investigation shall conduct a state and national fingerprint-based criminal history record check using records of the Colorado bureau of investigation and the federal bureau of investigation. The board is the authorized agency to receive information regarding the result of a national criminal history record check. The applicant whose fingerprints are checked shall pay the actual costs of the state and national fingerprint-based criminal history record check.

Source: L. 51: p. 564, § 4. **CSA:** C. 109, § 33(4). **CRS 53:** § 91-1-4. **C.R.S. 1963:** § 91-1-4. **L. 64:** p. 150, § 91. **L. 76:** (1)(d) repealed, p. 421, § 8, effective July 1. **L. 77:** (1)(b) amended, p. 677, § 1, effective July 1. **L. 79:** (1)(b) and (2) amended, p. 508, § 3, effective July 1. **L. 83:** (2) amended, p. 830, § 20, July 1. **L. 94:** (3) added, p. 501, § 1, effective March 31. **L. 96:** (2) amended, p. 1243, § 105, effective August 7. **L. 97:** (2) repealed, p. 1479, § 27, effective June 3. **L. 2004:** (1)(b) amended, p. 1827, § 68, effective August 4. **L. 2010:** (1)(c), (1)(e), and (3) amended, (HB 10-1260), ch. 403, p. 1951, § 16, effective July 1. **L. 2012:** (3) amended, (HB 12-1332), ch. 238, p. 1051, § 2, effective August 8. **L. 2016:** (4) added, (HB 16-1047), ch. 245, p. 1011, § 2, effective June 8.

Cross references: For the legislative declaration contained in the 1996 act amending subsection (2), as said subsection existed prior to 1997, see section 1 of chapter 237, Session Laws of Colorado 1996.

12-36-104.5. Limitation on authority. The authority granted the board under the provisions of this article shall not be construed to authorize the board to arbitrate or adjudicate fee disputes between licensees or between a licensee and any other party.

Source: L. 89: Entire section added, p. 672, § 12, effective July 1.

Cross references: For the legislative declaration contained in the 1989 act enacting this section, see section 1 of chapter 111, Session Laws of Colorado 1989.

12-36-105. Surety bond. (Repealed)

Source: L. 51: p. 565, § 5. **CSA:** C. 109, § 33(5). **CRS 53:** § 91-1-5. **C.R.S. 1963:** § 91-1-5. **L. 76:** Entire section amended, p. 418, § 2, effective July 1. **L. 79:** Entire section repealed, p. 525, § 31, effective July 1.

12-36-106. Practice of medicine defined - exemptions from licensing requirements - unauthorized practice by physician assistants and anesthesiologist assistants - penalties - rules - repeal. (1) For the purpose of this article 36, "practice of medicine" means:

(a) Holding out one's self to the public within this state as being able to diagnose, treat, prescribe for, palliate, or prevent any human disease; ailment; pain; injury; deformity; physical condition; or behavioral, mental health, or substance use disorder, whether by the use of drugs, surgery, manipulation, electricity, telemedicine, the interpretation of tests, including primary diagnosis of pathology specimens, images, or photographs, or any physical, mechanical, or other means whatsoever;

(b) Suggesting, recommending, prescribing, or administering any form of treatment, operation, or healing for the intended palliation, relief, or cure of a person's physical disease; ailment; injury; condition; or behavioral, mental health, or substance use disorder;

(c) The maintenance of an office or other place for the purpose of examining or treating persons afflicted with disease; injury; or a behavioral, mental health, or substance use disorder;

(d) Using the title M.D., D.O., physician, surgeon, or any word or abbreviation to indicate or induce others to believe that one is licensed to practice medicine in this state and engaged in the diagnosis or treatment of persons afflicted with disease; injury; or a behavioral, mental health, or substance use disorder, except as otherwise expressly permitted by the laws of this state enacted relating to the practice of any limited field of the healing arts;

(e) Performing any kind of surgical operation upon a human being;

(f) The practice of midwifery, except:

(I) Services rendered by certified nurse-midwives properly licensed and practicing in accordance with the provisions of article 38 of this title; or

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

(B) This subparagraph (II) is repealed, effective September 1, 2023.

(g) The delivery of telemedicine. Nothing in this paragraph (g) authorizes physicians to deliver services outside their scope of practice or limits the delivery of health services by other licensed professionals, within the professional's scope of practice, using advanced technology, including, but not limited to, interactive audio, interactive video, or interactive data communication.

(2) If a person who does not possess and has not filed a license to practice medicine, practice as a physician assistant, or practice as an anesthesiologist assistant in this state, as provided in this article, and who is not exempted from the licensing requirements under this article, performs any of the acts that constitute the practice of medicine as defined in this section, the person shall be deemed to be practicing medicine, practicing as a physician assistant, or practicing as an anesthesiologist assistant in violation of this article.

(3) A person may engage in, and shall not be required to obtain a license or a physician training license under this article 36 with respect to, any of the following acts:

(a) The gratuitous rendering of services in cases of emergency;

(b) The occasional rendering of services in this state by a physician if the physician:

(I) Is licensed and lawfully practicing medicine in another state or territory of the United States without restrictions or conditions on the physician's license;

(II) Does not have any established or regularly used medical staff membership or clinical privileges in this state;

(III) Is not party to any contract, agreement, or understanding to provide services in this state on a regular or routine basis;

(IV) Does not maintain an office or other place for the rendering of such services;

(V) Has medical liability insurance coverage in the amounts required pursuant to section 13-64-302, C.R.S., for the services rendered in this state; and

(VI) Limits the services provided in this state to an occasional case or consultation;

(c) The practice of dentistry under the conditions and limitations defined by the laws of this state;

(d) The practice of podiatry under the conditions and limitations defined by the laws of this state;

(e) The practice of optometry under the conditions and limitations defined by the laws of this state;

(f) The practice of chiropractic under the conditions and limitations defined by the laws of this state;

(g) The practice of religious worship;

(h) The practice of Christian Science, with or without compensation;

(i) The performance by commissioned medical officers of the armed forces of the United States of America or of the United States public health service or of the United States veterans administration of their lawful duties in this state as such officers;

(j) The rendering of nursing services and delegated medical functions by registered or other nurses in the lawful discharge of their duties as such;

(k) The rendering of services by students currently enrolled in an approved medical college;

(l) The rendering of services, other than the prescribing of drugs, by persons qualified by experience, education, or training, under the personal and responsible direction and supervision of a person licensed under the laws of this state to practice medicine, but nothing in this exemption shall be deemed to extend or limit the scope of any license, and this exemption shall not apply to persons otherwise qualified to practice medicine but not licensed to so practice in this state;

(m) The practice by persons licensed or registered under any law of this state to practice a limited field of the healing arts not specifically designated in this section, under the conditions and limitations defined by such law;

(n) (Deleted by amendment, L. 2000, p. 30, § 1, effective March 10, 2000.)

(o) (I) The administration and monitoring of medications in facilities as provided in part 3 of article 1.5 of title 25, C.R.S.;

(II) Repealed.

(p) The rendering of acupuncture services subject to the conditions and limitations provided in article 29.5 of this title;

(q) (I) The administration of nutrition or fluids through gastrostomy tubes as provided in sections 25.5-10-204 (2)(j) and 27-10.5-103 (2)(i), C.R.S., as a part of residential or day program services provided through service agencies approved by the department of health care policy and financing pursuant to section 25.5-10-208, C.R.S.;

(II) Repealed.

(r) (I) The administration of topical and aerosol medications within the scope of physical therapy practice as provided in section 12-41-113 (2);

(II) The performance of wound debridement under a physician's order within the scope of physical therapy practice as provided in section 12-41-113 (3) or the performance of noninvasive wound debridement within the scope of practice as a physical therapist assistant as provided in section 12-41-209 (1)(f);

(s) The rendering of services by an athletic trainer subject to the conditions and limitations provided in article 29.7 of this title;

(t) (I) The rendering of prescriptions by an advanced practice nurse pursuant to section 12-38-111.6.

(II) Repealed.

(II.5) On or after July 1, 2010, a physician who serves as a preceptor or mentor to an advanced practice nurse pursuant to sections 12-36-106.4 and 12-38-111.6 (4.5) shall have a license in good standing without disciplinary sanctions to practice medicine in Colorado and an unrestricted registration by the drug enforcement administration for the same schedules as the collaborating advanced practice nurse.

(III) Repealed.

(IV) It is unlawful and a violation of this article for any person, corporation, or other entity to require payment or employment as a condition of entering into a mentorship relationship with the advanced practice nurse pursuant to sections 12-36-106.4 and 12-38-111.6 (4.5), but the mentor may request reimbursement of reasonable expenses and time spent as a result of the mentorship relationship.

(u) (I) The provision, to a treating physician licensed in this state, of the results of laboratory tests, excluding histopathology tests and cytology tests, performed in a laboratory certified under the federal "Clinical Laboratories Improvement Act of 1967", as amended, 42 U.S.C. sec. 263a, to perform high complexity testing, as such term is used in 42 CFR 493.1701 and any related or successor provision;

(II) The provision, to a pathologist licensed in this state, of the results of histopathology tests and cytology tests performed in a laboratory certified under the federal "Clinical Laboratories Improvement Act of 1967", as amended, 42 U.S.C. sec. 263a, to perform high complexity testing, as such term is used in 42 CFR 493.1701 and any related or successor provision;

(v) The rendering of services by any person serving an approved internship, residency, or fellowship as defined by this article for an aggregate period not to exceed sixty days;

(w) A physician lawfully practicing medicine in another state or territory providing medical services to athletes or team personnel registered to train at the United States Olympic training center at Colorado Springs or providing medical services at an event in this state sanctioned by the United States Olympic committee. The physician's medical practice shall be contingent upon the requirements and approvals of the United States Olympic committee and shall not exceed ninety days per calendar year.

(x) Repealed.

(y) The rendering of services by an emergency medical service provider certified under section 25-3.5-203, C.R.S., if the services rendered are consistent with rules adopted by the executive director or chief medical officer, as applicable, under section 25-3.5-206, C.R.S., defining the duties and functions of emergency medical service providers;

(z) Rendering complementary and alternative health care services consistent with section 6-1-724, C.R.S.;

(aa) Practicing as a medical director pursuant to the "Recognition of Emergency Medical Services Personnel Licensure Interstate Compact Act", part 35 of article 60 of title 24, C.R.S., so long as the person is licensed in good standing in a state that has enacted and is a member of the compact.

(3.2) Nothing in this section shall be construed to prohibit patient consultation between a practicing physician licensed in Colorado and a practicing physician licensed in another state or jurisdiction.

(3.5) (Deleted by amendment, L. 2009, (SB 09-026), ch. 373, p. 2031, § 2, effective July 1, 2009.)

(4) All licensees designated or referred to in subsection (3) of this section, who are licensed to practice a limited field of the healing arts, shall confine themselves strictly to the field for which they are licensed and to the scope of their respective licenses, and shall not use any title, word, or abbreviation mentioned in paragraph (d) of subsection (1) of this section, except to the extent and under the conditions expressly permitted by the law under which they are licensed.

(5) (a) A person licensed under the laws of this state to practice medicine may delegate to a physician assistant licensed by the board pursuant to section 12-36-107.4 the authority to perform acts that constitute the practice of medicine and acts that physicians are authorized by law to perform to the extent and in the manner authorized by rules promulgated by the board, including the authority to prescribe medication, including controlled substances, and dispense only the drugs designated by the board. Such acts must be consistent with sound medical practice. Each prescription for a controlled substance, as defined in section 18-18-102 (5), C.R.S., issued by a physician assistant licensed by the board shall be imprinted with the name of the physician assistant's supervising physician. For all other prescriptions issued by a physician assistant, the name and address of the health facility and, if the health facility is a multi-speciality organization, the name and address of the speciality clinic within the health facility where the physician assistant is practicing must be imprinted on the prescription. Nothing in this subsection (5) limits the ability of otherwise licensed health personnel to perform delegated acts. The dispensing of prescription medication by a physician assistant is subject to section 12-42.5-118 (6).

(b) (I) If the authority to perform an act is delegated pursuant to paragraph (a) of this subsection (5), the act shall not be performed except under the personal and responsible direction and supervision of a person licensed under the laws of this state to practice medicine. A licensed physician may be responsible for the direction and supervision of up to four physician assistants at any one time, and may be responsible for the direction and supervision of more than four physician assistants upon receiving specific approval from the board. The board, by rule, may define what constitutes appropriate direction and supervision of a physician assistant.

(II) For purposes of this subsection (5), "personal and responsible direction and supervision" means that the direction and supervision of a physician assistant is personally rendered by a licensed physician practicing in the state of Colorado and is not rendered through intermediaries. The extent of direction and supervision shall be determined by rules promulgated by the board and as otherwise provided in this paragraph (b); except that, when a physician assistant is performing a delegated medical function in an acute care hospital, the board shall allow supervision and direction to be performed without the physical presence of the physician during the time the delegated medical functions are being implemented if:

(A) Such medical functions are performed where the supervising physician regularly practices or in a designated health manpower shortage area;

(B) The licensed supervising physician reviews the quality of medical services rendered by the physician assistant by reviewing the medical records to assure compliance with the physicians' directions; and

(C) The performance of the delegated medical function otherwise complies with the board's regulations and any restrictions and protocols of the licensed supervising physician and hospital.

(III) Repealed.

(c) to (f) (Deleted by amendment, L. 2010, (HB 10-1260), ch. 403, p. 1966, § 35, effective July 1, 2010.)

(g) Pursuant to section 12-36-129 (6), the board may apply for an injunction to enjoin any person from performing delegated medical acts that are in violation of this section or of any rules promulgated by the board.

(h) This subsection (5) shall not apply to any person who performs delegated medical tasks within the scope of the exemption contained in paragraph (l) of subsection (3) of this section.

(i) and (j) (Deleted by amendment, L. 2010, (HB 10-1260), ch. 403, p. 1966, § 35, effective July 1, 2010.)

(k) Repealed. / (Deleted by amendment, L. 2010, (HB 10-1260), ch. 403, p. 1966, § 35, effective July 1, 2010.)

(6) Repealed.

(7) (a) A physician licensed in this state that practices as an anesthesiologist may delegate tasks constituting the practice of medicine to an anesthesiologist assistant licensed pursuant to section 12-36-107.3 who has been educated and trained in accordance with rules promulgated by the board. The delegated medical tasks referred to in this paragraph (a) are limited to the medical functions that constitute the delivery or provision of anesthesia services as practiced by the supervising physician.

(b) An anesthesiologist assistant shall perform delegated medical tasks only under the direct supervision of a physician who practices as an anesthesiologist. A patient or the patient's representative shall be advised if an anesthesiologist assistant is involved in the care of a patient. Unless approved by the board, a supervising physician shall not concurrently supervise more than three anesthesiologist assistants; except that the board may, by rule, allow an anesthesiologist to supervise up to four anesthesiologist assistants on and after July 1, 2016. The board may consider information from anesthesiologists, anesthesiologist assistants, patients, and other sources when considering a ratio change of supervision of anesthesiologist assistants. Direct supervision of anesthesiologist assistants may be transferred between anesthesiologists of the same group or practice in accordance with generally accepted standards of care.

(c) Nothing in this subsection (7) affects the practice of dentists and dental assistants practicing pursuant to article 35 of this title.

Source: L. 51: p. 565, § 6. **CSA:** C. 109, § 33(6). **CRS 53:** § 91-1-6. **C.R.S. 1963:** § 91-1-6. **L. 73:** p. 1025, § 1. **L. 77:** (1)(f) amended and (3)(n) added, p. 684, §§ 1, 2, effective May 23. **L. 79:** (1)(d) and (4) amended, p. 508, § 4, effective July 1. **L. 80:** (1)(f) and (3)(n) amended, p. 494, § 2, effective July 1. **L. 83:** (3)(l) amended and (5) added, p. 537, § 1, effective July 1. **L.**

84: (5)(a) amended, p. 419, § 1, effective March 16. **L. 85:** (5)(a), (5)(c)(III), (5)(d), (5)(i), and (5)(j) amended and (5)(c)(IV) added, p. 518, § 3, effective July 1. **L. 86:** (3)(m) amended, p. 653, § 30, effective July 1; (5)(d) R&RE and (5)(e) and (5)(j) amended, pp. 638, 639, §§ 7, 8, effective July 1. **L. 88:** (3)(o) added, p. 1001, § 4, effective July 1. **L. 89:** (3)(p) added, p. 661, § 2, effective June 6. **L. 90:** (3)(j) amended, p. 819, § 2. **L. 91:** (3)(q) added, p. 1162, § 2, effective March 29; (3)(o)(II) amended, p. 929, § 3, effective April 1; (3)(s) and (3.5) added, p. 1640, § 1, effective May 7; (3)(r) added, p. 1667, § 3, effective July 1. **L. 92:** (5)(b) amended, p. 2055, § 2, effective April 23; (3)(q)(II) repealed, p. 2010, § 3, effective June 2; (3)(o) amended, p. 1148, § 2, effective July 1. **L. 93:** (1)(f) amended, p. 1911, § 1, effective July 1. **L. 94:** (3)(q)(I) amended, p. 2637, § 78, effective July 1. **L. 95:** (3)(t) added, p. 1087, § 11, and (3.5)(d)(V), (5)(a), (5)(e), and (5)(j) amended, p. 1057, § 2, effective July 1. **L. 96:** (1)(f)(II) amended, p. 400, § 10, effective April 17; (3)(o)(II) amended, p. 797, § 8, effective May 23; (3.5)(f) amended, p. 1226, § 36, effective August 7. **L. 98:** (1)(a) and (3)(b) amended and (3)(u) and (3.2) added, pp. 1104, 1105, §§ 1, 2, effective July 1; (3)(o) amended, p. 542, § 2, effective July 1. **L. 2000:** (1)(f) and (3)(n) amended, p. 30, § 1, effective March 10. **L. 2001:** (1)(f)(II)(B) amended, p. 1258, § 1, effective June 5; (3)(r) amended, p. 1256, § 18, effective July 1; (5)(a), (5)(b)(III), IP(5)(c), (5)(d), (5)(e), (5)(f), and (5)(i) amended and (6) added, p. 176, § 2, effective August 8; (1)(g) added, p. 1162, § 7, effective January 1, 2002. **L. 2002:** IP(3) and (3)(k) amended and (3)(v) added, p. 545, § 1, effective August 7. **L. 2003:** (3)(o)(I) amended, p. 701, § 11, effective July 1. **L. 2006:** (5)(e) amended, p. 1492, § 19, effective June 1; (1)(g) amended, p. 1546, § 2, effective July 1; (5)(b)(III) repealed, p. 795, § 27, effective July 1; (5)(k) added, p. 87, § 26, effective August 7. **L. 2009:** (3)(o)(II) repealed, (SB 09-128), ch. 365, p. 1914, § 4, effective July 1; (3)(s) and (3.5) amended, (SB 09-026), ch. 373, p. 2031, § 2, effective July 1; (3)(t)(II) and (3)(t)(III) amended and (3)(t)(II.5) and (3)(t)(IV) added, (SB 09-239), ch. 401, p. 2181, § 25, effective July 1. **L. 2010:** (3)(w) and (3)(x) added, (HB 10-1128), ch. 172, p. 612, § 9, effective April 29; (1)(b), (1)(g), (2), IP(3), (3)(b), (5)(a), (5)(b)(I), IP(5)(b)(II), (5)(b)(II)(B), (5)(c) to (5)(g), (5)(i), (5)(j), and (5)(k) amended, (3)(x), (5)(k), and (6) repealed, and (3)(y) and (3)(z) added, (HB 10-1260), ch. 403, pp. 1957, 1966, 1959, 1974, 1948, §§ 25, 35, 26, 44, 13, effective July 1. **L. 2011:** (5)(a) amended, (HB 11-1303), ch. 264, p. 1150, § 12, effective August 10. **L. 2012:** IP(3) and (3)(y) amended, (HB 12-1059), ch. 271, p. 1432, § 7, effective July 1; (5)(a) amended, (HB 12-1311), ch. 281, p. 1611, § 15, effective July 1; (2) amended and (7) added, (HB 12-1332), ch. 238, p. 1052, § 3, effective August 8. **L. 2013:** (3)(z) added, (SB 13-215), ch. 399, p. 2335, § 3, effective June 5; (3)(q)(I) amended, (HB 13-1314), ch. 323, p.1801, § 19, effective March 1, 2014. **L. 2015:** (3)(aa) added, (HB 15-1015), ch. 171, p. 540, § 3, effective August 5. **L. 2016:** (1)(f)(II) RC&RE, (HB 16-1360), ch. 350, p. 1427, § 10, effective August 10; (5)(a) amended, (SB 16-158), ch. 204, p. 724, § 8, effective August 10. **L. 2017:** IP(1) and (1)(a) to (1)(d) amended, (SB 17-242), ch. 263, p. 1272, § 54, effective May 25. **L. 2018:** IP(3) and (3)(r)(II) amended, (HB 18-1155), ch. 315, p. 1902, § 14, effective September 1.

Editor's note: (1) Subsection (5)(c) was relocated to § 12-36-107.4 (1), subsection (5)(d) was relocated to § 12-36-107.4 (2), subsection (5)(e) was relocated to § 12-36-107.4 (4), subsection (5)(f) was relocated to § 12-36-107.4 (5), subsection (5)(i) was relocated to § 12-36-107.4 (6), and subsection (6) was relocated to § 12-36-102.5 (7) in 2010.

(2) Amendments to subsection (5)(k) by sections 35 and 44 of House Bill 10-1260 were harmonized.

(3) Subsection (3)(z) was lettered as (3)(w) in House Bill 10-1260, but has been relettered on revision since it is identical to section 12-36-106 (3)(w) as added by House Bill 10-1128.

(4) Subsection (3)(t)(II) provided for the repeal of subsection (3)(t)(II), effective July 1, 2010. (See L. 2009, p. 2181.)

(5) Subsection (3)(t)(III)(D) provided for the repeal of subsection (3)(t)(III), effective July 1, 2010. (See L. 2009, p. 2181.)

(6) Subsection (1)(f)(II)(B) provided for the repeal of subsection (1)(f)(II), effective July 1, 2011. (See L. 2001, p. 1258.)

Cross references: (1) For the legislative declaration contained in the 1996 act amending subsection (3.5)(f), see section 1 of chapter 237, Session Laws of Colorado 1996. For the legislative declaration contained in the 2001 act enacting subsection (1)(g), see section 1 of chapter 300, Session Laws of Colorado 2001.

(2) For the legislative declaration in SB 16-158, see section 1 of chapter 204, Session Laws of Colorado 2016. For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-36-106.3. Collaborative agreements with advanced practice nurses - repeal. (Repealed)

Source: L. 95: Entire section added, p. 1088, § 12, effective July 1. **L. 2001:** (1) amended, p. 178, § 3, effective August 8. **L. 2009:** (1) amended and (4) added, (SB 09-239), ch. 401, p. 2179, § 23, effective July 1.

Editor's note: Subsection (4) provided for the repeal of this section, effective July 1, 2010. (See L. 2009, p. 2179.)

12-36-106.4. Collaboration with advanced practice nurses with prescriptive authority - mentorships - board rules. (1) (a) A physician licensed pursuant to this article may, and is encouraged to, serve as a mentor to an advanced practice nurse who is applying for prescriptive authority pursuant to section 12-38-111.6 (4.5). A physician who serves as a mentor to an advanced practice nurse seeking prescriptive authority shall:

(I) Be practicing in Colorado and shall have education, training, experience, and active practice that corresponds with the role and population focus of the advanced practice nurse; and

(II) Have a license in good standing without disciplinary sanctions to practice medicine in Colorado and an unrestricted registration by the drug enforcement administration for the same schedules as the advanced practice nurse.

(b) A physician serving as a mentor to an advanced practice nurse pursuant to section 12-38-111.6 (4.5) shall not require payment or employment as a condition of entering into the mentorship relationship, but the physician may request reimbursement of reasonable expenses and time spent as a result of the mentorship relationship.

(c) Upon successful completion of a mentorship as described in section 12-38-111.6 (4.5)(b)(I), the physician shall verify by his or her signature that the advanced practice nurse has successfully completed the mentorship within the required period.

(2) While serving as a mentor pursuant to section 12-38-111.6 (4.5)(b)(I), a physician shall assist the advanced practice nurse in developing an articulated plan for safe prescribing, as described in section 12-38-111.6 (4.5)(b)(II) and shall verify through his or her signature that the advanced practice nurse has developed an articulated plan in compliance with said section.

(3) For purposes of an advanced practice nurse who obtained prescriptive authority prior to July 1, 2010, as described in section 12-38-111.6 (4.5)(c), or who has prescriptive authority from another state and obtains prescriptive authority in this state, as described in section 12-38-111.6 (4.5)(d), physicians may, and are encouraged to, assist those advanced practice nurses in developing the articulated plans required by those sections and verifying, through the physician's signature, the development of the required plans. The physician verifying an advanced practice nurse's articulated plan shall be practicing in Colorado and have education, training, experience, and active practice that corresponds with the role and population focus of the advanced practice nurse.

(4) Repealed.

Source: L. 2009: Entire section added, (SB 09-239), ch. 401, p. 2180, § 24, effective July 1. **L. 2010:** (4)(b) amended, (HB 10-1260), ch. 403, p. 1952, § 18, effective July 1. **L. 2015:** IP(1)(a) and (1)(b) amended and (4) repealed, (SB 15-197), ch. 197, p. 672, § 5, effective September 1.

12-36-106.5. Child health associates - scope of practice. On and after July 1, 1990, any person who, on June 30, 1990, was certified only as a child health associate under the laws of this state shall, upon application to the board, be granted licensure as a physician assistant. The practice of any such person shall be subject to sections 12-36-106 (5) and 12-36-107.4; except that such practice shall be limited to patients under the age of twenty-one.

Source: L. 86: Entire section added, p. 639, § 9, effective July 1. **L. 2001:** Entire section amended, p. 178, § 4, effective August 8. **L. 2010:** Entire section amended, (HB 10-1260), ch. 403, p. 1980, § 57, effective July 1.

12-36-107. Qualifications for licensure. (1) Subject to the other conditions and provisions of this article, a license to practice medicine shall be granted by the board to an applicant only upon the basis of:

(a) The passing by the applicant of an examination approved by the board;

(b) The applicant's passage of examinations conducted by the national board of medical examiners, the national board of examiners for osteopathic physicians and surgeons, the federation of state medical boards, or any successor to said organizations, as approved by the board;

(c) Any combination of the examinations provided in paragraphs (a) and (b) of this subsection (1) approved by the board;

(d) (Deleted by amendment, L. 2010, (HB 10-1260), ch. 403, p. 1959, § 27, effective July 1, 2010.)

(e) (I) Endorsement, if the applicant for licensure by endorsement:

(A) Files an application and pays a fee as prescribed by the board;

(B) Holds a current, valid license in a jurisdiction that requires qualifications substantially equivalent to the qualifications for licensure in this state as specified in this section;

(C) Submits written verification that he or she has actively practiced medicine in another jurisdiction for at least five of the immediately preceding seven years or has otherwise maintained continued competency as determined by the board; and

(D) Submits proof satisfactory to the board that he or she has not been and is not subject to final or pending disciplinary or other action by any state or jurisdiction in which the applicant is or has been previously licensed; except that, if the applicant is or has been subject to such action, the board may review the action to determine whether the underlying conduct warrants refusal of a license pursuant to section 12-36-116.

(II) Upon receipt of all documents required by this paragraph (e), the board shall review the application and make a determination of the applicant's qualification to be licensed by endorsement.

(2) No person shall be granted a license to practice medicine as provided by subsection (1) of this section unless such person:

(a) Is at least twenty-one years of age;

(b) Is a graduate of an approved medical college; and

(c) Has completed either an approved internship of at least one year or at least one year of postgraduate training approved by the board.

(3) to (5) Repealed.

Source: L. 51: p. 567, § 7. **CSA:** C. 109, § 33(7). **CRS 53:** § 91-1-7. **C.R.S. 1963:** § 91-1-7. **L. 73:** pp. 525, 1025, §§ 48, 2. **L. 76:** (1), (1)(b), and (2) amended, p. 413, § 6, effective July 1. **L. 77:** (2) amended, p. 642, § 3, effective March 15. **L. 79:** Entire section amended, p. 509, § 5, effective July 1. **L. 81:** (3) added, p. 776, § 1, effective May 18. **L. 83:** (4) added, p. 540, § 1, effective May 26. **L. 84:** (3)(a) R&RE and (3)(b) amended, pp. 420, 421, §§ 1, 2, effective March 19. **L. 85:** (2) amended, p. 519, § 4, effective July 1. **L. 95:** (2) amended, p. 1057, § 3, effective July 1. **L. 99:** (5) added, p. 182, § 2, effective March 31. **L. 2004:** (3)(b) amended, p. 379, § 2, effective April 8. **L. 2006:** IP(3)(a)(I) and (3)(b) amended and (3)(c) added, p. 1168, § 1, effective May 25. **L. 2010:** (4) and (5) repealed, (HB 10-1128), ch. 172, p. 613, § 10, effective April 29; IP(1), (1)(b), (1)(d), (2)(b), and (2)(c) amended, (1)(e) added, and (3), (4), and (5) repealed, (HB 10-1260), ch. 403, pp. 1959, 1967, 1955, §§ 27, 36, 21, effective July 1.

Editor's note: Subsection (3) was relocated to § 12-36-107.2 in 2010.

Cross references: For the legislative declaration contained in the 1999 act enacting subsection (5), see section 1 of chapter 63, Session Laws of Colorado 1999. For the legislative declaration contained in the 2004 act amending subsection (3)(b), see section 1 of chapter 118, Session Laws of Colorado 2004.

12-36-107.2. Distinguished foreign teaching physician license - qualifications. (1) Notwithstanding any other provision of this article, an applicant of noteworthy and recognized

professional attainment who is a graduate of a foreign medical school and who is licensed in a foreign jurisdiction, if that jurisdiction has a licensing procedure, may be granted a distinguished foreign teaching physician license to practice medicine in this state, upon application to the board in the manner determined by the board, if the following conditions are met:

(a) The applicant has been invited by a medical school in this state to serve as a full-time member of its academic faculty for the period of his or her appointment, at a rank equal to an associate professor or higher;

(b) The applicant's medical practice is limited to that required by his or her academic position, the limitation is so designated on the license in accordance with board procedure, and the medical practice is also limited to the core teaching hospitals affiliated with the medical school, as identified by the board, on which the applicant is serving as a faculty member.

(2) An applicant who meets the qualifications and conditions set forth in subsection (1) of this section but is not offered the rank of associate professor or higher may be granted a temporary license, for one year only, to practice medicine in this state, as a member of the academic faculty, at the discretion of the board and in the manner determined by the board. If the applicant is granted a temporary license, he or she shall practice only under the direct supervision of a person who has the rank of associate professor or higher.

(3) A distinguished foreign teaching physician license is effective and in force only while the holder is serving on the academic staff of a medical school. The license expires one year after the date of issuance and may be renewed annually only after the board has specifically determined that the conditions specified in subsection (1) or (2) of this section will continue during the ensuing period of licensure. The board may require an applicant for licensure under this section to present himself or herself to the board for an interview. The board may withdraw licensure granted under this section prior to the expiration of the license for unprofessional conduct as defined in section 12-36-117.

(4) The board may establish and charge a fee for a distinguished foreign teaching physician license pursuant to section 24-34-105, C.R.S., not to exceed the amount of the fee for renewal of a physician's license.

(5) The board shall promulgate rules specifying standards related to the qualification and supervision of distinguished foreign teaching physicians.

Source: L. 2010: Entire section added with relocations, (HB 10-1260), ch. 403, p. 1967, § 37, effective July 1. **L. 2013:** (3) amended, (SB 13-042), ch. 135, p. 445, § 1, effective April 19.

Editor's note: This section is similar to former § 12-36-107 (3) as it existed prior to 2010.

12-36-107.3. Anesthesiologist assistant license - qualifications - effective date. (1) To be licensed as an anesthesiologist assistant under this article, an applicant must be at least twenty-one years of age and must have:

(a) Successfully completed an education program for anesthesiologist assistants that conforms to standards delineated by the commission on accreditation of allied health education programs, or its successor organization, and approved by the board;

(b) Successfully completed the national certifying examination for anesthesiologist assistants that is administered by the national commission for certification of anesthesiologist assistants or a successor organization; and

(c) Submitted an application to the board in the manner designated by the board and paid the appropriate fee established by the board pursuant to section 24-34-105, C.R.S.

(2) A person applying for a license to practice as an anesthesiologist assistant in this state shall notify the board, in connection with his or her application for licensure, of the commission of any act that would be grounds for disciplinary action against a licensed anesthesiologist assistant under section 12-36-117, along with an explanation of the circumstances of the act. The board may deny licensure to any applicant as set forth in section 12-36-116.

(3) A person licensed to practice as an anesthesiologist assistant shall not perform any act that constitutes the practice of medicine within a hospital or ambulatory surgical center licensed pursuant to part 1 of article 3 of title 25, C.R.S., or required to obtain a certificate of compliance pursuant to section 25-1.5-103 (1)(a)(II), C.R.S., unless the licensed anesthesiologist assistant obtains authorization from the governing board of the hospital or ambulatory surgical center. The governing board of a hospital or ambulatory surgical center may grant, deny, or limit a licensed anesthesiologist assistant's authorization based on the governing board's established procedures.

(4) The board may take any disciplinary action with respect to an anesthesiologist assistant license as it may with respect to the license of a physician, in accordance with section 12-36-118.

(5) The board shall license and keep a record of anesthesiologist assistants who have been licensed pursuant to this section. A licensed anesthesiologist assistant shall renew his or her license in accordance with section 12-36-123.

(6) This section takes effect July 1, 2013.

Source: L. 2012: Entire section added, (HB 12-1332), ch. 238, p. 1052, § 4, effective August 8.

12-36-107.4. Physician assistant license - qualifications. (1) To be licensed as a physician assistant under this article, an applicant shall be at least twenty-one years of age and shall have:

(a) Successfully completed an education program for physician assistants that conforms to standards approved by the board, which standards may be established by utilizing the assistance of any responsible accrediting organization;

(b) Successfully completed the national certifying examination for physician assistants that is administered by the national commission on certification of physician assistants or a successor organization or successfully completed any other examination approved by the board; and

(c) Submitted an application to the board in the manner designated by the board and paid the appropriate fee established by the board pursuant to section 24-34-105, C.R.S.

(2) The board may determine whether any applicant for licensure as a physician assistant possesses education, experience, or training in health care that is sufficient to be accepted in lieu of the qualifications required for licensure under subsection (1) of this section.

(3) A person applying for a license to practice as a physician assistant in this state shall notify the board, in connection with his or her application for licensure, of the commission of any act that would be grounds for disciplinary action against a licensed physician assistant under section 12-36-117, along with an explanation of the circumstances of the act. The board may deny licensure to any applicant as set forth in section 12-36-116.

(4) A person licensed as a physician assistant shall not perform any act that constitutes the practice of medicine within a hospital or nursing care facility that is licensed pursuant to part 1 of article 3 of title 25, C.R.S., or that is required to obtain a certificate of compliance pursuant to section 25-1.5-103 (1)(a)(II), C.R.S., without authorization from the governing board of the hospital or nursing care facility. The governing board may grant, deny, or limit a physician assistant's authorization based on its own established procedures.

(5) The board may take any disciplinary action with respect to a physician assistant license as it may with respect to the license of a physician, in accordance with section 12-36-118.

(6) The board shall license and keep a record of physician assistants who have been licensed pursuant to this section. A licensed physician assistant shall renew his or her license in accordance with section 12-36-123.

Source: L. 2010: Entire section added with relocations, (HB 10-1260), ch. 403, p. 1968, § 37, effective July 1.

Editor's note: This section is similar to former § 12-36-106 (5)(c), (5)(d), (5)(e), (5)(f), and (5)(i) as they existed prior to 2010.

12-36-107.5. Colorado resident physicians trained at foreign medical schools. (Repealed)

Source: L. 77: Entire section added, p. 686, § 1, effective July 1. **L. 79:** (1)(g) amended, p. 510, § 6, effective July 1. **L. 88:** Entire section repealed, p. 527, § 12, effective July 1.

12-36-107.6. Foreign medical school graduates - degree equivalence. (1) For graduates of schools other than those approved by the liaison committee for medical education or the American osteopathic association, or the successor of either entity, the board may require three years of postgraduate clinical training approved by the board. An applicant whose foreign medical school is not an approved medical college is eligible for licensure at the discretion of the board if the applicant meets all other requirements for licensure and holds specialty board certification, current at the time of application for licensure, conferred by a regular member board of the American board of medical specialties or the American osteopathic association. The factors to be considered by the board in the exercise of its discretion in determining the qualifications of such applicants shall include the following:

(a) The information available to the board relating to the medical school of the applicant; and

(b) The nature and length of the post-graduate training completed by the applicant.

(2) Repealed.

Source: L. 79: Entire section added, p. 510, § 7, effective July 1. **L. 85:** Entire section amended, p. 519, § 5, effective July 1. **L. 88:** Entire section amended, p. 522, § 2, effective July 1. **L. 90:** Entire section amended, p. 818, § 1, effective March 27. **L. 91:** Entire section amended, p. 1638, § 1, effective March 29. **L. 95:** (2) repealed, p. 1058, § 4, effective July 1. **L. 2010:** IP(1) amended, (HB 10-1260), ch. 403 p. 1974, § 42, effective July 1.

12-36-108. Approved medical college. (Repealed)

Source: L. 51: p. 568, § 8. **CSA:** C. 109, § 33(8). **CRS 53:** § 91-1-8. **C.R.S. 1963:** § 91-1-8. **L. 95:** Entire section amended, p. 1058, § 5, effective July 1. **L. 2010:** Entire section repealed, (HB 10-1260), ch. 403, p. 1974, § 44, effective July 1.

Editor's note: This section was relocated to § 12-36-102.5 (3) in 2010.

12-36-109. Approved internship. (Repealed)

Source: L. 51: p. 568, § 9. **CSA:** C. 109, § 33(9). **CRS 53:** § 91-1-9. **C.R.S. 1963:** § 91-1-9. **L. 95:** Entire section amended, p. 1058, § 6, effective July 1. **L. 2010:** Entire section repealed, (HB 10-1260), ch. 403, p. 1974, § 44, effective July 1.

Editor's note: This section was relocated to § 12-36-102.5 (2) in 2010.

12-36-110. Approved residency. (Repealed)

Source: L. 51: p. 568, § 10. **CSA:** C. 109, § 33(10). **CRS 53:** § 91-1-10. **C.R.S. 1963:** § 91-1-10. **L. 95:** Entire section amended, p. 1059, § 7, effective July 1. **L. 2010:** Entire section repealed, (HB 10-1260), ch. 403, p. 1974, § 44, effective July 1.

Editor's note: This section was relocated to § 12-36-102.5 (4) in 2010.

12-36-110.5. Approved fellowship. (Repealed)

Source: L. 2002: Entire section added, p. 545, § 2, effective August 7. **L. 2010:** Entire section repealed, (HB 10-1260), ch. 403, p. 1974, § 44, effective July 1.

Editor's note: This section was relocated to § 12-36-102.5 (1) in 2010.

12-36-111. Applications for license. (1) Every person desiring a license to practice medicine shall make application to the board, such application to be verified by oath and to be in such form as shall be prescribed by the board. Such application shall be accompanied by the license fee and such documents, affidavits, and certificates as are necessary to establish that the applicant possesses the qualifications prescribed by this article, apart from any required examination by the board. The burden of proof shall be upon the applicant, but the board may make such independent investigation as it may deem advisable to determine whether the

applicant possesses such qualifications and whether the applicant has at any time committed any of the acts or offenses defined in this article as unprofessional conduct.

(2) Repealed.

Source: L. 51: p. 568, § 11. **CSA:** C. 109, § 33(11). **CRS 53:** § 91-1-11. **C.R.S. 1963:** § 91-1-11. **L. 73:** p. 1026, § 3. **L. 95:** (2) amended, p. 1059, § 8, effective July 1. **L. 2010:** (2) repealed, (HB 10-1260), ch. 403, p. 1974, § 45, effective July 1.

12-36-111.3. Licensing panel. (1) (a) The president of the board shall establish a licensing panel consisting of three members of the board as follows:

(I) One panel member shall be a licensed physician having the degree of doctor of medicine;

(II) One panel member shall be a licensed physician having the degree of doctor of osteopathy; and

(III) One panel member shall be a public member of the board.

(b) The president may rotate the licensing panel membership and the membership on the inquiry and hearing panels established pursuant to section 12-36-118 so that all members of the board, including the board president, may serve on each of the board panels.

(c) If the president determines that the board lacks a member to serve on the licensing panel that meets the criteria specified in paragraph (a) of this subsection (1), the president may appoint another board member to fill the vacancy on the panel.

(2) The licensing panel shall review and make determinations on applications for a license under this article.

(3) The licensing panel shall review and resolve matters relating to the unlicensed practice of medicine. If it appears to the licensing panel, based upon credible evidence in a written complaint by any person or upon credible evidence in a motion of the licensing panel, that a person is practicing or has practiced medicine, practiced as a physician assistant, or practiced as an anesthesiologist assistant without a license as required by this article, the licensing panel may issue an order to cease and desist the unlicensed practice. The order must set forth the particular statutes and rules that have been violated, the facts alleged to have constituted the violation, and the requirement that all unlicensed practices immediately cease. The respondent may request a hearing on a cease-and-desist order in accordance with section 12-36-118 (14)(b). Section 12-36-118 (10), exempting board disciplinary proceedings and records from open meetings and public records requirements, does not apply to a hearing or any other proceeding held by the licensing panel pursuant to this subsection (3) regarding the unlicensed practice of medicine. The procedures specified in section 12-36-118 (15), (16), (17), and (18) apply to allegations and orders regarding the unlicensed practice of medicine before the licensing panel.

Source: L. 2010: Entire section added, (HB 10-1260), ch. 403, p. 1950, § 15, effective July 1. **L. 2012:** (3) amended, (HB 12-1332), ch. 238, p. 1053, § 5, effective August 8.

12-36-111.5. Michael Skolnik medical transparency act - disclosure of information about licensees - rules. (Repealed)

Source: L. 2007: Entire section added, p. 1202, § 1, effective January 1, 2008. **L. 2009:** (3)(a), IP(3)(d)(I), (3)(f), IP(3)(g), and (6) amended, (HB 09-1188), ch. 72, p. 243, § 1, effective March 30. **L. 2010:** Entire section repealed, (SB 10-124), ch. 416, p. 2057, § 2, effective August 11.

Editor's note: This section was relocated to § 24-34-110 in 2010.

12-36-112. License fee. (Repealed)

Source: L. 51: p. 569, § 12. **CSA:** C. 109, § 33(12). **CRS 53:** § 91-1-12. **C.R.S. 1963:** § 91-1-12. **L. 67:** p. 812, § 2. **L. 76:** Entire section amended, p. 419, § 3, effective July 1. **L. 79:** Entire section amended, p. 510, § 8, effective July 1. **L. 93:** Entire section amended, p. 1697, § 11, effective July 1. **L. 95:** Entire section repealed, p. 1060, § 9, effective July 1.

12-36-113. Examinations. (Repealed)

Source: L. 51: p. 569, § 13. **CSA:** C. 109, § 33(13). **CRS 53:** § 91-1-13. **C.R.S. 1963:** § 91-1-13. **L. 76:** (1) and (2) amended, p. 413, § 7, effective July 1. **L. 79:** (1) and (2) amended and (3) repealed, pp. 510, 525, §§ 9, 31, effective July 1. **L. 85:** (1) and (2) amended, p. 519, § 6, effective July 1. **L. 95:** (2) amended, p. 1060, § 10, effective July 1. **L. 2010:** Entire section repealed, (HB 10-1260), ch. 403, p. 1975, § 46, effective July 1.

12-36-114. Issuance of licenses - prior practice prohibited. (1) If the board determines that an applicant possesses the qualifications required by this article, the board shall issue to the applicant a license to practice medicine.

(2) Prior to the approval of such license, the applicant shall not engage in the practice of medicine in this state, and any person who practices medicine in this state without first obtaining approval of such license shall be deemed to have violated the provisions of this article.

(3) All holders of a license to practice medicine granted by the board, or by the state board of medical examiners as constituted under any prior law of this state, shall be accorded equal rights and privileges under all laws of the state of Colorado, shall be subject to the same duties and obligations, and shall be authorized to practice medicine, as defined by this article in all its branches.

Source: L. 51: p. 570, § 14. **CSA:** C. 109, § 33(14). **CRS 53:** § 91-1-14. **C.R.S. 1963:** § 91-1-14. **L. 79:** (1) amended, p. 511, § 10, effective July 1. **L. 85:** (2) amended, p. 520, § 7, effective July 1. **L. 2010:** (1) amended, (HB 10-1260), ch. 403, p. 1980, § 58, effective July 1.

12-36-114.3. Pro bono license - qualifications - reduced fee - rules. (1) Notwithstanding any other provision of this article, the board may issue a pro bono license to a physician to practice medicine in this state for not more than sixty days in a calendar year if the physician:

(a) (I) Holds an active and unrestricted license to practice medicine in Colorado and is in active practice in this state;

(II) Has been on inactive status pursuant to section 12-36-137 for not more than two years; or

(III) Holds an active and unrestricted license to practice medicine in another state or territory of the United States;

(b) Attests to the board that he or she:

(I) Does not charge for his or her services; except that the facility at which the services are provided may charge on a not-for-profit basis for the provision of services; or

(II) Works for and may be compensated by an organization that does not charge Colorado patients for its services;

(c) Has never had a license to practice medicine in this state or in another state or territory revoked or suspended, as verified by the applicant in the manner prescribed by the board;

(d) Is not the subject of an unresolved complaint;

(e) Maintains commercial professional liability insurance coverage in accordance with section 13-64-301, C.R.S.; and

(f) Pays the fee established by the board.

(2) The board shall establish and charge an application fee for an initial and renewal pro bono license, not to exceed one-half the amount of the fee for a renewal of a physician's license and not to exceed the cost of administering the license.

(3) A pro bono license is subject to the renewal requirements set forth in section 12-36-123.

(4) A physician granted a pro bono license under this section shall not simultaneously hold a full license to practice medicine issued under this article.

(5) A physician granted a pro bono license under this section is subject to discipline by the board for committing unprofessional conduct, as defined in section 12-36-117, or any other act prohibited by this article.

(6) The board may refrain from issuing a pro bono license in accordance with section 12-36-116.

(7) The board may adopt rules as necessary to implement this section.

Source: L. 2010: Entire section added, (HB 10-1260), ch. 403, p. 1954, § 20, effective July 1.

12-36-114.5. Reentry license. (1) Notwithstanding any other provision of this article, the board may issue a reentry license to a physician, physician assistant, or anesthesiologist assistant who has not actively practiced medicine, practiced as a physician assistant, or practiced as an anesthesiologist assistant, as applicable, for the two-year period immediately preceding the filing of an application for a reentry license, or who has not otherwise maintained continued competency during such period, as determined by the board. The board may charge a fee for a reentry license.

(2) (a) In order to qualify for a reentry license, the physician, physician assistant, or anesthesiologist assistant shall submit to evaluations, assessments, and an educational program as required by the board. The board may work with a private entity that specializes in physician, physician assistant, or anesthesiologist assistant assessment to:

(I) Determine the applicant's competency and areas in which improvement is needed, if any;

(II) Develop an educational program specific to the applicant; and

(III) Upon completion of the educational program, conduct an evaluation to determine the applicant's competency.

(b) (I) If, based on the assessment, the board determines that the applicant requires a period of supervised practice, the board may issue a reentry license, allowing the applicant to practice medicine, practice as a physician assistant, or practice as an anesthesiologist assistant, as applicable, under supervision as specified by the board.

(II) After satisfactory completion of the period of supervised practice, as determined by the board, the reentry licensee may apply to the board for conversion of the reentry license to a full license to practice medicine, practice as a physician assistant, or practice as an anesthesiologist assistant, as applicable, under this article.

(c) If, based on the assessment and after completion of an educational program, if prescribed, the board determines that the applicant is competent and qualified to practice medicine without supervision or practice as a physician assistant or as an anesthesiologist assistant with supervision as specified in this article, the board may convert the reentry license to a full license to practice medicine, practice as a physician assistant, or practice as an anesthesiologist assistant, as applicable, under this article.

(3) A reentry license shall be valid for no more than three years and shall not be renewable.

Source: L. 2010: Entire section added, (HB 10-1260), ch. 403, p. 1955, § 22, effective July 1. **L. 2012:** (1) and (2) amended, (HB 12-1332), ch. 238, p. 1054, § 6, effective August 8.

12-36-115. License must be recorded. (Repealed)

Source: L. 51: p. 570, § 15. **CSA:** C. 109, § 33(15). **CRS 53:** § 91-1-15. **C.R.S. 1963:** § 91-1-15. **L. 79:** Entire section repealed, p. 525, § 31, effective July 1.

12-36-116. Refusal of license - issuance subject to probation. (1) The board may refrain from issuing a license or may grant a license subject to terms of probation if the board determines that an applicant for a license:

(a) Does not possess the qualifications required by this article;

(b) Has engaged in unprofessional conduct, as defined in section 12-36-117;

(c) Has been disciplined in another state or foreign jurisdiction with respect to his or her license to practice medicine, license to practice as a physician assistant, or license to practice as an anesthesiologist assistant; or

(d) Has not actively practiced medicine, practiced as a physician assistant, or practiced as an anesthesiologist assistant for the two-year period immediately preceding the filing of such application or otherwise maintained continued competency during such period, as determined by the board.

(2) For purposes of this section, "discipline" includes any matter that must be reported pursuant to 45 CFR 60.8 and is substantially similar to unprofessional conduct, as defined in section 12-36-117.

(3) An applicant whose application is denied or whose license is granted subject to terms of probation may seek review pursuant to section 24-4-104 (9), C.R.S.; except that, if an applicant accepts a license that is subject to terms of probation, such acceptance shall be in lieu of and not in addition to the remedies set forth in section 24-4-104 (9), C.R.S.

Source: L. 51: p. 571, § 16. **CSA:** C. 109, § 33(16). **CRS 53:** § 91-1-16. **C.R.S. 1963:** § 91-1-16. **L. 73:** p. 525, § 49. **L. 79:** Entire section amended, p. 511, § 11, effective July 1. **L. 95:** Entire section amended, p. 1060, § 11, effective July 1. **L. 2001:** (1) and (2) amended, p. 178, § 5, effective August 8. **L. 2012:** (1)(c) and (1)(d) amended, (HB 12-1332), ch. 238, p. 1055, § 7, effective August 8.

12-36-117. Unprofessional conduct. (1) "Unprofessional conduct" as used in this article 36 means:

(a) Resorting to fraud, misrepresentation, or deception in applying for, securing, renewing, or seeking reinstatement of a license to practice medicine or a license to practice as a physician assistant in this state or any other state, in applying for professional liability coverage, required pursuant to section 13-64-301, C.R.S., or privileges at a hospital, or in taking the examination provided for in this article;

(b) to (e) Repealed.

(f) Any conviction of an offense of moral turpitude, a felony, or a crime that would constitute a violation of this article. For purposes of this paragraph (f), "conviction" includes the entry of a plea of guilty or nolo contendere or the imposition of a deferred sentence.

(g) Administering, dispensing, or prescribing any habit-forming drug or any controlled substance as defined in section 18-18-102 (5), C.R.S., other than in the course of legitimate professional practice;

(h) Any conviction of violation of any federal or state law regulating the possession, distribution, or use of any controlled substance, as defined in section 18-18-102 (5), C.R.S., and, in determining if a license should be denied, revoked, or suspended, or if the licensee should be placed on probation, the board shall be governed by section 24-5-101, C.R.S. For purposes of this paragraph (h), "conviction" includes the entry of a plea of guilty or nolo contendere or the imposition of a deferred sentence.

(i) Habitual or excessive use or abuse of alcohol, a habit-forming drug, or a controlled substance as defined in section 18-18-102 (5), C.R.S.;

(j) Repealed.

(k) The aiding or abetting, in the practice of medicine, of any person not licensed to practice medicine as defined under this article or of any person whose license to practice medicine is suspended;

(l) Repealed.

(m) (I) Except as otherwise provided in sections 12-36-134, 25-3-103.7, and 25-3-314, C.R.S., practicing medicine as the partner, agent, or employee of, or in joint venture with, any person who does not hold a license to practice medicine within this state, or practicing medicine as an employee of, or in joint venture with, any partnership or association any of whose partners or associates do not hold a license to practice medicine within this state, or practicing medicine as an employee of or in joint venture with any corporation other than a professional service corporation for the practice of medicine as described in section 12-36-134. Any licensee holding

a license to practice medicine in this state may accept employment from any person, partnership, association, or corporation to examine and treat the employees of such person, partnership, association, or corporation.

(II) (A) Nothing in this paragraph (m) shall be construed to permit a professional services corporation for the practice of medicine, as described in section 12-36-134, to practice medicine.

(B) Nothing in this paragraph (m) shall be construed to otherwise create an exception to the corporate practice of medicine doctrine.

(n) Violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this article;

(o) Failing to notify the board, as required by section 12-36-118.5 (1), of a physical illness; a physical condition; or a behavioral, mental health, or substance use disorder that impacts the licensee's ability to perform a medical service with reasonable skill and with safety to patients, failing to act within the limitations created by a physical illness; a physical condition; or a behavioral, mental health, or substance use disorder that renders the licensee unable to perform a medical service with reasonable skill and with safety to the patient, or failing to comply with the limitations agreed to under a confidential agreement entered pursuant to section 12-36-118.5;

(p) Any act or omission which fails to meet generally accepted standards of medical practice;

(q) Repealed.

(r) Engaging in a sexual act with a patient during the course of patient care or within six months immediately following the termination of the licensee's professional relationship with the patient. "Sexual act", as used in this paragraph (r), means sexual contact, sexual intrusion, or sexual penetration as defined in section 18-3-401, C.R.S.

(s) Refusal of an attending physician to comply with the terms of a declaration executed by a patient pursuant to the provisions of article 18 of title 15, C.R.S., and failure of the attending physician to transfer care of said patient to another physician;

(t) (I) Violation of abuse of health insurance pursuant to section 18-13-119, C.R.S.; or

(II) Advertising through newspapers, magazines, circulars, direct mail, directories, radio, television, or otherwise that the licensee will perform any act prohibited by section 18-13-119 (3), C.R.S.;

(u) Violation of any valid board order or any rule or regulation promulgated by the board in conformance with law;

(v) Dispensing, injecting, or prescribing an anabolic steroid as defined in section 18-18-102 (3), C.R.S., for the purpose of the hormonal manipulation that is intended to increase muscle mass, strength, or weight without a medical necessity to do so or for the intended purpose of improving performance in any form of exercise, sport, or game;

(w) Dispensing or injecting an anabolic steroid as defined in section 18-18-102 (3), C.R.S., unless such anabolic steroid is dispensed from a pharmacy prescription drug outlet pursuant to a prescription order or is dispensed by any practitioner in the course of his professional practice;

(x) Prescribing, distributing, or giving to a family member or to oneself except on an emergency basis any controlled substance as defined in section 18-18-204, C.R.S., or as contained in schedule II of 21 U.S.C. sec. 812, as amended;

(y) Failing to report to the board, within thirty days after an adverse action, that an adverse action has been taken against the licensee by another licensing agency in another state or country, a peer review body, a health care institution, a professional or medical society or association, a governmental agency, a law enforcement agency, or a court for acts or conduct that would constitute grounds for disciplinary or adverse action as described in this article;

(z) Failing to report to the board, within thirty days, the surrender of a license or other authorization to practice medicine in another state or jurisdiction or the surrender of membership on any medical staff or in any medical or professional association or society while under investigation by any of those authorities or bodies for acts or conduct similar to acts or conduct that would constitute grounds for action as described in this article;

(aa) Failing to accurately answer the questionnaire accompanying the renewal form as required pursuant to section 12-36-123 (1)(b);

(bb) (I) Engaging in any of the following activities and practices: Willful and repeated ordering or performance, without clinical justification, of demonstrably unnecessary laboratory tests or studies; the administration, without clinical justification, of treatment which is demonstrably unnecessary; the failure to obtain consultations or perform referrals when failing to do so is not consistent with the standard of care for the profession; or ordering or performing, without clinical justification, any service, X ray, or treatment which is contrary to recognized standards of the practice of medicine as interpreted by the board.

(II) In determining which activities and practices are not consistent with the standard of care or are contrary to recognized standards of the practice of medicine, the board shall utilize, in addition to its own expertise, the standards developed by recognized and established accreditation or review organizations that meet requirements established by the board by rule. Such determinations shall include but not be limited to appropriate ordering of laboratory tests and studies, appropriate ordering of diagnostic tests and studies, appropriate treatment of the medical condition under review, appropriate use of consultations or referrals in patient care, and appropriate creation and maintenance of patient records.

(cc) Falsifying or repeatedly making incorrect essential entries or repeatedly failing to make essential entries on patient records;

(dd) Committing a fraudulent insurance act, as defined in section 10-1-128, C.R.S.;

(ee) Failing to establish and continuously maintain financial responsibility, as required in section 13-64-301, C.R.S.;

(ff) Repealed.

(gg) Failing to respond in an honest, materially responsive, and timely manner to a complaint issued pursuant to section 12-36-118 (4);

(hh) Advertising in a manner that is misleading, deceptive, or false;

(ii) Repealed.

(jj) Any act or omission in the practice of telemedicine that fails to meet generally accepted standards of medical practice;

(kk) Entering into or continuing in a mentorship relationship with an advanced practice nurse pursuant to sections 12-36-106.4 and 12-38-111.6 (4.5) that fails to meet generally acceptable standards of medical practice;

(ll) Verifying by signature the articulated plan developed by an advanced practice nurse pursuant to sections 12-36-106.4 and 12-38-111.6 (4.5) if the articulated plan fails to comply with the requirements of section 12-38-111.6 (4.5)(b)(II);

(mm) Failure to comply with the requirements of section 14 of article XVIII of the state constitution, section 25-1.5-106, C.R.S., or the rules promulgated by the state health agency pursuant to section 25-1.5-106 (3), C.R.S.

(1.5) (a) A licensee shall not be subject to disciplinary action by the board solely for prescribing controlled substances for the relief of intractable pain.

(b) For the purposes of this subsection (1.5), "intractable pain" means a pain state in which the cause of the pain cannot be removed and which in the generally accepted course of medical practice no relief or cure of the cause of the pain is possible or none has been found after reasonable efforts including, but not limited to, evaluation by the attending physician and one or more physicians specializing in the treatment of the area, system, or organ of the body perceived as the source of the pain.

(1.7) Repealed.

(1.8) A licensee is not subject to disciplinary action by the board for issuing standing orders and protocols regarding the use of epinephrine auto-injectors in a public or nonpublic school in accordance with the requirements of section 22-1-119.5, C.R.S., for the actions taken by a school nurse or by any designated school personnel who administers epinephrine auto-injectors in accordance with the requirements of section 22-1-119.5, C.R.S., or for prescribing epinephrine auto-injectors in accordance with the requirements of article 47 of title 25, C.R.S.

(2) The discipline of a license to practice medicine, of a license to practice as a physician assistant, or of a license to practice as an anesthesiologist assistant in another state, territory, or country shall be deemed to be unprofessional conduct. For purposes of this subsection (2), "discipline" includes any sanction required to be reported pursuant to 45 CFR 60.8. This subsection (2) applies only to discipline that is based upon an act or omission in such other state, territory, or country that is defined substantially the same as unprofessional conduct pursuant to subsection (1) of this section.

(3) (a) For purposes of this section, "alternative medicine" means those health care methods of diagnosis, treatment, or healing that are not generally used but that provide a reasonable potential for therapeutic gain in a patient's medical condition that is not outweighed by the risk of such methods. A licensee who practices alternative medicine shall inform each patient in writing, during the initial patient contact, of such licensee's education, experience, and credentials related to the alternative medicine practiced by such licensee. The board shall not take disciplinary action against a licensee solely on the grounds that such licensee practices alternative medicine.

(b) Nothing in paragraph (a) of this subsection (3) prevents disciplinary action against a licensee for practicing medicine, practicing as a physician assistant, or practicing as an anesthesiologist assistant in violation of this article.

Source: L. 51: p. 571, § 17. **CSA:** C. 109, § 33(17). **CRS 53:** § 91-1-17. **C.R.S. 1963:** § 91-1-17. **L. 67:** p. 813, §§ 3, 4. **L. 69:** p. 825, § 1. **L. 73:** p. 525, § 50. **L. 75:** (1)(p) added, p. 461, § 1, effective June 29. **L. 79:** (1)(c) to (1)(e), (1)(j), and (1)(l) repealed, (1)(n) to (1)(p) amended, and (1)(q) and (2) added, pp. 511, 512, 525, §§ 12, 13, 31, effective July 1. **L. 81:** (1)(g) to (1)(i) amended, p. 735, § 11, effective July 1. **L. 85:** (1)(s) added, p. 613, § 2, effective May 9; (1)(f) and (1)(g) amended and (1)(r) added, p. 520, § 8, effective July 1; (1)(t) added, p. 682, § 7, effective July 1. **L. 87:** (1)(p) amended and (1)(u) added, pp. 501, 511, §§ 1, 3, effective March 13; (1)(v) and (1)(w) added, p. 501, § 3, effective May 20. **L. 88:** (1)(a)

amended and (1)(x) and (1)(y) to (1)(aa) added, p. 522, § 3, effective July 1. **L. 89:** (1)(x) amended, p. 677, § 1, effective July 1; (1)(bb) to (1)(dd) added, p. 672, § 13, effective July 1. **L. 91:** (1)(ff) added, p. 1616, § 8, effective January 1; (1)(q) repealed, p. 884, § 3, effective July 1; (1)(ee) added, p. 1337, § 52, effective July 1. **L. 92:** (1)(v), (1)(w), and (1)(x) amended, p. 390, § 14, effective July 1. **L. 93:** (1)(m) amended, p. 723, § 5, effective May 6. **L. 94:** (1)(m) amended, p. 670, § 2, effective April 19. **L. 95:** (1)(a), (1)(f), (1)(h), (1)(p), (1)(r), (1)(aa), (1)(ee), and (2) amended and (1)(gg) and (1)(hh) added, p. 1061, § 12, effective July 1; (1)(ii) added, p. 1088, § 13, effective July 1. **L. 97:** (1.5) added, p. 396, § 1, effective August 6; (3) added, p. 325, § 1, effective August 6. **L. 2000:** (1)(gg) amended, p. 175, § 2, effective July 1. **L. 2001:** (1)(a), (1)(r), (1.5)(a), (2), and (3) amended, p. 179, § 6, effective August 8; (1)(jj) added, p. 1162, § 8, effective January 1, 2002. **L. 2003:** (1)(m) amended, p. 1600, § 3, effective July 1; (1)(dd) amended, p. 621, § 30, effective July 1. **L. 2004:** (1)(g) and (1)(i) amended, p. 1194, § 35, effective August 4. **L. 2009:** (1)(ii) amended and (1)(kk) and (1)(ll) added, (SB 09-239), ch. 401, p. 2182, § 26, effective July 1. **L. 2010:** (1)(ff) repealed, (HB 10-1128), ch. 172, p. 614, § 11, effective April 29; (1)(mm) added, (SB 10-109), ch. 356, p. 1696, § 3, effective June 7; (1)(i), (1)(o), (1)(y), (1)(z), and (1)(bb)(II) amended, (HB 10-1260), ch. 403, pp. 1962, 1961, §§ 31, 29, effective July 1; (1)(m)(I) amended, (HB 10-1244), ch. 221, p. 963, § 1, effective August 11. **L. 2012:** (1)(g), (1)(h), and (1)(i) amended, (HB 12-1311), ch. 281, p. 1611, § 16, effective July 1; (2) and (3)(b) amended, (HB 12-1332), ch. 238, p. 1055, § 8, effective August 8. **L. 2013:** (1.7) added, (SB 13-014), ch. 178, p. 659, § 4, effective May 10; (1.8) added, (HB 13-1171), ch. 348, p. 2025, § 2, effective May 28; (1)(b) repealed, (HB 13-1154), ch. 372, p. 2192, § 3, effective July 1. **L. 2015:** (1.7) repealed, (SB 15-053), ch. 78, p. 209, § 2, effective April 3; (1.8) amended, (HB 15-1232), ch. 191, p. 632, § 2, effective May 14. **L. 2017:** IP(1) and (1)(o) amended, (SB 17-242), ch. 263, p. 1273, § 55, effective May 25.

Editor's note: Subsection (1)(ii)(II) provided for the repeal of subsection (1)(ii), effective July 1, 2010. (See L. 2009, p. 2182.)

Cross references: (1) For the legislative declaration contained in the 1989 act enacting subsection (1)(bb) to (1)(dd), see section 1 of chapter 111, Session Laws of Colorado 1989. For the legislative declaration contained in the 2000 act amending subsection (1)(gg), see section 1 of chapter 56, Session Laws of Colorado 2000. For the legislative declaration contained in the 2001 act enacting subsection (1)(jj), see section 1 of chapter 300, Session Laws of Colorado 2001. For the legislative declaration contained in the 2003 act amending subsection (1)(m), see section 1 of chapter 240, Session Laws of Colorado 2003. For the legislative declaration in the 2013 act adding subsection (1.7), see section 1 of chapter 178, Session Laws of Colorado 2013. For the legislative declaration in the 2013 act repealing subsection (1)(b), see section 1 of chapter 372, Session Laws of Colorado 2013.

(2) For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

(3) For an exception to the provisions of subsection (1)(m), see § 6-18-303.

12-36-117.5. Prescriptions - requirement to advise patients. (1) A physician licensed under this article, or a physician assistant licensed by the board who has been delegated the authority to prescribe medication, may advise the physician's or the physician assistant's patients

of their option to have the symptom or purpose for which a prescription is being issued included on the prescription order.

(2) A physician's or a physician assistant's failure to advise a patient under subsection (1) of this section shall not be grounds for any disciplinary action against the physician's or the physician assistant's professional license issued under this article. Failure to advise a patient pursuant to subsection (1) of this section shall not be grounds for any civil action against a physician or physician's assistant in a negligence or tort action, nor shall such failure be evidence in any civil action against a physician or a physician's assistant.

Source: L. 2003: Entire section added, p. 765, § 6, effective March 25.

12-36-117.6. Prescribing opiates - limitations - repeal. (1) (a) A physician or physician assistant shall not prescribe more than a seven-day supply of an opioid to a patient who has not had an opioid prescription in the last twelve months by that physician or physician assistant, and may exercise discretion to include a second fill for a seven-day supply. The limits on initial prescribing do not apply if, in the judgment of the physician or physician assistant, the patient:

(I) Has chronic pain that typically lasts longer than ninety days or past the time of normal healing, as determined by the physician or physician assistant, or following transfer of care from another physician or physician assistant who prescribed an opioid to the patient;

(II) Has been diagnosed with cancer and is experiencing cancer-related pain;

(III) Is experiencing post-surgical pain that, because of the nature of the procedure, is expected to last more than fourteen days; or

(IV) Is undergoing palliative care or hospice care focused on providing the patient with relief from symptoms, pain, and stress resulting from a serious illness in order to improve quality of life.

(b) Prior to prescribing the second fill of any opioid prescription pursuant to this section, a physician or physician assistant must comply with the requirements of section 12-42.5-404 (3.6). Failure to comply with section 12-42.5-404 (3.6) constitutes unprofessional conduct under section 12-36-117 only if the physician or physician assistant repeatedly fails to comply.

(2) A physician or physician assistant licensed pursuant to this article 36 may prescribe opioids electronically.

(3) A violation of this section does not create a private right of action or serve as the basis of a cause of action. A violation of this section does not constitute negligence per se or contributory negligence per se and does not alone establish a standard of care. Compliance with this section does not alone establish an absolute defense to any alleged breach of the standard of care.

(4) This section is repealed, effective September 1, 2021.

Source: L. 2018: Entire section added, (SB 18-022), ch. 221, p. 1403, § 3, effective May 21.

12-36-117.7. Prescribing opiate antagonists - definitions. (1) A physician or physician assistant licensed pursuant to this article may prescribe or dispense, directly or in accordance with standing orders and protocols, an opiate antagonist to:

(a) An individual at risk of experiencing an opiate-related drug overdose event;

(b) A family member, friend, or other person in a position to assist an individual at risk of experiencing an opiate-related drug overdose event;

(c) An employee or volunteer of a harm reduction organization; or

(d) A first responder.

(2) A licensed physician or physician assistant who prescribes or dispenses an opiate antagonist pursuant to this section is strongly encouraged to educate persons receiving the opiate antagonist on the use of an opiate antagonist for overdose, including instruction concerning risk factors for overdose, recognizing an overdose, calling emergency medical services, rescue breathing, and administering an opiate antagonist.

(3) A licensed physician or physician assistant does not engage in unprofessional conduct pursuant to section 12-36-117 if the physician or physician assistant issues standing orders and protocols regarding opiate antagonists or prescribes or dispenses an opiate antagonist in a good-faith effort to assist:

(a) An individual who is at risk of experiencing an opiate-related drug overdose event;

(b) A family member, friend, or other person who is in a position to assist an individual who is at risk of experiencing an opiate-related drug overdose event; or

(c) A first responder or an employee or volunteer of a harm reduction organization in responding to, treating, or otherwise assisting an individual who is experiencing or is at risk of experiencing an opiate-related drug overdose event or a friend, family member, or other person in a position to assist an at-risk individual.

(4) A licensed physician or physician assistant who prescribes or dispenses an opiate antagonist in accordance with this section is not subject to civil liability or criminal prosecution, as specified in sections 13-21-108.7 (4) and 18-1-712 (3), C.R.S., respectively.

(5) This section does not establish a duty or standard of care regarding the prescribing, dispensing, or administering of an opiate antagonist.

(6) As used in this section:

(a) "First responder" means:

(I) A peace officer, as defined in section 16-2.5-101, C.R.S.;

(II) A firefighter, as defined in section 29-5-203 (10), C.R.S.; or

(III) A volunteer firefighter, as defined in section 31-30-1102 (9), C.R.S.

(b) "Harm reduction organization" means an organization that provides services, including medical care, counseling, homeless services, or drug treatment, to individuals at risk of experiencing an opiate-related drug overdose event or to the friends and family members of an at-risk individual.

(c) "Opiate" has the same meaning as set forth in section 18-18-102 (21), C.R.S.

(d) "Opiate antagonist" means naloxone hydrochloride or any similarly acting drug that is not a controlled substance and that is approved by the federal food and drug administration for the treatment of a drug overdose.

(e) "Opiate-related drug overdose event" means an acute condition, including a decreased level of consciousness or respiratory depression, that:

(I) Results from the consumption or use of a controlled substance or another substance with which a controlled substance was combined;

(II) A layperson would reasonably believe to be caused by an opiate-related drug overdose event; and

(III) Requires medical assistance.

(f) "Protocol" means a specific written plan for a course of medical treatment containing a written set of specific directions created by a physician, group of physicians, hospital medical committee, pharmacy and therapeutics committee, or other similar practitioners or groups of practitioners with expertise in the use of opiate antagonists.

(g) "Standing order" means a prescription order written by a physician or physician assistant that is not specific to and does not identify a particular patient.

Source: L. 2015: Entire section added, (SB 15-053), ch. 78, p. 207, § 1, effective April 3.

12-36-118. Disciplinary action by board - immunity - rules. (1) (a) The president of the board shall divide those members of the board other than the president into two panels of six members each, four of whom shall be physician members.

(b) Each panel shall act as both an inquiry and a hearings panel. Members of the board may be assigned from one panel to the other by the president. The president may be a member of both panels, but in no event shall the president or any other member who has considered a complaint as a member of a panel acting as an inquiry panel take any part in the consideration of a formal complaint involving the same matter.

(c) All matters referred to one panel for investigation shall be heard, if referred for formal hearing, by the other panel or a committee of such panel. However, in its discretion, either inquiry panel may elect to refer a case for formal hearing to a qualified administrative law judge in lieu of a hearings panel of the board, for an initial decision pursuant to section 24-4-105, C.R.S.

(d) The initial decision of an administrative law judge may be reviewed pursuant to section 24-4-105 (14) and (15), C.R.S., by the filing of exceptions to the initial decision with the hearings panel which would have heard the case if it had not been referred to an administrative law judge or by review upon the motion of such hearings panel. The respondent or the board's counsel shall file such exceptions.

(2) Investigations shall be under the supervision of the panel to which they are assigned. The persons making such investigation shall report the results thereof to the assigning panel for appropriate action.

(3) (a) In the discharge of its duties, the board may enlist the assistance of other licensees. Licensees have the duty to report to the board any licensee known, or upon information and belief, to have violated any of the provisions of section 12-36-117 (1); except that a licensee who is treating another licensee for a behavioral, mental health, or substance use disorder or the excessive use of any habit-forming drug, shall not have a duty to report his or her patient unless, in the opinion of the treating licensee, the impaired licensee presents a danger to himself, herself, or others.

(b) Any member of the board, any member of the board's staff, any person acting as a witness or consultant to the board, any witness testifying in a proceeding authorized under this part 1, and any person who lodges a complaint pursuant to this part 1 shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as board member, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort

to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in the making of a complaint or report or participating in any investigative or administrative proceeding pursuant to this section shall be immune from any liability, civil or criminal, that otherwise might result by reason of such participation.

(4) (a) (I) Written complaints relating to the conduct of a licensee licensed or authorized to practice medicine in this state may be made by any person or may be initiated by an inquiry panel of the board on its own motion. The licensee complained of shall be given notice by first-class mail of the nature of the complaint and shall be given thirty days to answer or explain in writing the matters described in such complaint. Upon receipt of the licensee's answer or at the conclusion of thirty days, whichever occurs first, the inquiry panel may take further action as set forth in subparagraph (II) of this paragraph (a).

(II) The inquiry panel may then conduct a further investigation, which may be made by one or more members of the inquiry panel, one or more licensees who are not members of the board, a member of the staff of the board, a professional investigator, or any other person or organization as the inquiry panel directs. Any such investigation shall be entirely informal.

(b) The board shall cause an investigation to be made when the board is informed of:

(I) Disciplinary actions taken by hospitals to suspend or revoke the privileges of a physician and reported to the board pursuant to section 25-3-107, C.R.S.;

(II) Disciplinary actions taken as a result of a professional review proceeding pursuant to part 1 of article 36.5 of this title against a physician. Such disciplinary actions shall be promptly reported to the board.

(III) An instance of a medical malpractice settlement or judgment against a licensee reported to the board pursuant to section 10-1-120, C.R.S.; or

(IV) Licensees who have been allowed to resign from hospitals for medical misconduct. Such hospitals shall report the same.

(c) On completion of an investigation, the inquiry panel shall make a finding that:

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

(II) There is no reasonable cause to warrant further action with reference thereto;

(II.5) The investigation discloses an instance of conduct that does not warrant formal action by the board and should be dismissed but in which the inquiry panel has noticed indications of possible errant conduct by the licensee that could lead to serious consequences if not corrected. In such a case, a confidential letter of concern shall be sent to the licensee against whom the complaint was made.

(III) (A) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the board, does not warrant formal action by the board but that should not be dismissed as being without merit, a letter of admonition may be issued and sent, by certified mail, to the licensee.

(B) When a letter of admonition is sent by the board, by certified mail, to a licensee, such licensee shall be advised that he or she has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(C) If the request for adjudication is timely made, the letter of admonition shall be deemed vacated and the matter shall be processed by means of formal disciplinary proceedings.

(IV) (A) The investigation discloses facts that warrant further proceedings by formal complaint, as provided in subsection (5) of this section, in which event the complaint shall be referred to the attorney general for preparation and filing of a formal complaint.

(B) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(d) All proceedings pursuant to this subsection (4) shall be expeditiously and informally conducted so that no licensee is subjected to unfair and unjust charges and that no complainant is deprived of his or her right to a timely, fair, and proper investigation of his or her complaint.

(e) Repealed.

(5) (a) to (d) (Deleted by amendment, L. 95, p. 1062, § 13, effective July 1, 1995.)

(e) All formal complaints shall be heard and determined in accordance with paragraph (f) of this subsection (5) and section 24-4-105, C.R.S. Except as provided in subsection (1) of this section, all formal hearings shall be conducted by the hearings panel. The licensee may be present in person and by counsel, if so desired, to offer evidence and be heard in his or her own defense. At formal hearings, the witnesses shall be sworn and a complete record shall be made of all proceedings and testimony.

(f) Except as provided in subsection (1) of this section, an administrative law judge shall preside at the hearing and shall advise the hearings panel, as requested, on legal matters in connection with the hearing. The administrative law judge shall provide advice or assistance as requested by the hearings panel in connection with its preparations of its findings and recommendations or conclusions to be made. The administrative law judge may administer oaths and affirmations, sign and issue subpoenas, and perform other duties as authorized by the hearings panel.

(g) (I) To warrant a finding of unprofessional conduct, the charges shall be established as specified in section 24-4-105 (7), C.R.S. Except as provided in subsection (1) of this section, the hearings panel shall make a report of its findings and conclusions which, when approved and signed by a majority of those members of the hearings panel who have conducted the hearing pursuant to paragraphs (e) and (f) of this subsection (5), shall be and become the action of the board.

(II) If it is found that the charges are unproven, the hearings panel, or an administrative law judge sitting in lieu of the hearings panel pursuant to subsection (1) of this section, shall enter an order dismissing the complaint.

(III) If the hearings panel finds the charges proven and orders that discipline be imposed, it shall also determine the extent of such discipline, which must be in the form of a letter of admonition, suspension for a definite or indefinite period, or revocation of license to practice. The hearings panel also may impose a fine of up to five thousand dollars per violation. In determining appropriate disciplinary action, the hearings panel shall first consider sanctions that are necessary to protect the public. Only after the panel has considered such sanctions may it consider and order requirements designed to rehabilitate the licensee or applicant. If discipline other than revocation of a license to practice is imposed, the hearings panel may also order that the licensee be granted probation and allowed to continue to practice during the period of such probation. The hearings panel may also include in any disciplinary order that allows the licensee to continue to practice such conditions as the panel may deem appropriate to assure that the licensee is physically, mentally, morally, and otherwise qualified to practice medicine, practice

as a physician assistant, or practice as an anesthesiologist assistant in accordance with generally accepted professional standards of practice, including any or all of the following:

(A) Submission by the respondent to such examinations as the hearings panel may order to determine his physical or mental condition or his professional qualifications;

(B) The taking by him of such therapy or courses of training or education as may be needed to correct deficiencies found either in the hearing or by such examinations;

(C) The review or supervision of his practice as may be necessary to determine the quality of his practice and to correct deficiencies therein; and

(D) The imposition of restrictions upon the nature of his practice to assure that he does not practice beyond the limits of his capabilities.

(III.5) Any moneys collected pursuant to subparagraph (III) of this paragraph (g) shall be transmitted to the state treasurer, who shall credit the same to the general fund.

(IV) Upon the failure of the licensee to comply with any conditions imposed by the hearings panel pursuant to subparagraph (III) of this paragraph (g), unless due to conditions beyond the licensee's control, the hearings panel may order suspension of the licensee's license to practice medicine, practice as a physician assistant, or practice as an anesthesiologist assistant in this state until such time as the licensee complies with such conditions.

(V) In making any of the orders provided in subparagraphs (III) and (IV) of this paragraph (g), the hearings panel may take into consideration the licensee's prior disciplinary record. If the hearings panel does take into consideration any prior discipline of the licensee, its findings and recommendations shall so indicate.

(VI) In all cases of revocation, suspension, or probation, the board shall enter in its records the facts of such revocation, suspension, or probation and of any subsequent action of the board with respect thereto.

(VII) to (IX) (Deleted by amendment, L. 79, p. 512, § 14, effective July 1, 1979.)

(X) In all cases involving alleged violations of section 12-36-117 (1)(mm), the board shall promptly notify the executive director of the department of public health and environment of its findings, including whether it found that the physician violated section 12-36-117 (1)(mm) and any restrictions it placed on the physician with respect to recommending the use of medical marijuana.

(h) The attorney general shall prosecute those charges which have been referred to him or her by the inquiry panel pursuant to subparagraph (IV) of paragraph (c) of subsection (4) of this section. The board may direct the attorney general to perfect an appeal.

(i) Any person whose license to practice medicine, to practice as a physician assistant, or to practice as an anesthesiologist assistant is revoked or who surrenders his or her license to avoid discipline is not eligible to apply for any license for two years after the date the license is revoked or surrendered. The two-year waiting period applies to any person whose license to practice medicine, to practice as a physician assistant, to practice as an anesthesiologist assistant, or to practice any other health care occupation is revoked by any other legally qualified board or regulatory entity.

(6) A majority of the members of the board, three members of the inquiry panel, or three members of the hearings panel shall constitute a quorum. The action of a majority of those present comprising such quorum shall be the action of the board, the inquiry panel, or the hearings panel.

(7) (Deleted by amendment, L. 2010, (HB 10-1260), ch. 403, p. 1951, § 17, effective July 1, 2010.)

(8) If any licensee is determined to be mentally incompetent or insane by a court of competent jurisdiction and a court enters, pursuant to part 3 or part 4 of article 14 of title 15 or section 27-65-109 (4) or 27-65-127, C.R.S., an order specifically finding that the mental incompetency or insanity is of such a degree that the licensee is incapable of continuing to practice medicine, practice as a physician assistant, or practice as an anesthesiologist assistant, the board shall automatically suspend his or her license, and, anything in this article to the contrary notwithstanding, such suspension must continue until the licensee is found by such court to be competent to practice medicine, practice as a physician assistant, or practice as an anesthesiologist assistant.

(9) (a) If the board has reasonable cause to believe that a licensee is unable to practice with reasonable skill and safety to patients because of a condition described in section 12-36-117 (1)(i) or (1)(o), it may require such licensee to submit to mental or physical examinations by physicians designated by the board. If a licensee fails to submit to such mental or physical examinations, the board may suspend the license until the required examinations are conducted.

(b) Every licensee shall be deemed, by so practicing or by applying for annual registration of such person's license, to have consented to submit to mental or physical examinations when directed in writing by the board. Further, such person shall be deemed to have waived all objections to the admissibility of the examining physician's testimony or examination reports on the ground of privileged communication. Subject to applicable federal law, such licensee shall be deemed to have waived all objections to the production of medical records to the board from health care providers that may be necessary for the evaluations described in paragraph (a) of this subsection (9).

(c) The results of any mental or physical examination ordered by the board shall not be used as evidence in any proceeding other than before the board.

(10) (a) Investigations, examinations, hearings, meetings, or any other proceedings of the board conducted pursuant to this section shall be exempt from any law requiring that proceedings of the board be conducted publicly or that the minutes or records of the board with respect to action of the board taken pursuant to this section be open to public inspection. This subsection (10) shall not apply to investigations, examinations, hearings, meetings, or any other proceedings or records of the licensing panel created pursuant to section 12-36-111.3 related to the unlicensed practice of medicine.

(b) For purposes of the records related to a complaint filed pursuant to this section against a licensee, the board is considered a professional review committee, the records related to the complaint include all records described in section 12-36.5-102 (7), and section 12-36.5-104 (11) applies to those records.

(11) A licensee who, at the request of the board, examines another licensee shall be immune from suit for damages by the person examined if the examining person conducted the examination and made his or her findings or diagnosis in good faith.

(12) (Deleted by amendment, L. 95, p. 1062, § 13, effective July 1, 1995.)

(13) Within thirty days after the board takes final action, which is of public record, to revoke or suspend a license or to place a licensee on probation based on competence or professional conduct, the board shall send notice of the final action to any hospital in which the licensee has clinical privileges, as indicated by the licensee.

(14) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person or in its own motion, that a licensee is acting in a manner that is an imminent threat to the health and safety of the public, the board may issue an order to cease and desist such activity. 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 practices immediately cease.

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

(15) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this part 1, then, in addition to any specific powers granted pursuant to this part 1, the board may issue to such person an order to show cause as to why the board should not issue a final order directing such person to cease and desist from the unlawful act or unlicensed practice.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (15) shall be promptly notified by the board of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the board for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order is issued. Personal service or mailing of an order or document pursuant to this subsection (15) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the board as provided in paragraph (b) of this subsection (15). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (15) does not appear at the hearing, the board may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (15) and such other evidence related to the matter as the board deems appropriate. The board shall issue the order within ten days after the board's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the board reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required license or has or is about to engage in acts or practices constituting violations of this part 1, a final cease-and-desist order may be issued directing such person to cease and desist from further unlawful acts or unlicensed practices.

(IV) The board shall provide notice, in the manner set forth in paragraph (b) of this subsection (15), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom such order has been

issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

(16) If it appears to the board, based upon credible evidence presented to the board, that a person has engaged in or is about to engage in any unlicensed act or practice, any act or practice constituting a violation of this part 1, any rule promulgated pursuant to this part 1, any order issued pursuant to this part 1, or any act or practice constituting grounds for administrative sanction pursuant to this part 1, the board may enter into a stipulation with such person.

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

(18) A person aggrieved by the final cease-and-desist order may seek judicial review of the board's determination or of the board's final order as provided in section 12-36-119.

(19) If a physician has a restriction placed on his or her license, the restriction shall, if practicable, state whether the restriction prohibits the physician from making a medical marijuana recommendation.

Source: L. 51: p. 572 § 18. **CSA:** C. 109, § 33(18). **CRS 53:** § 91-1-18. **C.R.S. 1963:** § 91-1-18. **L. 73:** pp. 526, 1026, §§ 51, 4. **L. 75:** (1) and (2) R&RE, p. 461, § 2, effective June 29; (7) amended, p. 923, § 12, effective July 14. **L. 76:** (1) amended and (10) and (11) added, p. 419, § 4, effective July 1; (6) repealed, p. 416, § 13, effective July 1. **L. 77:** Entire section R&RE, p. 677, § 2, effective July 1. **L. 79:** (4)(a) and (5)(b) amended, p. 437, § 15, effective July 1; entire section amended, p. 512, § 14, effective July 1. **L. 82:** (1), (4)(a), (5)(a) to (5)(f), (5)(g)(I), (5)(g)(II), and (5)(h) amended, p. 259, § 1, effective March 2. **L. 83:** (3) and (9)(a) amended, p. 531, § 3, effective April 29. **L. 85:** (1), (3), (4)(c)(III), (5)(a), (5)(g)(I), and (7) amended, p. 520, § 9, effective July 1; (3), (4)(a), (4)(b)(I), (4)(b)(II), (4)(b)(III), (4)(b)(IV), (4)(c)(III), (4)(d), (5)(a), (5)(b), (5)(c), (5)(d), (5)(e), IP(5)(g)(III), (5)(g)(IV), (5)(g)(V), (8), (9)(a), (9)(b), (11), and (12)(a) amended, p. 500, § 14, effective July 1. **L. 87:** (1), (5)(f), and (5)(g)(II) amended, p. 947, § 37, effective March 13. **L. 88:** (3) and (4)(d) amended and (4)(c)(II.5), (4)(e), and (13) added, pp. 522-524, §§ 4-7, effective July 1. **L. 89:** (4)(b)(II) amended, p. 689, § 3, effective July 1. **L. 91:** (8) amended, p. 1782, § 7, effective July 1. **L. 95:** (1), (4)(a), (4)(b)(II), (4)(c)(II.5), (5)(a) to (5)(e), (5)(g)(II), IP(5)(g)(III), (9)(a), (9)(b), and (12) amended p. 1062, § 13, effective July 1. **L. 97:** (4)(e) repealed, p. 1479, § 28, effective June 3. **L. 2001:** (1)(a) amended, p. 1269, § 13, effective June 5; (3), (4)(a), (4)(b)(III), (4)(b)(IV), (4)(c)(II.5), (4)(c)(III), (4)(d), (5)(e), IP(5)(g)(III), (5)(g)(IV), (5)(g)(V), (8), (9)(a), (9)(b), (11), and (13) amended, p. 179, § 7, effective August 8. **L. 2003:** (4)(b)(III) amended, p. 621, § 31, effective July 1; IP(5)(g)(III) amended and (5)(g)(III.5) added, p. 828, § 1, effective August 6. **L. 2004:** (3), (4)(c)(III), and (4)(c)(IV) amended, p. 1828, § 69, effective August 4; (13) amended, p. 953, § 1, effective August 4. **L. 2006:** (4)(a)(I) amended and (14) to (18) added, p. 795, § 28, effective July 1. **L. 2010:** (8) amended, (SB 10-175), ch. 188, p. 778, § 9, effective April 29; (5)(g)(X) added, (SB 10-109), ch. 356, p. 1696, § 4, effective June 7; (5)(f), IP(5)(g)(III), (7), (10), (13), and (14)(a) amended and (5)(i) added, (HB 10-1260), ch. 403, pp. 1951, 1962, 1960, §§ 17, 32, 28, effective July 1. **L. 2011:** (19) added, (HB 11-1043), ch. 266, p. 1214, § 25, effective July 1. **L. 2012:** (10)(b) amended, (HB 12-1300), ch. 245, p. 1181, § 13, effective July 1; IP(5)(g)(III), (5)(g)(IV),

(5)(i), (8) amended, (HB 12-1332), ch. 238, p. 1055, § 9, effective August 8. **L. 2016:** (5)(h) amended, (HB 16-1094), ch. 94, p. 266, § 7, effective August 10. **L. 2017:** (3)(a) amended, (SB 17-242), ch. 263, p. 1273, § 56, effective May 25.

Editor's note: Amendments to this section and subsections (4)(a) and (5)(b) by Senate Bill 79-293 and Senate Bill 79-296 were harmonized.

Cross references: (1) For an alternative disciplinary action for persons licensed pursuant to this article, see § 24-34-106.

(2) For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-36-118.5. Confidential agreements to limit practice - violation grounds for discipline. (1) If a physician, physician assistant, or anesthesiologist assistant suffers from a physical illness; a physical condition; or a behavioral or mental health disorder that renders the licensee unable to practice medicine, practice as a physician assistant, or practice as an anesthesiologist assistant with reasonable skill and with safety to patients, the physician, physician assistant, or anesthesiologist assistant shall notify the board of the physical illness; the physical condition; or the behavioral or mental health disorder in a manner and within a period determined by the board. The board may require the licensee to submit to an examination or refer the licensee to a peer health assistance program pursuant to section 12-36-123.5 to evaluate the extent of the physical illness; the physical condition; or the behavioral or mental health disorder and its impact on the licensee's ability to practice with reasonable skill and with safety to patients.

(2) (a) Upon determining that a physician, physician assistant, or anesthesiologist assistant with a physical illness; a physical condition; or a behavioral or mental health disorder is able to render limited medical services with reasonable skill and with safety to patients, the board may enter into a confidential agreement with the physician, physician assistant, or anesthesiologist assistant in which the physician, physician assistant, or anesthesiologist assistant agrees to limit his or her practice based on the restrictions imposed by the physical illness; the physical condition; or the behavioral or mental health disorder, as determined by the board.

(b) As part of the agreement, the licensee shall be subject to periodic reevaluations or monitoring as determined appropriate by the board. The board may refer the licensee to the peer assistance health program for reevaluation or monitoring.

(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 board pursuant to this section to limit his or her practice, the licensee shall not be deemed to be engaging in unprofessional conduct, and the agreement shall be considered an administrative action and shall not constitute a restriction or discipline by the board. However, if the licensee fails to comply with the terms of an agreement entered into pursuant to this section, such failure constitutes unprofessional conduct pursuant to section 12-36-117 (1)(o), and the licensee shall be subject to discipline in accordance with section 12-36-118.

(4) This section shall not apply to a licensee subject to discipline for unprofessional conduct as described in section 12-36-117 (1)(i).

Source: L. 2010: Entire section added, (HB 10-1260), ch. 403, p. 1961, § 30, effective July 1. **L. 2012:** (1) and (2)(a) amended, (HB 12-1332), ch. 238, p. 1056, § 10, effective August 8. **L. 2017:** (1) and (2)(a) amended, (SB 17-242), ch. 263, p. 1273, § 57, effective May 25.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-36-119. Appeal of final board actions. When the board refuses to grant a license, imposes disciplinary action pursuant to section 12-36-118, or places a licensee on probation, such action may be reviewed by the court of appeals pursuant to section 24-4-106 (11), C.R.S., unless the licensee has accepted a license subject to terms of probation as set forth in section 12-36-116 (3).

Source: L. 51: p. 574, § 19. **CSA:** C. 109, § 33(19). **CRS 53:** § 91-1-19. **C.R.S. 1963:** § 91-1-19. **L. 75:** (2) amended, p. 555, § 1, effective April 9. **L. 76:** (1) amended, p. 414, § 8, effective July 1. **L. 77:** (1) and (2) amended, p. 683, § 3, effective July 1. **L. 79:** Entire section amended, p. 518, § 15, effective July 1. **L. 81:** (2) amended, p. 1144, § 5, effective July 1. **L. 85:** (1)(b) and (2) amended, pp. 504, 522, §§ 15, 10, effective July 1. **L. 95:** Entire section amended, p. 1066, § 14, effective July 1. **L. 2001:** Entire section amended, p. 182, § 8, effective August 8.

12-36-120. Other licensees of board - disciplinary action. (Repealed)

Source: L. 51: p. 574, § 20. **CSA:** C. 109, § 33(20). **CRS 53:** § 91-1-20. **C.R.S. 1963:** § 91-1-20. **L. 76:** (4) repealed, p. 424, § 7, effective July 1. **L. 79:** (2) amended, p. 519, § 16, effective July 1. **L. 85:** Entire section repealed, p. 506, § 24, effective July 1.

12-36-121. Duplicates of license. (Repealed)

Source: L. 51: p. 575, § 21. **CSA:** C. 109, § 33(21). **CRS 53:** § 91-1-21. **C.R.S. 1963:** § 91-1-21. **L. 76:** Entire section amended, 423, § 1, effective July 1. **L. 79:** Entire section amended, p. 519, § 17, effective July 1. **L. 85:** Entire section amended, p. 504, § 16, effective July 1. **L. 2001:** Entire section amended, p. 183, § 9, effective August 8. **L. 2010:** Entire section repealed, (HB 10-1260), ch. 403, p. 1975, § 47, effective July 1.

12-36-122. Physician training licenses. (1) Any person serving an approved internship, residency, or fellowship, as defined by this article, in a hospital in this state may do so for an aggregate period of up to six years under the authority of a physician training license issued pursuant to this subsection and without a license to practice medicine issued pursuant to section 12-36-107 or 12-36-107.6.

(2) No person shall be granted a physician training license unless such person meets the following criteria:

(a) The person has been accepted into and demonstrates the intention to participate in an approved internship, residency, or fellowship, as defined by this article; and

(b) The person is not otherwise licensed to practice medicine in this state.

(3) The board may refrain from issuing a physician training license, or may grant a physician training license subject to terms or probation, for any of the reasons listed in section 12-36-116 (1)(a), (1)(b), or (1)(c). An applicant whose physician training license is denied or is granted subject to terms of probation may seek review pursuant to section 24-4-104 (9), C.R.S.; except that, if an applicant accepts a physician training license that is subject to terms of probation, such acceptance shall be in lieu of and not in addition to the remedies set forth in section 24-4-104 (9), C.R.S.

(4) Except as provided in subsection (3) of this section, the board shall issue a physician training license upon receipt of a statement from the approved internship, residency, or fellowship program stating that the applicant meets the criteria set forth in subsection (2) of this section and that the approved internship, residency, or fellowship accepts responsibility for the applicant's training while in the program. The statement shall be signed by the program director, clinical director, or other physician responsible for the training of the applicant. The statement shall be submitted to the board no later than thirty days prior to the date on which the applicant begins the approved internship, residency, or fellowship in this state.

(5) Where feasible, the applicant shall submit a completed application, on a form approved by the board, on or before the date on which the applicant begins the approved internship, residency, or fellowship in this state. Any physician training license granted pursuant to this section shall expire if a completed application is not received by the board sixty days after the applicant begins the approved internship, residency, or fellowship in this state. The board may establish and charge an application and renewal fee not to exceed fifty dollars for such physician training licenses pursuant to section 24-34-105, C.R.S. Such applicants and renewal applicants shall not be required to pay any fee pursuant to section 12-36-123.5.

(6) Except as otherwise provided in this section, such physician training license shall be subject to renewal as set forth in section 12-36-123 (1)(a) and (1)(b). In no event shall any person hold a Colorado physician training license for more than an aggregate period of six years.

(7) A physician training licensee may practice medicine as defined by this article with the following restrictions:

(a) A physician training licensee shall be authorized to practice medicine only under the supervision of a physician licensed to practice medicine pursuant to section 12-36-107 or 12-36-107.6 and only as necessary for the physician training licensee's participation in the approved internship, residency, or fellowship designated on the licensee's application for a physician training license.

(b) (I) A physician training license shall expire:

(A) Within sixty days under the circumstances described in subsection (5) of this section;

(B) At the time the physician training licensee ceases to participate in the approved internship, residency, or fellowship program identified on the licensee's application form; or

(C) At the time the physician training licensee obtains any other license to practice medicine issued by the board.

(II) If a physician training licensee entered an approved internship, residency, or fellowship other than the approved internship, residency, or fellowship indicated on the licensee's application, the licensee shall file a new application with the board pursuant to subsections (4) and (5) of this section.

(c) A physician training licensee shall not have the authority to delegate the rendering of medical services to a person who is not licensed to practice medicine pursuant to section 12-36-106 (3)(l) and shall not have the authority to supervise physician assistants as provided by section 12-36-106 (5).

(d) The issuance of a physician training license shall not be construed to require the board to issue the physician training licensee a license to practice medicine pursuant to section 12-36-107 or 12-36-107.6.

(8) A physician training licensee may be disciplined for unprofessional conduct as defined in section 12-36-117, pursuant to the procedures outlined in section 12-36-118.

(9) Repealed.

(10) Licensed physicians responsible for the supervision of interns, residents, or fellows in graduate training programs shall report to the board no later than thirty days after a physician training licensee has been terminated or has resigned from the approved internship, residency, or fellowship.

Source: L. 51: p. 575, § 22. **CSA:** C. 109, § 33(22). **CRS 53:** § 91-1-22. **C.R.S. 1963:** § 91-1-22. **L. 67:** p. 813, § 5. **L. 88:** Entire section amended, p. 524, § 8, effective July 1. **L. 95:** Entire section amended, p. 1066, § 15, effective July 1. **L. 2002:** Entire section amended, p. 546, § 3, effective August 7. **L. 2010:** (9) repealed, (HB 10-1260), ch. 403, p. 1974, § 44, effective July 1.

Editor's note: Subsection (9) was relocated to § 12-36-122.5 (3) in 2010.

12-36-122.5. Intern, resident, or fellow reporting. (1) Notwithstanding any provision of 12-36-118 (10) to the contrary, the board shall inform the licensed physicians responsible for the supervision of an intern, resident, or fellow of any complaint received in writing relating to the intern, resident, or fellow. The board shall also inform the program sponsoring such intern, resident, or fellow of actions of the board regarding such complaint.

(2) The board in its discretion may release records that are not otherwise privileged or confidential by law to the licensed physicians responsible for the supervision of an intern, resident, or fellow, but only if such physician agrees in writing not to redisclose such records or the information contained therein for use outside of any proceeding within the program or practice site.

(3) Licensed physicians responsible for the supervision of interns, residents, or fellows in graduate training programs shall promptly report to the board anything concerning a licensee in the graduate training program that would constitute a violation of this article. The physicians shall also report to the board any licensee who has not progressed satisfactorily in the program because the licensee has been dismissed, suspended, or placed on probation for reasons that constitute unprofessional conduct as defined in section 12-36-117, unless the conduct has been reported to the peer health assistance program pursuant to section 12-36-123.5.

Source: L. 2002: Entire section added, p. 545, § 2, effective August 7. **L. 2010:** (3) added with relocations, (HB 10-1260), ch. 403, p. 1974, § 43, effective July 1.

Editor's note: Subsection (3) is similar to former § 12-36-122 (9) as it existed prior to 2010.

12-36-123. Procedure - registration - fees. (1) (a) All licenses shall be renewed or reinstated pursuant to a schedule established by the director of the division of professions and occupations within the department of regulatory agencies and shall be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director of the division may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S., and shall increase renewal fees consistent with section 24-34-109 (4), C.R.S., to fund the division's costs in administering and staffing the nurse-physician advisory task force for Colorado health care created in section 24-34-109 (1), C.R.S. If a person fails to renew his or her license pursuant to the schedule established by the director of the division of professions and occupations, such license shall expire. A person whose license has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

(b) The board shall design a questionnaire to accompany the renewal form for the purpose of determining whether a licensee has acted in violation of this article or been disciplined for any action that might be considered a violation of this article or might make the licensee unfit to practice medicine with reasonable care and safety. If an applicant fails to answer the questionnaire accurately, such failure shall constitute unprofessional conduct under section 12-36-117 (1)(aa).

(c) Applicants for relicensure shall not be required to attend and complete continuing medical education programs, except as directed by the board to correct deficiencies of training or education as directed under section 12-36-118 (5)(g)(III)(B).

(2) (Deleted by amendment, L. 2004, p. 1829, § 70, effective August 4, 2004.)

(3) (Deleted by amendment, L. 95, p. 1067, § 16, effective July 1, 1995.)

Source: L. 51: p. 575, § 23. **CSA:** C. 109, § 33(23). **CRS 53:** § 91-1-23. **C.R.S. 1963:** § 91-1-23. **L. 67:** p. 813, § 6. **L. 73:** p. 1027, § 5. **L. 76:** (1) amended, p. 420, § 5, effective July 1; (1) amended, p. 423, § 2, effective July 1. **L. 79:** (1)(a) and (2) amended, p. 438, § 16, effective July 1; entire section amended, p. 519, § 18, effective July 1. **L. 83:** (1)(b) amended and (1)(c) repealed, p. 542, §§ 1, 2, effective May 20. **L. 85:** (1)(a) R&RE and (2) and (3) amended, p. 523, §§ 11, 12, effective July 1. **L. 88:** (2) and (3) amended, p. 524, § 9, effective July 1. **L. 95:** (1)(a), (1)(b), (2)(a), (2)(b), and (3) amended, p. 1067, § 16, effective July 1. **L. 2001:** (1)(a) and (2) amended, p. 183, § 10, effective August 8. **L. 2004:** (1)(a) and (2) amended, p. 1829, § 70, effective August 4. **L. 2009:** (1)(a) amended, (SB 09-239), ch. 401, p. 2182, § 27, effective July 1.

Editor's note: Amendments to this section and subsections (1)(a) and (2) by Senate Bill 79-293 and Senate Bill 79-296 were harmonized.

Cross references: For the authority of the executive director of the department of regulatory agencies to change the period of validity and renewal date of any license or certificate issued by any examining or licensing board or commission in the division of professions and occupations, see § 24-34-102 (7) and (8).

12-36-123.5. Physicians', physician assistants', and anesthesiologist assistants' peer health assistance program.

(1) to (3) Repealed.

(3.5) (a) (Deleted by amendment, L. 95, p. 1068, § 17, effective July 1, 1995.)

(b) (I) As a condition of physician, physician assistant, and anesthesiologist assistant licensure and renewal in this state, every applicant shall pay, pursuant to paragraph (e) of this subsection (3.5), an amount set by the board, not to exceed sixty-one dollars per year, which maximum amount may be adjusted on January 1, 2011, and annually thereafter by the board to reflect:

(A) Changes in the United States bureau of labor statistics consumer price index for the Denver-Boulder consolidated metropolitan statistical area for all urban consumers, all goods, or its successor index;

(B) Overall utilization of the program; and

(C) Differences in program utilization by physicians, physician assistants, and anesthesiologist assistants.

(II) Based on differences in utilization rates between physicians, physician assistants, and anesthesiologist assistants, the board may establish different fee amounts for physicians, physician assistants, and anesthesiologist assistants.

(III) The fee imposed pursuant to this paragraph (b) is to support designated providers that have been selected by the board to provide assistance to physicians, physician assistants, and anesthesiologist assistants needing help in dealing with physical, emotional, or psychological problems that may be detrimental to their ability to practice medicine, practice as a physician assistant, or practice as an anesthesiologist assistant, as applicable.

(c) The board shall select one or more peer health assistance programs as designated providers. To be eligible for designation by the board, a peer health assistance program must:

(I) Provide for the education of physicians, physician assistants, and anesthesiologist assistants with respect to the recognition and prevention of physical, emotional, and psychological problems and provide for intervention when necessary or under circumstances that may be established by rules promulgated by the board;

(II) Offer assistance to a physician, physician assistant, or anesthesiologist assistant in identifying physical, emotional, or psychological problems;

(III) Evaluate the extent of physical, emotional, or psychological problems and refer the physician, physician assistant, or anesthesiologist assistant for appropriate treatment;

(IV) Monitor the status of a physician, physician assistant, or anesthesiologist assistant who has been referred for treatment;

(V) Provide counseling and support for the physician, physician assistant, or anesthesiologist assistant and for the family of any physician, physician assistant, or anesthesiologist assistant referred for treatment;

(VI) Agree to receive referrals from the board;

(VII) Agree to make their services available to all licensed Colorado physicians, licensed Colorado physician assistants, and licensed Colorado anesthesiologist assistants.

(d) The administering entity shall be a qualified, nonprofit private foundation that is qualified under section 501 (c)(3) of the federal "Internal Revenue Code of 1986", as amended, and shall be dedicated to providing support for charitable, benevolent, educational, and scientific

purposes that are related to medicine, medical education, medical research and science, and other medical charitable purposes.

(e) The responsibilities of the administering entity are:

(I) To collect the required annual payments, either directly or through the board pursuant to paragraph (e.5) of this subsection (3.5);

(II) To verify to the board, in a manner acceptable to the board, the names of all physician, physician assistant, and anesthesiologist assistant applicants who have paid the fee set by the board;

(III) To distribute the moneys collected, less expenses, to the approved designated provider, as directed by the board;

(IV) To provide an annual accounting to the board of all amounts collected, expenses incurred, and amounts disbursed; and

(V) To post a surety performance bond in an amount specified by the board to secure performance under the requirements of this section. The administering entity may recover the actual administrative costs incurred in performing its duties under this section in an amount not to exceed ten percent of the total amount collected.

(e.5) The board may collect the required annual payments payable to the administering entity for the benefit of the administering entity and shall transfer all such payments to the administering entity. All required annual payments collected by or due to the board for each fiscal year are custodial funds that are not subject to appropriation by the general assembly, and the distribution of the payments to the administering entity or expenditure of the payments by the administering entity does not constitute state fiscal year spending for purposes of section 20 of article X of the state constitution.

(f) Repealed.

(4) (Deleted by amendment, L. 95, p. 1068, § 17, effective July 1, 1995.)

(5) Nothing in this section creates any liability on the board or the state of Colorado for the actions of the board in making grants to peer assistance programs, and no civil action may be brought or maintained against the board or the state for an injury alleged to have been the result of the activities of any state-funded peer assistance program or the result of an act or omission of a physician, physician assistant, or anesthesiologist assistant participating in or referred by a state-funded peer assistance program.

(6) Repealed.

Source: L. 87: Entire section added, p. 512, § 1, effective May 1. **L. 93:** (1) amended and (3.5) and (6) added, p. 1697, § 12, effective July 1. **L. 95:** (3.5), (4), and (5) amended, p. 1068, § 17, effective July 1. **L. 98:** (3.5)(b) amended, p. 94, § 1, effective March 23. **L. 2001:** (3.5)(c)(VII) amended, p. 183, § 11, effective August 8. **L. 2010:** (3.5)(e)(I) amended and (3.5)(e.5) added, (HB 10-1128), ch. 172, p. 616, § 13, effective April 29; (3.5)(b), (3.5)(e)(I), and (3.5)(e.5) amended, (HB 10-1260), ch. 403, p. 1956, §§ 23, 24, effective July 1. **L. 2012:** IP(3.5)(b)(I), (3.5)(b)(I)(C), (3.5)(b)(II), (3.5)(b)(III), (3.5)(c), IP(3.5)(e), (3.5)(e)(II), and (5) amended, (HB 12-1332), ch. 238, p. 1057, § 11, effective August 8. **L. 2017:** (3.5)(f) repealed, (SB 17-294), ch. 264, p. 1387, § 14, effective May 25.

Editor's note: (1) Subsection (6) provided for the repeal of subsections (1), (2), (3), and (6), effective June 30, 1994. (See L. 93, p. 1697.)

(2) Amendments to subsection (3.5)(e)(I) by House Bill 10-1128 and House Bill 10-1260 were harmonized.

12-36-124. Certification of licensing. (Repealed)

Source: L. 51: p. 576, § 24. **CSA:** C. 109, § 33(24). **CRS 53:** § 91-1-24. **C.R.S. 1963:** § 91-1-24. **L. 76:** Entire section amended, p. 424, § 3, effective July 1. **L. 79:** Entire section amended, p. 521, § 19, effective July 1. **L. 85:** Entire section amended, p. 504, § 17, effective July 1; entire section amended, p. 523, § 13, effective July 1. **L. 2001:** Entire section amended, p. 184, § 12, effective August 8. **L. 2010:** Entire section repealed, (HB 10-1260), ch. 403, p. 1980, § 59, effective July 1.

12-36-125. Division of fees - independent advertising or marketing agent. (1) (a) If any person holding a license issued by the board or by the state board of medical examiners as constituted under any prior law of this state divides any fee or compensation received or charged for services rendered by him or her as such licensee or agrees to divide any such fee or compensation with any person, firm, association, or corporation as pay or compensation to such other person for sending or bringing any patient or other person to such licensee, or for recommending such licensee to any person, or for being instrumental in any manner in causing any person to engage such licensee in his or her professional capacity; or if any such licensee shall either directly or indirectly pay or compensate or agree to pay or compensate any person, firm, association, or corporation for sending or bringing any patient or other person to such licensee for examination or treatment, or for recommending such licensee to any person, or for being instrumental in causing any person to engage such licensee in his or her professional capacity; or if any such licensee, in his or her professional capacity and in his or her own name or behalf, shall make or present a bill or request a payment for services rendered by any person other than the licensee, such licensee commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(b) Notwithstanding the provisions of paragraph (a) of subsection (1) of this section, a licensee may pay an independent advertising or marketing agent compensation for the advertising or marketing services rendered on the licensee's behalf by such agent, including compensation which is paid for the results or performance of such services on a per patient basis.

(c) As used in this subsection (1), "independent advertising or marketing agent" means a person, firm, association, or corporation which performs advertising or other marketing services on behalf of licensees, including referrals of patients to licensees resulting from patient-initiated responses to such advertising or marketing services.

(2) Violation of the provisions of this section shall constitute grounds for the suspension or revocation of a license or the placing of the holder thereof on probation.

(3) Repealed.

Source: L. 51: p. 576, § 25. **CSA:** C. 109, § 33(25). **CRS 53:** § 91-1-25. **C.R.S. 1963:** § 91-1-25. **L. 76:** (2) amended, p. 424, § 4, effective July 1. **L. 79:** (1) amended, p. 521, § 20, effective July 1. **L. 85:** (1) amended and (3) added, p. 515, § 4, effective May 3; (1) amended, p. 408, § 10, effective July 1; (2) amended, p. 504, § 18, effective July 1. **L. 91:** (3) amended, p. 889, § 13, effective July 1. **L. 95:** (3) repealed, p. 1070, § 18, effective July 1. **L. 2001:** (2)

amended, p. 184, § 13, effective August 8. **L. 2002:** (1)(a) amended, p. 1478, § 74, effective October 1.

Editor's note: Amendments to subsection (1) by House Bill 85-1098 and House Bill 85-1172 were harmonized.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (1)(a), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-36-126. Recovery of fees illegally paid. If any licensee, in violation of section 12-36-125, divides or agrees to divide any fee or compensation received by him for services rendered in his professional capacity with any person whomsoever, the person who has paid such fee or compensation to such licensee may recover the amount unlawfully paid or agreed to be paid from either the licensee or from the person to whom such fee or compensation has been paid, by an action to be instituted within two years from the date on which such fee or compensation was so divided or agreed to be divided.

Source: L. 51: p. 577, § 26. **CSA:** C. 109, § 33(26). **CRS 53:** § 91-1-26. **C.R.S. 1963:** § 91-1-26. **L. 79:** Entire section amended, p. 521, § 21, effective July 1.

12-36-127. Liability of persons other than licensee. If any person, firm, association, or corporation receives, either directly or indirectly, any pay or compensation given or paid in violation of section 12-36-125, such person, firm, association, or corporation, and the officers and directors thereof, commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 51: p. 577, § 27. **CSA:** C. 109, § 33(27). **CRS 53:** § 91-1-27. **C.R.S. 1963:** § 91-1-27. **L. 85:** Entire section amended, p. 408, § 11, effective July 1. **L. 2002:** Entire section amended, p. 1478, § 75, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

12-36-128. Advertising. (Repealed)

Source: L. 51: p. 578, § 28. **CSA:** C. 109, § 33(28). **CRS 53:** § 91-1-28. **C.R.S. 1963:** § 91-1-28. **L. 79:** Entire section R&RE, p. 521, § 22, effective July 1. **L. 85:** Entire section repealed, p. 516, § 5, effective May 3.

12-36-128.5. Public communications and advertisements. (Repealed)

Source: L. 91: Entire section added, p. 886, § 12, effective July 1. **L. 95:** Entire section repealed, p. 1072, § 25, effective July 1.

12-36-129. Unauthorized practice - penalties. (1) Any person who practices or offers or attempts to practice medicine, practice as a physician assistant, or practice as an anesthesiologist assistant within this state 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 any person committing a second or subsequent offense commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(2) Any person who engages in any of the following activities commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.:

(a) Presents as his or her own the diploma, license, certificate, or credentials of another;

(b) Gives either false or forged evidence of any kind to the board or any board member in connection with an application for a license to practice medicine, practice as a physician assistant, or practice as an anesthesiologist assistant;

(c) Practices medicine, practices as a physician assistant, or practices as an anesthesiologist assistant under a false or assumed name; or

(d) Falsely impersonates another licensee of a like or different name.

(2.5) Any person who violates section 12-36-117 (1)(w) commits a class 5 felony, and any person committing a second or subsequent violation commits a class 3 felony; and such persons shall be punished as provided in section 18-1.3-401, C.R.S.

(3) No action may be maintained against an individual who has been the recipient of services constituting the unlawful practice of medicine, unlawful practice as a physician assistant, or unlawful practice as an anesthesiologist assistant, for the breach of a contract involving the unlawful practice of medicine, unlawful practice as a physician assistant, or unlawful practice as an anesthesiologist assistant or the recovery of compensation for services rendered under such a contract.

(4) When an individual has been the recipient of services constituting the unlawful practice of medicine, unlawful practice as a physician assistant, or unlawful practice as an anesthesiologist assistant, whether or not the individual knew that the rendition of the services was unlawful:

(a) The individual or the individual's personal representative is entitled to recover the amount of any fee paid for the services; and

(b) The individual or the individual's personal representative may also recover a reasonable attorney fee as fixed by the court, to be assessed as part of the costs of the action.

(5) (a) No specialty society, association of physicians, or licensed physician may discriminate against any person licensed to practice medicine if such physician is qualified for membership in the specialty society or association. If board certification or eligibility in a specialty is a membership requirement, certification or eligibility by either the American board of medical specialties or the American osteopathic association based upon the applicant's training as a doctor of medicine or doctor of osteopathy, is sufficient. Notwithstanding any other remedies provided under this article, a licensed physician who is discriminated against in violation of this section shall have a private right of action against the licensed physician or specialty society or association that so discriminates.

(b) Any licensed physician, specialty society, or association of physicians held liable for a violation of this subsection (5) shall pay the costs and reasonable attorney fees incurred by the aggrieved physician associated with his pursuit of any claim for relief authorized by this subsection (5).

(6) (a) The board may, in the name of the people of the state of Colorado and through the attorney general of the state of Colorado, apply for an injunction in any court of competent jurisdiction to enjoin any person from committing any act prohibited by this article.

(b) If the board establishes that the defendant has been or is committing an act prohibited by this article, the court shall enter a decree perpetually enjoining the defendant from further committing the act.

(c) An injunctive proceeding may be brought pursuant to this section in addition to, and not in lieu of, all penalties and other remedies provided in this article.

Source: L. 51: p. 578, § 29. **CSA:** C. 109, § 33(29). **CRS 53:** § 91-1-29. **L. 63:** p. 338, § 48. **C.R.S. 1963:** § 91-1-29. **L. 73:** pp. 1027, 1410, §§ 6, 68. **L. 77:** (2) amended, p. 876, § 39, effective July 1, 1979. **L. 79:** (2) amended, p. 522, § 23, effective July 1. **L. 85:** (1) amended, p. 408, § 12, effective July 1; (1) amended, p. 523, § 14, effective July 1; (2) amended, p. 504, § 19, effective July 1. **L. 87:** (1) amended and (2.5) added, p. 502, § 4, effective May 20. **L. 89:** (1), (2), and (2.5) amended, p. 825, § 24, effective July 1. **L. 90:** (5) added, p. 819, § 1, effective May 14. **L. 95:** (5)(a) amended, p. 1070, § 19, effective July 1. **L. 2002:** (1), (2), and (2.5) amended, p. 1478, § 76, effective October 1. **L. 2006:** (1) amended, p. 87, § 27, effective August 7. **L. 2010:** (1), (2), (3), and (4) amended and (6) added, (HB 10-1260), ch. 403, p. 1969, §§ 38, 39, effective July 1. **L. 2012:** (1), (2)(b), (2)(c), (3), IP(4) amended, (HB 12-1332), ch. 238, p. 1058, § 12, effective August 8.

Editor's note: (1) Amendments to subsection (1) by House Bill 85-1172 and Senate Bill 85-11 were harmonized.

(2) The effective date for amendments made to this section by chapter 216, L. 77, was changed from July 1, 1978, to April 1, 1979, by chapter 1, First Extraordinary Session, L. 78, and was subsequently changed to July 1, 1979, by chapter 157, § 23, L. 79. See People v. McKenna, 199 Colo. 452, 611 P.2d 54 (1980).

(3) Subsection (6) is similar to former § 12-36-132 as it existed prior to 2010.

Cross references: (1) For unlawful acts relating to the treatment of cancer, see § 25-50-106.

(2) For the legislative declaration contained in the 2002 act amending subsections (1), (2), and (2.5), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-36-130. Moneys collected. (Repealed)

Source: L. 51: p. 578, § 30. **CSA:** C. 109, § 33(30). **CRS 53:** § 91-1-30. **C.R.S. 1963:** § 91-1-30. **L. 73:** p. 1373, § 30. **L. 79:** Entire section repealed, p. 525, § 31, effective July 1.

12-36-131. Existing licenses. (1) Nothing in this article shall be construed to invalidate or affect the license of any person holding a valid, unrevoked, and unsuspended license to practice medicine in this state on July 1, 1951, except as otherwise provided by this article.

(2) Nothing in this article shall be construed to invalidate the license of any person holding a valid, unrevoked, and unsuspended license on June 30, 1979, to practice medicine in this state or to affect any disciplinary proceeding or appeal pending on June 30, 1979, or any

appointment to the board, the inquiry panel, or the hearings panel made on or before June 30, 1979.

Source: L. 51: p. 571, § 32. **CSA:** C. 109, § 33(32). **CRS 53:** § 91-1-32. **C.R.S. 1963:** § 91-1-32. **L. 79:** Entire section amended, p. 522, § 24, effective July 1.

12-36-132. Injunctive proceedings. (Repealed)

Source: L. 67: p. 813, § 7. **C.R.S. 1963:** § 91-1-36. **L. 76:** (1) amended, p. 424, § 5, and (1) amended, p. 414, § 9, effective July 1. **L. 85:** (1) amended, p. 505, § 20, effective July 1. **L. 91:** (1) amended, p. 1910, § 16, effective June 1. **L. 2010:** Entire section repealed, (HB 10-1260), ch. 403, p. 1974, § 44, effective July 1.

Editor's note: This section was relocated to § 12-36-129 (6) in 2010.

12-36-133. Postmortem examinations by licensee - definition - application of this section. (1) As used in this section, "person or persons" shall include any individual, partnership, corporation, body politic, or association.

(2) Consent for a licensee to conduct a postmortem examination of the body of a deceased person shall be deemed sufficient when given by whichever one of the following assumes custody of the body for purposes of burial: Father, mother, husband, wife, child, guardian, next of kin, or, in the absence of any of the foregoing, a friend or a person charged by law with the responsibility for burial. If two or more such persons assume custody of the body, the consent of one of them shall be deemed sufficient.

(3) Nothing in this section shall be construed as a repeal of any provision of part 6 of article 10 of title 30, C.R.S.

Source: L. 59: p. 586, §§ 1, 2, 3. **CRS 53:** §§ 91-1-33, 91-1-34, 91-1-35. **C.R.S. 1963:** §§ 91-1-33, 91-1-34, 91-1-35. **L. 2001:** (2) amended, p. 184, § 14, effective August 8.

12-36-134. Professional service corporations, limited liability companies, and registered limited liability partnerships for the practice of medicine - definitions. (1) Persons licensed to practice medicine by the board may form professional service corporations for such persons' practice of medicine under the "Colorado Business Corporation Act", articles 101 to 117 of title 7, C.R.S., if such corporations are organized and operated in accordance with the provisions of this section. The articles of incorporation of such corporations shall contain provisions complying with the following requirements:

(a) The name of the corporation shall contain the words "professional company" or "professional corporation" or abbreviations thereof.

(b) The corporation is organized solely for the purpose of permitting individuals to conduct the practice of medicine through a corporate entity, so long as all the individuals are actively licensed physicians or physician assistants in the state of Colorado.

(c) The corporation may exercise the powers and privileges conferred upon corporations by the laws of Colorado only in furtherance of and subject to its corporate purpose.

(d) (I) Except as specified in subparagraph (II) of this paragraph (d), all shareholders of the corporation are persons licensed by the board to practice medicine in the state of Colorado who at all times own their shares in their own right; except that one or more persons licensed by the board as a physician assistant may be a shareholder of the corporation as long as the physician shareholders maintain majority ownership of the corporation. The shareholders shall be individuals who, except for illness, accident, time spent in the armed services, on vacations, and on leaves of absence not to exceed one year, are actively engaged in the practice of medicine or as a physician assistant in the offices of the corporation.

(II) If a person licensed to practice medicine who was a shareholder of the corporation dies, an heir to the deceased shareholder may become a shareholder of the corporation for up to two years, regardless of whether the heir is licensed to practice medicine. Unless the deceased shareholder was the only shareholder of the corporation, the heir who becomes a shareholder shall be a nonvoting shareholder in all matters concerning the corporation. If the heir of the deceased shareholder ceases to be a shareholder, the shares shall be disposed of pursuant to paragraph (e) of this subsection (1).

(e) Provisions shall be made requiring any shareholder who ceases to be or for any reason is ineligible to be a shareholder to dispose of all his shares forthwith, either to the corporation or to any person having the qualifications described in paragraph (d) of this subsection (1).

(f) The president shall be a shareholder and a director and, to the extent possible, all other directors and officers shall be persons having the qualifications described in paragraph (d) of this subsection (1). Lay directors, officers, and heirs of deceased shareholders shall not exercise any authority whatsoever over the independent medical judgment of persons licensed by the board to practice medicine in this state. Notwithstanding sections 7-108-103 to 7-108-106, C.R.S., relating to the terms of office and classification of directors, a professional service corporation for the practice of medicine may provide in the articles of incorporation or the bylaws that the directors may have terms of office of up to six years and that the directors may be divided into classes, with the terms of each class staggered to provide for the periodic election of less than all the directors. Nothing in this article shall be construed to cause a professional service corporation to be vicariously liable to a patient or third person for the professional negligence or other tortious conduct of a physician who is a shareholder or employee of a professional service corporation.

(f.5) An heir to a deceased shareholder who becomes a shareholder shall be liable only to the same extent as the deceased shareholder would have been in his or her capacity as a shareholder, had he or she lived and remained a shareholder, for all acts, errors, and omissions of the employees of the corporation.

(g) The articles of incorporation provide and all shareholders of the corporation agree that all shareholders of the corporation are jointly and severally liable for all acts, errors, and omissions of the employees of the corporation or that all shareholders of the corporation are jointly and severally liable for all acts, errors, and omissions of the employees of the corporation, except during periods of time when each licensee who is a shareholder or any employee of the corporation has a professional liability policy insuring himself or herself and all employees who are not licensed pursuant to this article who act at his or her direction, in the amount of fifty thousand dollars for each claim and an aggregate top limit of liability per year for all claims of

one hundred fifty thousand dollars, or the corporation maintains in good standing professional liability insurance that meets the following minimum standards:

(I) The insurance insures the corporation against liability imposed upon the corporation by law for damages resulting from any claim made against the corporation arising out of the performance of professional services for others by those officers and employees of the corporation who are licensees.

(II) The policies insure the corporation against liability imposed upon it by law for damages arising out of the acts, errors, and omissions of all nonprofessional employees.

(III) The insurance is in an amount for each claim of at least fifty thousand dollars multiplied by the number of licensees employed by the corporation. The policy may provide for an aggregate top limit of liability per year for all claims of one hundred fifty thousand dollars also multiplied by the number of licensees employed by the corporation, but no firm shall be required to carry insurance in excess of three hundred thousand dollars for each claim with an aggregate top limit of liability for all claims during the year of nine hundred thousand dollars.

(IV) The policy may provide that it does not apply to: Any dishonest, fraudulent, criminal, or malicious act or omission of the insured corporation or any stockholder or employee thereof; the conduct of any business enterprise, as distinguished from the practice of medicine, in which the insured corporation under this section is not permitted to engage but which nevertheless may be owned by the insured corporation or in which the insured corporation may be a partner or which may be controlled, operated, or managed by the insured corporation in its own or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith; when not resulting from breach of professional duty, bodily injury to, or sickness, disease, or death of any person, or to injury to or destruction of any tangible property, including the loss of use thereof; and such policy may contain reasonable provisions with respect to policy periods, territory, claims, conditions, and other usual matters.

(2) Repealed.

(3) The corporation shall do nothing that, if done by a licensee employed by the corporation, would violate the standards of professional conduct as provided for in section 12-36-117. Any violation of this section by the corporation is grounds for the board to revoke or suspend the license of the person or persons responsible for the violation.

(4) Nothing in this section diminishes or changes the obligation of each licensee employed by the corporation to conduct his or her practice in accordance with the standards of professional conduct provided for in section 12-36-117. Any licensee who, by act or omission, causes the corporation to act or fail to act in a way that violates the standards of professional conduct, including any provision of this section, is personally responsible for such act or omission and is subject to discipline for the act or omission.

(5) Nothing in this section modifies the physician-patient privilege specified in section 13-90-107 (1)(d), C.R.S.

(6) A professional service corporation may adopt a pension, profit-sharing (whether cash or deferred), health and accident, insurance, or welfare plan for all or part of its employees including lay employees if such plan does not require or result in the sharing of specific or identifiable fees with lay employees, and if any payments made to lay employees, or into any such plan in behalf of lay employees, are based upon their compensation or length of service, or both, rather than the amount of fees or income received.

(7) (a) Corporations shall not practice medicine. Nothing in this section shall be construed to abrogate a cause of action against a professional corporation for its independent acts of negligence.

(b) Employment of a physician in accordance with section 25-3-103.7, C.R.S., shall not be considered the corporate practice of medicine.

(8) As used in this section, unless the context otherwise requires:

(a) "Articles of incorporation" includes operating agreements of limited liability companies and partnership agreements of registered limited liability partnerships.

(b) "Corporation" includes a limited liability company organized under the "Colorado Limited Liability Company Act", article 80 of title 7, C.R.S., and a limited liability partnership registered under section 7-60-144 or 7-64-1002, C.R.S.; except that the name of an entity other than a corporation shall contain the word "professional" or the abbreviation "prof." in addition to any other words required by the statute under which such entity is organized.

(c) "Director" and "officer" of a corporation includes a member and a manager of a limited liability company and a partner in a registered limited liability partnership.

(d) "Employees" includes employees, members, and managers of a limited liability company and employees and partners of a registered limited liability partnership.

(e) "President" includes all managers, if any, of a limited liability company and all partners in a registered limited liability partnership.

(f) "Share" includes a member's rights in a limited liability company and a partner's rights in a registered limited liability partnership.

(g) "Shareholder" includes a member of a limited liability company and a partner in a registered limited liability partnership.

Source: L. 69: p. 825, § 2. **C.R.S. 1963:** § 91-1-37. **L. 75:** IP(1)(g) amended, p. 463, § 1, effective July 1. **L. 83:** (1)(f) amended, p. 544, § 1, effective May 16. **L. 85:** (2) repealed, p. 524, § 17, effective July 1. **L. 93:** (7) amended, p. 721, § 1, effective May 6; (1)(f) amended, p. 863, § 34, effective July 1, 1994. **L. 95:** (8) added, p. 813, § 33, effective May 24. **L. 97:** (8)(b) amended, p. 918, § 13, effective January 1, 1998. **L. 2003:** IP(1), (1)(b), (1)(f), IP(1)(g), (3), and (7) amended, p. 1598, § 2, effective July 1. **L. 2010:** (1)(b), (1)(d), (1)(f), IP(1)(g), (1)(g)(I), (1)(g)(II), (1)(g)(III), (3), (4), and (5) amended, (HB 10-1260), ch. 403, p. 1975, § 48, effective July 1; (1)(d) and (1)(f) amended and (1)(f.5) added, (HB 10-1244), ch. 221, p. 963, § 2, effective August 11.

Editor's note: Amendments to subsections (1)(d) and (1)(f) by House Bill 10-1244 and House Bill 10-1260 were harmonized.

Cross references: For the legislative declaration contained in the 2003 act amending the introductory portions to subsections (1) and (1)(g) and subsections (1)(b), (1)(f), (3), and (7), see section 1 of chapter 240, Session Laws of Colorado 2003.

12-36-135. Injuries to be reported - penalty for failure to report - immunity from liability. (1) (a) (I) Every licensee who attends or treats any of the following injuries shall report the injury at once to the police of the city, town, or city and county or the sheriff of the county in which the licensee is located:

(A) A bullet wound, a gunshot wound, a powder burn, or any other injury arising from the discharge of a firearm, or an injury caused by a knife, an ice pick, or any other sharp or pointed instrument that the licensee believes to have been intentionally inflicted upon a person;

(B) An injury arising from a dog bite that the licensee believes was inflicted upon a person by a dangerous dog, as defined in section 18-9-204.5 (2)(b), C.R.S.; or

(C) Any other injury that the licensee has reason to believe involves a criminal act; except that a licensee is not required to report an injury that he or she has reason to believe resulted from domestic violence unless he or she is required to report the injury pursuant to subsection (1)(a)(I)(A) or (1)(a)(I)(B) of this section or the injury is a serious bodily injury, as defined in section 18-1-901 (3)(p).

(II) Any licensee who fails to make a report as required by this section commits a class 2 petty offense, as defined by section 18-1.3-503, C.R.S., and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.

(III) Except as described in subsection (1)(a)(I)(C) of this section, a licensee may, but is not required to, report an injury that he or she has reason to believe occurred as a result of domestic violence if:

(A) The victim of the injury is at least eighteen years of age and indicates his or her preference that the injury not be reported; and

(B) The injury is not an injury that the licensee is required to report pursuant to subsection (1)(a)(I)(A) or (1)(a)(I)(B) of this section.

(IV) If a licensee does not report an injury pursuant to a victim's request, as described in subsection (1)(a)(III) of this section, the licensee shall document the victim's request in the victim's medical record.

(V) Before a licensee reports an injury that he or she has reason to believe resulted from domestic violence, as described in subsection (1)(a)(III) of this section, the licensee shall make a good-faith effort, confidentially, to advise the victim of the licensee's intent to do so.

(VI) If a licensee has reason to believe that an injury resulted from domestic violence, then, regardless of whether the licensee reports the injury to law enforcement, the licensee shall either refer the victim to a victim's advocate, as defined in section 13-90-107 (1)(k)(II), or provide the victim with information concerning services available to victims of abuse.

(b) (I) When a licensee or nurse performs a medical forensic examination that includes the collection of evidence at the request of a victim of sexual assault, the licensee's or nurse's employing medical facility shall, with the consent of the victim of the sexual assault, make one of the following reports to law enforcement:

(A) A law enforcement report if a victim wishes to obtain a medical forensic examination with evidence collection and at the time of the medical forensic examination chooses to participate in the criminal justice system;

(B) A medical report if a victim wishes to obtain a medical forensic examination with evidence collection but at the time of the medical forensic examination chooses not to participate in the criminal justice system. The licensee or nurse shall collect such evidence and victim identifying information, and the employing medical facility shall release the evidence and information to law enforcement for testing in accordance with section 24-33.5-113 (1)(b)(III), C.R.S., and storage in accordance with section 18-3-407.5 (3)(c), C.R.S.

(C) An anonymous report if a victim wishes to obtain a medical forensic examination with evidence collection but at the time of the medical forensic examination chooses not to have personal identifying information provided to law enforcement or to participate in the criminal justice system. The licensee or nurse shall collect such evidence, and the employing medical facility shall release it to law enforcement for storage in accordance with section 18-3-407.5 (3)(c), C.R.S. Law enforcement shall receive no identifying information for the victim. Law enforcement shall assign a unique identifying number to the evidence, and the licensee or nurse shall record the identifying number in the medical record and notify the victim that the identifying number is recorded. Additionally, the licensee or nurse shall provide the identifying number to the victim.

(II) Nothing in this section:

(A) Prohibits a victim from anonymously speaking to law enforcement about the victim's rights or options prior to determining whether to consent to a report described in this paragraph (b); or

(B) Requires a licensee, nurse, or medical facility to make a report to law enforcement concerning an alleged sexual assault if medical forensic evidence is not collected.

(III) If the licensee's employing medical facility knows where the alleged sexual assault occurred, the facility shall make the report with the law enforcement agency in whose jurisdiction the crime occurred regarding preservation of the evidence. If the medical facility does not know where the alleged sexual assault occurred, the facility shall make the report with its local law enforcement agency regarding preservation of the evidence.

(IV) In addition to the report required by subparagraph (I) of this paragraph (b) to be filed by the employing medical facility, a licensee who attends or treats any of the injuries described in sub-subparagraph (A) of subparagraph (I) of paragraph (a) of this subsection (1) of a victim of a sexual assault shall also report the injury to the police or sheriff as required by paragraph (a) of this subsection (1).

(1.5) As used in subsection (1) of this section, unless the context otherwise requires:

(a) "Domestic violence" means an act of violence upon a person with whom the actor is or has been involved in an intimate relationship. Domestic violence also includes any other crime against a person or any municipal ordinance violation against a person when used as a method of coercion, control, punishment, intimidation, or revenge directed against a person with whom the actor is or has been involved in an intimate relationship.

(b) "Intimate relationship" means a relationship between spouses, former spouses, past or present unmarried couples, or persons who are both the parents of the same child regardless of whether the persons have been married or have lived together at any time.

(2) (a) Any licensee who, in good faith, makes a report pursuant to subsection (1) of this section or does not make a report as described in subsection (1)(a)(III) of this section is immune from any liability, civil or criminal, that might otherwise be incurred or imposed with respect to the making of such report, and has the same immunity with respect to participation in any judicial proceeding resulting from such report.

(b) A licensee who, in good faith, refers a victim to a victim's advocate or provides a victim with information concerning services available to victims of abuse, as described in subsection (1)(a)(VI) of this section, is not civilly liable for any act or omission of the victim's advocate or of any agency that provides such services to the victim.

(3) Any licensee who makes a report pursuant to subsection (1) of this section shall not be subject to the physician-patient relationship described in section 13-90-107 (1)(d), C.R.S., as to the medical examination and diagnosis. Such licensee may be examined as a witness, but not as to any statements made by the patient that are the subject matter of section 13-90-107 (1)(d), C.R.S.

Source: L. 79: Entire section added, p. 526, § 1, effective July 1. **L. 95:** (1) amended and (1.5) added, p. 1219, § 1, effective July 1; (3) added, p. 1249, § 1, effective July 1. **L. 2001:** (1), (2), and (3) amended, p. 184, § 15, effective August 8. **L. 2002:** (1) amended, p. 1479, § 77, effective October 1. **L. 2006:** (1) amended, p. 1252, § 1, effective July 1. **L. 2008:** (1) amended, p. 264, § 2, effective March 31. **L. 2015:** (1) amended, (SB 15-128), ch. 65, p. 179, § 1, effective March 30. **L. 2017:** (1)(a)(I)(C) and (2) amended and (1)(a)(III) to (1)(a)(VI) added, (HB 17-1322), ch. 325, p. 1748, § 1, effective August 9.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (1), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-36-136. Determination of death. (1) An individual is dead if:

(a) He has sustained irreversible cessation of circulatory and respiratory functions; or

(b) He has sustained irreversible cessation of all functions of the entire brain, including the brain stem.

(2) A determination of death under this section shall be in accordance with accepted medical standards.

Source: L. 81: Entire section added, p. 778, § 1, effective May 21.

Editor's note: Prior to the enactment of this section, the Colorado Supreme Court had adopted the concept of "Brain death" as set forth in the "Uniform Brain Death Act". See Lovato v. District Court, 198 Colo. 419, 601 P.2d 1072 (1979).

12-36-137. Inactive license. (1) Any licensee pursuant to section 12-36-114 may apply to the board to be transferred to an inactive status. Such application shall be in the form and manner designated by the board. The board may grant such status by issuing an inactive license or it may deny the application as set forth in section 12-36-116.

(2) Any person applying for a license under this section shall:

(a) Provide an affidavit to the board that the applicant, after a date certain, will not practice medicine, practice as a physician assistant, or practice as an anesthesiologist assistant in this state unless the applicant is issued a license to practice medicine, practice as a physician assistant, or practice as an anesthesiologist assistant pursuant to subsection (5) of this section;

(b) Pay the license fee as authorized pursuant to section 12-36-123; and

(c) Comply with any financial responsibility standards promulgated by the board pursuant to section 13-64-301 (1), C.R.S.

(3) Such inactive status shall be plainly indicated on the face of any inactive license issued under this section.

(4) The board is authorized to undertake disciplinary proceedings as set forth in sections 12-36-117 and 12-36-118 against any person licensed under this section for any act committed while the person was licensed pursuant to this article.

(5) Any person licensed under this section who wishes to resume the practice of medicine or to resume practice as a physician assistant shall file an application in the form and manner the board shall designate, pay the license fee promulgated by the board pursuant to section 12-36-123, and meet the financial responsibility requirements promulgated by the board pursuant to section 13-64-301 (1), C.R.S. The board may approve such application and issue a license or may deny the application as set forth in section 12-36-116.

Source: L. 90: Entire section added, p. 815, § 4, effective May 8. **L. 2001:** (1), (2)(a), and (5) amended, p. 185, § 16, effective August 8. **L. 2012:** (2)(a) amended, (HB 12-1332), ch. 238, p. 1059, § 13, effective August 8.

12-36-138. Rules and regulations - compliance with reporting requirements of federal act. (Repealed)

Source: L. 88: Entire section added, p. 525, § 10, effective July 1. **L. 89:** Entire section repealed, p. 689, § 6, effective July 1.

12-36-139. Limitations on liability relating to professional review actions. (Repealed)

Source: L. 88: Entire section added, p. 525, § 10, effective July 1. **L. 89:** Entire section repealed, p. 689, § 6, effective July 1.

12-36-140. Protection of medical records - licensee's obligations - verification of compliance - noncompliance grounds for discipline - rules. (1) Each licensed physician and physician assistant shall develop a written plan to ensure the security of patient medical records. The plan shall address at least the following:

(a) The storage and proper disposal, if appropriate, of patient medical records;

(b) The disposition of patient medical records in the event the licensee dies, retires, or otherwise ceases to practice or provide medical care to patients; and

(c) The method by which patients may access or obtain their medical records promptly if any of the events described in paragraph (b) of this subsection (1) occurs.

(2) Upon initial licensure under this article and upon renewal of a license, the applicant or licensee, as applicable, shall attest to the board that he or she has developed a plan in compliance with this section.

(3) A licensee shall inform each patient, in writing, of the method by which the patient may access or obtain his or her medical records if an event described in paragraph (b) of subsection (1) of this section occurs.

(4) A licensee who fails to comply with this section shall be subject to discipline in accordance with section 12-36-118.

(5) The board may adopt rules as necessary to implement this section.

Source: L. 2010: Entire section added, (HB 10-1260), ch. 403, p. 1965, § 34, effective July 1.

12-36-141. Medical marijuana recommendations - guidelines. The board, in consultation with the department of public health and environment and physicians specializing in medical marijuana, shall establish guidelines for physicians making medical marijuana recommendations.

Source: L. 2015: Entire section added, (SB 15-014), ch. 199, p. 682, § 2, effective May 18.

Cross references: For the legislative declaration in SB 15-014, see section 1 of chapter 199, Session Laws of Colorado 2015.

12-36-142. Licensee duties relating to assistance animals - definitions. (1) A licensee who is approached by a patient seeking an assistance animal as a reasonable accommodation in housing shall either:

(a) Make a written finding regarding whether the patient has a disability and, if a disability is found, a separate written finding regarding whether the need for the animal is related to that disability; or

(b) Make a written finding that there is insufficient information available to make a finding regarding disability or the disability-related need for the animal.

(2) This section does not:

(a) Change any laws or procedures related to a service animal under Title II and Title III of the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq.;

(b) Affect in any way the right of pet ownership in public housing established in 42 U.S.C. sec. 1437z-3, as amended; or

(c) Limit the means by which a person with a disability may demonstrate, pursuant to state or federal law, that the person has a disability or that the person has a disability-related need for an assistance animal.

(3) A licensee shall not make a determination related to subsection (1) of this section unless the licensee:

(a) Has met with the patient in person or by telemedicine;

(b) Is sufficiently familiar with the patient and the disability; and

(c) Is legally and professionally qualified to make the determination.

(4) For purposes of this section:

(a) "Assistance animal" means an animal that qualifies as a reasonable accommodation under the federal "Fair Housing Act", 42 U.S.C. sec. 3601 et seq., as amended, or section 504 of the federal "Rehabilitation Act of 1973", 29 U.S.C. sec. 794, as amended.

(b) "Disability" has the same meaning as set forth in the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq., and its related amendments and implementing regulations and includes a handicap as that term is defined in the federal "Fair Housing Act", 42 U.S.C. sec. 3601 et seq., as amended, and 24 CFR 100.201.

(c) "Service animal" has the same meaning as set forth in the implementing regulations of Title II and Title III of the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq.

Source: L. 2016: Entire section added, (HB 16-1426), ch. 309, p. 1242, § 2, effective January 1, 2017.

Cross references: For the legislative declaration in HB 16-1426, see section 1 of chapter 309, Session Laws of Colorado 2016.

PART 2

SAFETY TRAINING FOR UNLICENSED X-RAY TECHNICIANS

12-36-201 and 12-36-202. (Repealed)

Source: L. 2010: Entire part repealed, (HB 10-1128), ch. 172, p. 614, § 12, effective April 29.

Editor's note: This part 2 was added in 1991. For amendments to this part 2 prior to its repeal in 2010, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 36.5

Professional Review of Health Care Providers

PART 1

PROFESSIONAL REVIEW PROCEEDINGS - PHYSICIANS

Law reviews: For article, "The Colorado Peer Review Act: The Fog Lifts", see 30 Colo. Law. 57 (Jan. 2001).

12-36.5-101. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that the Colorado medical board created in article 36 of this title and the state board of nursing created in article 38 of this title act for the state in their sovereign capacity to govern licensure, discipline, and professional review of persons licensed to practice medicine, licensed as physician assistants, and licensed to practice nursing and granted authority as advanced practice nurses, respectively, in this state. The general assembly further finds, determines, and declares that:

(a) The authority to provide health care in this state is a privilege granted by the legislative authority of the state; and

(b) It is necessary for the health, safety, and welfare of the people of this state that the appropriate regulatory boards exercise their authority to protect the people of this state from unauthorized practice and unprofessional conduct by persons licensed to provide health care under articles 36 and 38 of this title.

(2) The general assembly recognizes that:

(a) Many patients of persons licensed to provide health care in this state have restricted choices of health care providers under a variety of circumstances and conditions;

(b) Many patients lack the knowledge, experience, or education to properly evaluate the quality of medical or nursing practice or the professional conduct of those licensed to practice medicine, licensed to act as physician assistants, and licensed to practice nursing and granted authority as advanced practice nurses; and

(c) It is necessary and proper that the respective regulatory boards exercise their regulatory authority to protect the health, safety, and welfare of the people of this state.

(3) The general assembly recognizes that, in the proper exercise of their authority and responsibilities under this article, the Colorado medical board and the state board of nursing must, to some extent, replace competition with regulation, and that the replacement of competition by regulation, particularly with regard to persons licensed under article 36 of this title or licensed under article 38 of this title and granted authority as advanced practice nurses, is related to a legitimate state interest in the protection of the health, safety, and welfare of the people of this state.

Source: L. 89: Entire article added, p. 678, § 1, effective July 1. **L. 2010:** Entire section amended, (HB 10-1260), ch. 403, p. 1981, § 62, effective July 1. **L. 2012:** Entire section amended, (HB 12-1300), ch. 245, p. 1161, § 3, effective July 1.

12-36.5-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Authorized entity" means a corporation, organization, or entity that is authorized to establish a professional review committee under section 12-36.5-104 (4) or (5) or under rules of the medical board or nursing board adopted pursuant to section 12-36.5-104 (5).

(2) "CMS" means the federal centers for medicare and medicaid services.

(2.5) "Division" means the division of professions and occupations in the department of regulatory agencies.

(3) "Governing board" means a board, board of trustees, governing board, or other body, or duly authorized subcommittee thereof, of an authorized entity, which board or body has final authority pursuant to the entity's written bylaws, policies, or procedures to take final action regarding the recommendations of a professional review committee.

(4) "Joint commission" means the joint commission or its successor entity.

(5) "Medical board" means the Colorado medical board created in section 12-36-103 (1).

(6) "Professional review committee" means any committee authorized under this article to review and evaluate the competence, professional conduct of, or the quality and appropriateness of patient care provided by, any person licensed under article 36 of this title or licensed under article 38 of this title and granted authority as an advanced practice nurse. "Professional review committee" includes a governing board, a hearing panel appointed by a governing board to conduct a hearing under section 12-36.5-104 (7)(a), and an independent third party designated by a governing board under section 12-36.5-104 (8)(b).

(7) (a) "Records" means any and all written, electronic, or oral communications by any person arising from any activities of a professional review committee, including a governing board, established by an authorized entity under this article or by the agent or staff thereof, including any:

(I) Letters of reference;

(II) Complaint, response, or correspondence related to the complaint or response;

(III) Interviews or statements, reports, memoranda, assessments, and progress reports developed to assist in professional review activities;

(IV) Assessments and progress reports to assist in professional review activities, including reports and assessments developed by independent consultants in connection with professional review activities; and

(V) Recordings or transcripts of proceedings, minutes, formal recommendations, decisions, exhibits, and other similar items or documents related to professional review activities or the committee on anticompetitive conduct and typically constituting the records of administrative proceedings.

(b) "Records" does not include any written, electronic, or oral communications by any person that are otherwise available from a source outside the scope of professional review activities, including medical records and other health information.

(8) "State board of nursing" or "nursing board" means the state board of nursing created in section 12-38-104.

Source: L. 89: Entire article added, p. 679, § 1, effective July 1. **L. 2010:** (1) amended, (HB 10-1260), ch. 403, p. 1982, § 63, effective July 1. **L. 2012:** Entire section amended, (HB 12-1300), ch. 245, p. 1161, § 4, effective July 1.

12-36.5-103. Use of professional review committees. (1) (a) The general assembly recognizes that:

(I) The medical board and the nursing board, while assuming and retaining ultimate authority for licensure and discipline in accordance with articles 36 and 38 of this title, respectively, and in accordance with this article, cannot practically and economically assume responsibility over every single allegation or instance of purported deviation from the standards of quality for the practice of medicine or nursing, from the standards of professional conduct, or from the standards of appropriate care; and

(II) An attempt to exercise such oversight would result in extraordinary delays in the determination of the legitimacy of the allegations and would result in the inappropriate and unequal exercise of their authority to license and discipline persons licensed under article 36 of this title or licensed under article 38 of this title and granted authority as advanced practice nurses.

(b) It is therefore the intent of the general assembly that the medical board and the nursing board utilize and allow professional review committees and governing boards to assist them in meeting their responsibilities under articles 36 and 38 of this title, respectively, and under this article.

(2) All persons licensed under article 36 of this title or licensed under article 38 of this title and granted authority as advanced practice nurses are encouraged to serve upon professional review committees when called to do so and to study and review in an objectively reasonable

manner the professional conduct of persons licensed under article 36 of this title or licensed under article 38 of this title and granted authority as advanced practice nurses, including the competence, professional conduct of, or the quality and appropriateness of patient care provided by, those persons.

(3) (a) The use of professional review committees is an extension of the authority of the medical board and nursing board. However, except as otherwise provided in this article, nothing in this article limits the authority of professional review committees properly constituted under this article.

(b) Professional review committees, the members who constitute the committees, governing boards, authorized entities, and persons who participate directly or indirectly in professional review activities are granted certain immunities from liability arising from actions that are within the scope of their activities as provided in section 12-36.5-105. These grants of immunity from liability are necessary to ensure that professional review committees and governing boards can exercise their professional knowledge and judgment.

Source: L. 89: Entire article added, p. 679, § 1, effective July 1. **L. 2010:** (1) and (3)(a) amended, (HB 10-1260), ch. 403, p. 1982, § 64, effective July 1. **L. 2012:** Entire section amended, (HB 12-1300), ch. 245, p. 1163, § 5, effective July 1.

12-36.5-104. Establishment of professional review committees - function - rules. (1) A professional review committee may be established pursuant to this section to review and evaluate the competence of, the quality and appropriateness of patient care provided by, or the professional conduct of, any person licensed under article 36 of this title or licensed under article 38 of this title and granted authority as an advanced practice nurse.

(2) Licensed physicians who are actively engaged in the practice of medicine in this state must constitute a majority of the voting members of any professional review committee established pursuant to this section for physicians and physician assistants; except that physicians need not constitute the majority of the voting members of a governing board authorized by paragraph (g) of subsection (4) of this section or an independent third party designated by a governing board under paragraph (b) of subsection (8) of this section.

(2.5) A professional review committee that is reviewing the competence of, the quality and appropriateness of patient care provided by, or the professional conduct of, a person licensed under article 38 of this title and granted authority as an advanced practice nurse must either:

(a) Have, as a voting member, at least one person licensed under article 38 of this title and granted authority as an advanced practice nurse with a scope of practice similar to that of the person who is the subject of the review; or

(b) Engage, to perform an independent review as appropriate, an independent person licensed under article 38 of this title and granted authority as an advanced practice nurse with a scope of practice similar to that of the person who is the subject of the review. The person conducting the independent review must be a person who was not previously involved in the review.

(3) A utilization and quality control peer review organization, as defined pursuant to 42 U.S.C. sec. 1320c-1, or any other organization performing similar review services under federal or state law is an approved professional review committee under this article.

(4) A professional review committee established by any of the following authorized entities is an approved professional review committee under this article if it operates in compliance with written bylaws, policies, or procedures that are in compliance with this article and that have been approved by the authorized entity's governing board and if it is registered with the division in accordance with section 12-36.5-104.6:

(a) The medical staff of a hospital licensed pursuant to part 1 of article 3 of title 25, C.R.S., or certified pursuant to section 25-1.5-103 (1)(a)(II), C.R.S.;

(b) The medical staff of a hospital-related corporation. For the purposes of this paragraph (b), an entity is a "hospital-related corporation" if the licensed or certified hospital or holding company of the licensed or certified hospital has ownership or control of the entity;

(c) A society or association of physicians whose membership includes not less than one-third of the doctors of medicine or doctors of osteopathy licensed to practice and residing in this state, if the physician whose services are the subject of the review is a member of the society or association;

(c.5) A society or association of advanced practice nurses licensed and registered pursuant to article 38 of this title and residing in this state, if the advanced practice nurse whose services are the subject of the review is a member of the society or association;

(d) A society or association of physicians licensed to practice and residing in this state and specializing in a specific discipline of medicine, whose society or association has been designated by the medical board as a specialty society or association representative of physicians practicing the specific discipline of medicine, if the physician whose services are the subject of the review is a member of the specialty society or association;

(d.5) A society or association of advanced practice nurses licensed and registered pursuant to article 38 of this title and practicing in a specified nursing role and population focus, as defined by the nursing board, which society or association has been designated by the nursing board as the specific nursing society or association representative of those advanced practice nurses practicing in that nursing role and population focus, if the advanced practice nurse whose services are the subject of the review is a member of the designated nursing society or association.

(e) An individual practice association or a preferred provider organization consisting of persons licensed under article 36 of this title, or licensed under article 38 of this title and granted authority as advanced practice nurses, or a medical group that predominantly serves members of a health maintenance organization licensed pursuant to parts 1 and 4 of article 16 of title 10, C.R.S. A professional review committee established pursuant to this paragraph (e) has jurisdiction to review only persons licensed under article 36 of this title, or licensed under article 38 of this title and granted authority as advanced practice nurses, who are members of the association or organization creating and authorizing that committee; except that the professional review committee may review the care provided to a particular patient referred by a member of the association or organization to another person licensed under article 36 of this title, or licensed under article 38 of this title and granted authority as an advanced practice nurse, who is not a member of the association or organization.

(f) A corporation authorized to insure persons licensed under article 36 of this title or licensed under article 38 of this title and granted authority as advanced practice nurses pursuant to article 3 of title 10, C.R.S., or any other organization authorized to insure such persons in this state when designated by the medical board or nursing board under subsection (5) of this section;

(g) The governing board of any authorized entity that has a professional review committee established pursuant to article 36 or article 38 of this title;

(h) Any professional review committee established or created by a combination or pooling of any authorized entities;

(i) (I) A nonprofit corporation or association consisting of representatives from a statewide professional society and a statewide hospital association. The association must consist of persons licensed under article 36 of this title or licensed under article 38 of this title and granted authority as advanced practice nurses, hospital administrators, and hospital trustees, with a majority of the representatives being persons licensed under article 36 of this title when the subject of the investigation is a person licensed under article 36 of this title, and at least one of the representatives being a person licensed under article 38 of this title and granted authority as an advanced practice nurse when the subject of the investigation is a person licensed under article 38 of this title and granted authority as an advanced practice nurse. The association may establish, or contract for, one or more professional review committees to review the care by hospital staff personnel who are licensed under article 36 of this title or licensed under article 38 of this title and granted authority as advanced practice nurses, with priority given to small rural hospital staffs. These professional review services must be available statewide on a fee-for-service basis to licensed or certified hospitals at the joint request of the governing board and the medical or nursing staff of the hospital or at the sole request of the governing board of the hospital. If a member being reviewed specializes in a generally recognized specialty of medicine or nursing, at least one of the health care providers on the professional review committee must be a person licensed under article 36 of this title, or licensed under article 38 of this title and granted authority as an advanced practice nurse, who practices such specialty.

(II) For purposes of the introductory portion to this subsection (4) and this paragraph (i), the bylaws, policies, or procedures must be in compliance with this article and approved by the nonprofit corporation or association.

(j) The medical or nursing staff of an ambulatory surgical center licensed pursuant to part 1 of article 3 of title 25, C.R.S.;

(k) A professional services entity organized pursuant to section 12-36-134;

(l) A provider network that includes persons licensed under article 36 of this title, or licensed under article 38 of this title and granted authority as advanced practice nurses, and is organized pursuant to part 3 of article 18 of title 6, C.R.S.;

(m) A health system that includes two or more authorized entities with a common governing board;

(n) A trust organization established under article 70 of title 11, C.R.S.;

(o) An entity licensed pursuant to parts 1 and 4 of article 16 of title 10, C.R.S.;

(p) An accountable care organization established under the federal "Patient Protection and Affordable Care Act", Pub.L. 111-148, or other organization with a similar function;

(q) A hospital licensed pursuant to part 1 of article 3 of title 25, C.R.S., or certified pursuant to section 25-1.5-103 (1)(a)(II), C.R.S.; and

(r) An ambulatory surgical center licensed pursuant to part 1 of article 3 of title 25, C.R.S.

(5) The medical board and the nursing board, with respect to the licensees subject to their jurisdiction, may establish by rule procedures necessary to authorize other health care or

physician organizations or professional societies as authorized entities that may establish professional review committees.

(6) (a) A professional review committee acting pursuant to this part 1 may investigate or cause to be investigated:

(I) The qualifications and competence of any person licensed under article 36 of this title or licensed under article 38 of this title and granted authority as an advanced practice nurse who seeks to subject himself or herself to the authority of any authorized entity; or

(II) The quality or appropriateness of patient care rendered by, or the professional conduct of, any person licensed under article 36 of this title or licensed under article 38 of this title and granted authority as an advanced practice nurse who is subject to the authority of the authorized entity.

(b) The professional review committee shall conduct the investigation in conformity with written bylaws, policies, or procedures adopted by the authorized entity's governing board.

(7) The written bylaws, policies, or procedures of any professional review committee for persons licensed under article 36 of this title or licensed under article 38 of this title and granted authority as advanced practice nurses must provide for at least the following:

(a) (I) Except as provided in subparagraph (II) of this paragraph (a), if the findings of any investigation indicate that a person licensed under article 36 of this title or licensed under article 38 of this title and granted authority as an advanced practice nurse, and who is the subject of the investigation, is lacking in qualifications or competency, has provided substandard or inappropriate patient care, or has exhibited inappropriate professional conduct and the professional review committee takes or recommends an action to adversely affect the person's membership, affiliation, or privileges with the authorized entity, the professional review committee shall hold a hearing to consider the findings and recommendations unless the person waives, in writing, the right to a hearing or is given notice of a hearing and fails to appear.

(II) If the professional review committee is submitting its findings and recommendations to another professional review committee for review, only one hearing is necessary prior to any appeal before the governing board.

(b) A person who has participated in the course of an investigation is disqualified as a member of the professional review committee that conducts a hearing pursuant to paragraph (a) of this subsection (7), but the person may participate as a witness in the hearing.

(c) The authorized entity shall give to the subject of any investigation under this subsection (7) reasonable notice of the hearing, and of any finding or recommendation that would adversely affect the person's membership, affiliation, or privileges with the authorized entity, and the subject of the investigation has a right to be present, to be represented by legal counsel at the hearing, and to offer evidence in his or her own behalf.

(d) After the hearing, the professional review committee that conducted the hearing shall make any recommendations it deems necessary to the governing board, unless otherwise provided by federal law or regulation.

(e) The professional review committee shall give a copy of the recommendations to the subject of the investigation, who then has the right to appeal to the governing board to which the recommendations are made with regard to any finding or recommendation that would adversely affect his or her membership, affiliation, or privileges with the authorized entity.

(f) The professional review committee shall forward a copy of any recommendations made pursuant to paragraph (d) of this subsection (7) promptly to the medical board if the

subject of the investigation is licensed under article 36 of this title, or to the nursing board if the subject of the investigation is licensed under article 38 of this title and granted authority as an advanced practice nurse.

(8) (a) All governing boards shall adopt written bylaws, policies, or procedures under which a person licensed under article 36 of this title or licensed under article 38 of this title and granted authority as an advanced practice nurse who is the subject of an adverse recommendation by a professional review committee may appeal to the governing board following a hearing in accordance with subsection (7) of this section. The bylaws, policies, or procedures must provide that the person be given reasonable notice of his or her right to appeal and, unless waived by the person, has the right to appear before the governing board, to be represented by legal counsel, and to offer the argument on the record as he or she deems appropriate.

(b) The bylaws may provide that a committee of not fewer than three members of the governing board may hear the appeal. Also, the bylaws may allow for an appeal to be heard by an independent third party designated by a governing board under this paragraph (b).

(9) All governing boards that are required to report their final actions to the medical board or the nursing board, as appropriate, are not otherwise relieved of their obligations by virtue of this article.

(10) (a) Except as specified in paragraph (b) of this subsection (10), the records of an authorized entity, its professional review committee, and its governing board are not subject to subpoena or discovery and are not admissible in any civil suit.

(b) Subject to subsection (13) of this section, the records are subject to subpoena and available for use:

(I) Repealed.

(II) By either party in an appeal or de novo proceeding brought pursuant to this part 1;

(III) By a person licensed under article 36 of this title, or licensed under article 38 of this title and granted authority as an advanced practice nurse, in a suit seeking judicial review of an action by the governing board;

(IV) By the Colorado department of public health and environment in accordance with its authority to issue or continue a health facility license or certification for an authorized entity;

(V) By CMS in accordance with its authority over federal health care program participation by an authorized entity;

(VI) By an authorized entity or governing board seeking judicial review;

(VII) By the medical board within the scope of its authority over licensed physicians and physician assistants; and

(VIII) By the nursing board within the scope of its authority over advanced practice nurses.

(11) (a) Except as provided in paragraph (b) of this subsection (11), the records of an authorized entity or its professional review committee may be disclosed to:

(I) The medical board, as requested by the medical board acting within the scope of its authority or as required or appropriate under this article or article 36 of this title;

(II) The nursing board, as requested by the nursing board acting within the scope of its authority or as required or appropriate under this article or article 38 of this title;

(III) The Colorado department of public health and environment acting within the scope of its health facility licensing authority or as the agent of CMS;

(IV) CMS, in connection with the survey and certification processes for federal health care program participation by an authorized entity; and

(V) The joint commission or other entity granted deeming authority by CMS, in connection with a survey or review for accreditation.

(b) The medical board, nursing board, and Colorado department of public health and environment shall not make further disclosures of any records disclosed by an authorized entity or its professional review committee under this section.

(12) The records of an authorized entity or its professional review committee or governing board may be shared by and among authorized entities and their professional review committees and governing boards concerning the competence, professional conduct of, or the quality and appropriateness of patient care provided by, a health care provider who seeks to subject himself or herself to, or is currently subject to, the authority of the authorized entity.

(13) Responding to a subpoena or disclosing or sharing of otherwise privileged records and information pursuant to subsection (10), (11), or (12) of this section does not constitute a waiver of the privilege specified in paragraph (a) of subsection (10) of this section or a violation of the confidentiality requirements of subsection (15) of this section. Records provided to any governmental agency, including the department of public health and environment, the committee on anticompetitive conduct, the medical board, and the nursing board pursuant to subsection (10) or (11) of this section are not public records subject to the "Colorado Open Records Act", part 2 of article 72 of title 24, C.R.S. A person providing the records to an authorized entity or its professional review committee or governing board, the department of public health and environment, the committee on anticompetitive conduct, the medical board, the nursing board, CMS, the joint commission, or other governmental agency is entitled to the same immunity from liability as provided under section 12-36.5-105 for the disclosure of the records.

(14) Investigations, examinations, hearings, meetings, and other proceedings of a professional review committee or governing board conducted pursuant to this part 1 are exempt from any law requiring that proceedings be conducted publicly or that the records, including any minutes, be open to public inspection.

(15) Except as otherwise provided in subsection (10), (11), or (12) of this section, all proceedings, recommendations, records, and reports involving professional review committees or governing boards are confidential.

(16) A professional review committee or governing board that is constituted and conducts its reviews and activities in accordance with this part 1 is not an unlawful conspiracy in violation of section 6-4-104 or 6-4-105, C.R.S.

Source: L. 89: Entire article added, p. 680, § 1, effective July 1. **L. 92:** (6) amended, p. 2015, § 1, effective April 2; (4)(e) and (14) amended, pp. 1726, 244, §§ 13, 2, effective July 1. **L. 95:** (4)(f) amended and (7)(f) added, p. 1071, §§ 20, 21, effective July 1. **L. 2003:** (4)(a) amended, p. 702, § 13, effective July 1. **L. 2008:** (4)(j) added, p. 277, § 1, effective August 5. **L. 2010:** IP(4), (4)(d), (4)(f), (5), (6)(a)(I), (7)(f), (9), and (11) amended, (HB 10-1260), ch. 403, p. 1982, § 65, effective July 1. **L. 2012:** Entire section amended, (HB 12-1300), ch. 245, p. 1164, § 6, effective July 1; (10)(a) and IP(10)(b) amended, (HB 12-1297), ch. 139, p. 505, § 2, effective September 1, 2013; (10)(b)(I)(B) added by revision, (HB 12-1297), ch. 139, pp. 505, 506, §§ 2, 6.

Editor's note: (1) Amendments to subsection (10)(a), the introductory portion to (10)(b), and subsection (10)(b)(I) by House Bill 12-1297 and House Bill 12-1300 were harmonized.

(2) Subsection (10)(b)(I)(B) provided for the repeal of subsection (10)(b)(I), effective September 1, 2013. (See L. 2012, pp. 505, 506.)

12-36.5-104.4. Hospital professional review committees. (1) The quality and appropriateness of patient care rendered by persons licensed under article 36 of this title, licensed under article 38 of this title and granted authority as advanced practice nurses, and other licensed health care professionals so influence the total quality of patient care that a review of care provided in a hospital is ineffective without concomitantly reviewing the overall competence, professional conduct of, or the quality and appropriateness of care rendered by, such persons.

(2) (a) (I) Whenever a professional review committee created pursuant to section 12-36.5-104 reasonably believes that the quality or appropriateness of care provided by other licensed health care professionals may have adversely affected the outcome of patient care, the professional review committee shall:

(A) Refer the matter to a hospital committee created pursuant to section 25-3-109, C.R.S.; or

(B) Consult with a representative of the other licensed health care professional's profession.

(II) A professional review committee established pursuant to this article may meet and act in collaboration with a committee established pursuant to section 25-3-109, C.R.S.

(b) All matters considered in collaboration with or referred to a committee pursuant to this subsection (2) and all records and proceedings related thereto shall remain confidential and the committee members, governing board, witnesses, and complainants shall be subject to the immunities and privileges as set forth in this article.

(3) Nothing in this section shall be deemed to extend the authority or jurisdiction of the medical board to any individual not otherwise subject to the jurisdiction of the board.

Source: L. 94: Entire section added, p. 1740, § 1, effective May 31. **L. 2010:** (3) amended, (HB 10-1260), ch. 403, p. 1983, § 66, effective July 1. **L. 2012:** (1) amended, (HB 12-1300), ch. 245, p. 1171, § 7, effective July 1.

12-36.5-104.6. Governing boards to register with division - annual reports - aggregation and publication of data - definition - rules. (1) As used in this section, "adversely affecting" has the same meaning as set forth in 45 CFR 60.3; except that it does not include a precautionary suspension or any professional review action affecting a person licensed under article 36 of this title, or licensed under article 38 of this title and granted authority as an advanced practice nurse, for a period of thirty days or less.

(2) Each governing board that establishes or uses one or more professional review committees to review the practice of persons licensed under article 36 of this title or licensed under article 38 of this title and granted authority as advanced practice nurses shall:

(a) Register with the division in a form satisfactory to the division on or before July 1, 2013, if the governing board has one or more existing professional review committees, or, if the

governing board first establishes a professional review committee on or after July 1, 2013, within thirty days after approving the written bylaws, policies, or procedures for the professional review committee;

(b) In addition to any other state or federal reporting requirements:

(I) Report annually to the medical board, in a form satisfactory to the medical board, the number of final professional review actions in each of the following categories relating to individuals licensed under article 36 of this title:

(A) Adversely affecting the individual;

(B) In which an authorized entity accepted the individual's surrender of clinical privileges, membership, or affiliation while the individual was under investigation;

(C) In which an authorized entity accepted the individual's surrender of clinical privileges, membership, or affiliation in return for not conducting an investigation; and

(D) In which the professional review committee made recommendations regarding the individual following a hearing pursuant to section 12-36.5-104 (7)(d).

(II) Report annually to the nursing board, in a form satisfactory to the nursing board, the number of final professional review actions in each of the following categories relating to individuals licensed under article 38 of this title and granted authority as advanced practice nurses:

(A) Adversely affecting the individual;

(B) In which an authorized entity accepted the individual's surrender of clinical privileges, membership, or affiliation while the individual was under investigation;

(C) In which an authorized entity accepted the individual's surrender of clinical privileges, membership, or affiliation in return for not conducting an investigation; and

(D) In which the professional review committee made recommendations regarding the individual following a hearing pursuant to section 12-36.5-104 (7)(d).

(c) (I) Report to the division, in a de-identified manner, on its professional review activities during the immediately preceding calendar year in a form satisfactory to the division. These reports must include aggregate data, which is limited to the following:

(A) The number of investigations completed during the year;

(B) The number of investigations that resulted in no action;

(C) The number of investigations that resulted in written involuntary requirements for improvement sent to the subject of the investigation by the authorized entity; and

(D) The number of investigations that resulted in written agreements for improvement between the subject of the investigation and the authorized entity.

(II) (A) The medical board and the nursing board shall forward the reports received pursuant to sub-subparagraphs (I) and (II), respectively, of paragraph (b) of this subsection (2) to the division in a de-identified manner.

(B) The division shall not publish any information identifying the governing board or authorized entity making a report under paragraph (b) of this subsection (2) or this paragraph (c), and such reports and information are not public records under the "Colorado Open Records Act", part 2 of article 72 of title 24, C.R.S.

(III) Reports submitted pursuant to this paragraph (c) must include only investigations in which no final action adversely affecting the subject of the investigation was taken or recommended.

(3) (a) The division shall publish the data provided pursuant to paragraphs (b) and (c) of subsection (2) of this section in aggregate form and without individually identifiable information concerning the governing board, the authorized entity, or any person licensed under article 36 of this title, or licensed under article 38 of this title and granted authority as an advanced practice nurse, who was subject to review.

(b) The division shall maintain and shall publish online, through its website, a current list of all governing boards that are registered in accordance with this section and that otherwise are in compliance with this article.

(4) The division shall adopt rules to implement this section and may collect a reasonable registration fee to recover its direct and indirect costs of administering the registration and publication systems required by this section.

(5) For purposes of this section, an investigation occurs when the authorized entity or its professional review committee notifies the subject of the investigation in writing that an investigation has commenced.

(6) The medical board and the nursing board shall not initiate an investigation or issue a subpoena based solely on the data reported pursuant to paragraph (c) of subsection (2) of this section.

(7) (a) A governing board that fails to register with the division pursuant to paragraph (a) of subsection (2) of this section is not entitled to any immunity afforded under this article until the date that the governing board so registers. A governing board's failure to register does not affect any immunity, confidentiality, or privilege afforded to an individual participating in professional review activities.

(b) A governing board's failure to report as required by this section does not affect any immunity, confidentiality, or privilege afforded to the governing board under this article.

Source: L. 2012: Entire section added, (HB 12-1300), ch. 245, p. 1172, § 8, effective July 1.

12-36.5-105. Immunity from liability. (1) A member of a professional review committee, a governing board or any committee or third party designated by the governing board under section 12-36.5-104 (8)(b) and any person serving on the staff of that committee, board, panel, or third party, a witness or consultant before a professional review committee, and any person who files a complaint or otherwise participates in the professional review process is immune from suit and liability for damages in any civil or criminal action, including antitrust actions, brought by a person licensed under article 36 of this title or licensed under article 38 of this title who is the subject of the review by such professional review committee unless, in connection with the professional review process, the person provided false information and knew that the information was false.

(2) The governing board and the authorized entity that has established a professional review committee pursuant to section 12-36.5-104 is immune from suit and liability for damages in any civil or criminal action, including antitrust actions, brought by a person licensed under article 36 of this title or licensed under article 38 of this title who is the subject of the review by such professional review committee if the professional review action was taken within the scope of the professional review process and was taken:

(a) In the objectively reasonable belief that the action was in the furtherance of quality health care;

(b) After an objectively reasonable effort to obtain the facts of the matter;

(c) In the objectively reasonable belief that the action taken was warranted by the facts; and

(d) In accordance with procedures that, under the circumstances, were fair to the person licensed under article 36 of this title or licensed under article 38 of this title and granted authority as an advanced practice nurse.

Source: L. 89: Entire article added, p. 683, § 1, effective July 1. **L. 2004:** (2) amended, p. 1830, § 71, effective August 4. **L. 2012:** Entire section amended, (HB 12-1300), ch. 245, p. 1174, § 9, effective July 1.

12-36.5-106. Committee on anticompetitive conduct - repeal - legislative declaration - rules. (Repealed)

Source: L. 89: Entire article added, p. 684, § 1, effective July 1. **L. 2004:** (13) amended, p. 1830, § 72, effective August 4. **L. 2010:** (1), (2), (9)(n), and (10)(b) amended, (HB 10-1260), ch. 403, p. 1983, § 67, effective July 1. **L. 2012:** (14) added, (HB 12-1297), ch. 139, p. 505, § 1, effective April 26. **L. 2012:** (14) added, (HB 12-1297), ch. 139, p. 505, § 1, effective April 26; (2), (5), (7), (8), IP(9), (9)(a), (9)(b), (9)(e), (9)(f), (9)(k), (9)(n), (10), (12), and (13) amended, (HB 12-1300), ch. 245, p. 1175, § 10, effective July 1.

Editor's note: Subsection (14) provided for the repeal of this section, effective September 1, 2013. (See L. 2012, p. 505.)

12-36.5-107. Repeal of article. This article is repealed, effective September 1, 2019. Prior to such repeal, the department of regulatory agencies shall review the functions of professional review committees and the committee on anticompetitive conduct in accordance with section 24-34-104, C.R.S.

Source: L. 2010: Entire section added, (HB 10-1260), ch. 403, p. 1944, § 4, effective July 1. **L. 2012:** Entire section amended, (HB 12-1300), ch. 245, p. 1160, § 1, effective July 1.

PART 2

CONFORMANCE WITH FEDERAL LAW AND REGULATION

12-36.5-201. Legislative declaration. The general assembly hereby finds, determines, and declares that the enactment of this part 2 is necessary in order for the state to comply with the provisions of the federal "Health Care Quality Improvement Act of 1986", as amended. It is the intent of the general assembly that the provisions of this part 2 are to be interpreted as being complementary to the provisions of part 1 of this article. The provisions of this part 2 are intended to be responsive to specific requirements of the federal "Health Care Quality Improvement Act of 1986", as amended. If the provisions of this part 2 conflict with the

provisions of part 1 of this article, other than with respect to the specific requirements of the federal "Health Care Quality Improvement Act of 1986", as amended, the provisions of part 1 of this article shall prevail.

Source: L. 89: Entire article added, p. 687, § 1, effective July 1.

12-36.5-202. Rules - compliance with reporting requirements of federal act. The medical board and nursing board may promulgate rules to comply with the reporting requirements of the federal "Health Care Quality Improvement Act of 1986", as amended, 42 U.S.C. secs. 11101 through 11152, and may participate in the federal data bank.

Source: L. 89: Entire article added, p. 687, § 1, effective July 1. **L. 2010:** Entire section amended, (HB 10-1260), ch. 403, p. 1984, § 68, effective July 1. **L. 2012:** Entire section amended, (HB 12-1300), ch. 245, p. 1178, § 11, effective July 1.

12-36.5-203. Limitations on liability relating to professional review actions. (1) The following persons are immune from suit and not liable for damages in any civil action with respect to their participation in, assistance to, or reporting of information to a professional review committee in connection with a professional review action in this state, and such persons are not liable for damages in a civil action with respect to their participation in, assistance to, or reporting of information to a professional review committee that meets the standards of and is in conformity with the federal "Health Care Quality Improvement Act of 1986", as amended, 42 U.S.C. secs. 11101 through 11152:

(a) An authorized entity, professional review committee, or governing board;

(b) Any person acting as a member of or staff to the authorized entity, professional review committee, or governing board;

(c) A witness, consultant, or other person who provided information to the authorized entity, professional review committee, or governing board; and

(d) Any person who participates with or assists the professional review committee or governing board with respect to the professional review activities.

(2) (a) Notwithstanding subsection (1) of this section, nothing in this article relieves an authorized entity that is a health care facility licensed or certified pursuant to part 1 of article 3 of title 25, C.R.S., or certified pursuant to section 25-1.5-103, C.R.S., of liability to an injured person or wrongful death claimant for the facility's independent negligence in the credentialing or privileging process for a person licensed under article 36 of this title or licensed under article 38 of this title and granted authority as an advanced practice nurse who provided health care services for the injured or deceased person at the facility. For purposes of this section, the facility's participation in the credentialing process or the privileging process does not constitute the corporate practice of medicine.

(b) Nothing in this section affects the confidentiality or privilege of any records subject to section 12-36.5-104 (10) or of information obtained and maintained in accordance with a quality management program as described in section 25-3-109, C.R.S. The exceptions to confidentiality or privilege as set forth in sections 25-3-109 (4), C.R.S., and 12-36.5-104 (10) apply.

(c) This subsection (2), as amended, applies to actions filed on or after July 1, 2012.

(3) For the purposes of this section, unless the context otherwise requires:

(a) "Professional review action" means an action or recommendation of a professional review committee that is taken or made in the conduct of professional review activity and that is based on the quality and appropriateness of patient care provided by, or the competence or professional conduct of, an individual person licensed under article 36 of this title or licensed under article 38 of this title and granted authority as an advanced practice nurse, which action affects or may affect adversely the person's clinical privileges of or membership in an authorized entity. "Professional review action" includes a formal decision by the professional review committee not to take an action or make a recommendation as provided in this paragraph (a) and also includes professional review activities relating to a professional review action. An action is not based upon the competence or professional conduct of a person if the action is primarily based on:

(I) The person's association or lack of association with a professional society or association;

(II) The person's fees or his or her advertising or engaging in other competitive acts intended to solicit or retain business;

(III) The person's association with, supervision of, delegation of authority to, support for, training of, or participation in a private group practice with a member or members of a particular class of health care practitioners or professionals;

(IV) The person's participation in prepaid group health plans, salaried employment, or any other manner of delivering health services whether on a fee-for-service basis or other basis;

(V) Any other matter that does not relate to the quality and appropriateness of patient care provided by, or the competence or professional conduct of, a person licensed under article 36 of this title or licensed under article 38 of this title and granted authority as an advanced practice nurse.

(b) (Deleted by amendment, L. 2012.)

Source: L. 89: Entire article added, p. 687, § 1, effective July 1. **L. 2012:** Entire section amended, (HB 12-1300), ch. 245, p. 1179, § 12, effective July 1.

ARTICLE 37

Direct-entry Midwives

Editor's note: This article was numbered as article 4 of chapter 91, C.R.S. 1963. This article was repealed in 1976 and was subsequently recreated and reenacted in 1993, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1976, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

12-37-101. Scope of article - exemptions - legislative declaration. (1) (a) This article applies only to direct-entry midwives and does 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.

(b) (I) A person who is a certified nurse-midwife authorized pursuant to section 12-38-111.5 or a physician as provided in article 36 of this title shall not simultaneously be so licensed and also be registered under this article. A physician or certified nurse-midwife who holds a license in good standing may relinquish the license and subsequently be registered under this article.

(II) A direct-entry midwife shall not represent himself or herself as a nurse-midwife or certified nurse-midwife.

(III) The fact that a direct-entry midwife may hold a practical or professional nursing license does not expand the scope of practice of the direct-entry midwife.

(IV) The fact that a practical or professional nurse may be registered as a direct-entry midwife does not expand the scope of practice of the nurse.

(c) 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.

(2) Nothing in this article shall be construed to prohibit, or to require registration under this article, with regard to:

(a) The gratuitous rendering of services in an emergency;

(b) The rendering of services by a physician licensed pursuant to article 36 of this title or otherwise legally authorized to practice in this state;

(c) The rendering of services by certified nurse-midwives properly licensed and practicing in accordance with the provisions of article 38 of this title; or

(d) The practice by persons licensed or registered under any law of this state, in accordance with such law, to practice a limited field of the healing arts not specifically designated in this section.

Source: L. 93: Entire article RC&RE, p. 1911, § 2, effective July 1. **L. 96:** (1) amended, p. 395, § 1, effective April 17. **L. 2000:** (2)(c) amended, p. 31, § 2, effective March 10. **L. 2001:** (1) amended, p. 1258, § 2, effective June 5. **L. 2011:** (1) amended, (SB 11-088), ch. 283, p. 1259, § 4, effective July 1.

12-37-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Client" means a pregnant woman for whom a direct-entry midwife performs services. For purposes of perinatal or postpartum care, "client" includes the woman's newborn.

(2) "Direct-entry midwife" means a person who practices direct-entry midwifery.

(3) "Direct-entry midwifery" or "practice of direct-entry midwifery" means the advising, attending, or assisting of a woman during pregnancy, labor and natural childbirth at home, and during the postpartum period in accordance with this article.

(4) "Director" means the director of the division.

(5) "Division" means the division of professions and occupations in the department of regulatory agencies.

(6) "Natural childbirth" means the birth of a child without the use of instruments, surgical procedures, or prescription drugs other than those for which the direct-entry midwife has specific authority under this article to obtain and administer.

(6.5) "Perinatal" means the period from the twenty-eighth week of pregnancy through seven days after birth.

(7) "Postpartum period" means the period of six weeks after birth.

(8) "Registrant" means a direct-entry midwife registered pursuant to section 12-37-103.

Source: L. 93: Entire article RC&RE, p. 1912, § 2, effective July 1. **L. 2001:** (1) amended, p. 1259, § 3, effective June 5. **L. 2011:** Entire section amended, (SB 11-088), ch. 283, p. 1259, § 5, effective July 1. **L. 2016:** (6.5) added, (HB 16-1360), ch. 350, p. 1423, § 3, effective August 10.

12-37-103. Requirement for registration with the division of professions and occupations - annual fee - grounds for revocation. (1) Every direct-entry midwife shall register with the division of professions and occupations by applying to the director in the form and manner the director requires. Said application shall include the information specified in section 12-37-104.

(2) Any changes in the information required by subsection (1) of this section shall be reported within thirty days after the change to the division in the form and manner required by the director.

(3) Every applicant for registration shall pay a registration fee to be established by the director in the manner authorized by section 24-34-105, C.R.S. Registrations shall be renewed or reinstated pursuant to a schedule established by the director and shall be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her registration pursuant to the schedule established by the director, such registration shall expire. Any person whose registration has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

(4) (Deleted by amendment, L. 96, p. 395, § 2, effective April 17, 1996.)

(4.5) A person who has had his or her registration revoked shall not apply for a new registration until at least two years have elapsed since the date of the revocation.

(5) To qualify to register, a direct-entry midwife must 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 must 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, or its successor, must 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 is qualified to register if such person has:

(a) Attained the age of nineteen years;

(b) Earned at least a high school diploma or the equivalent;

(c) Successfully completed training approved by the director in:

(I) The provision of care during labor and delivery and during the antepartum and postpartum periods;

(II) Parenting education for prepared childbirth;

(III) Aseptic techniques and universal precautions;

(IV) Management of birth and immediate care of the mother and the newborn;

(V) Recognition of early signs of possible abnormalities;

(VI) Recognition and management of emergency situations;

(VII) Special requirements for home birth;

(VIII) Recognition of communicable diseases affecting the pregnancy, birth, newborn, and postpartum periods; and

(IX) Recognition of the signs and symptoms of increased risk of medical, obstetric, or neonatal complications or problems as set forth in section 12-37-105 (3);

(d) Acquired practical experience including, at a minimum, experience with the conduct of at least one hundred prenatal examinations on no fewer than thirty different women and observation of at least thirty births;

(e) Participated as a birth attendant, including rendering care from the prenatal period through the postpartum period, in connection with at least thirty births; and

(f) Filed documentation with the director that the direct-entry midwife is currently certified by the American heart association or the American red cross to perform adult and infant cardiopulmonary resuscitation ("CPR").

(6) Effective July 1, 2003, in order to be deemed qualified to register, a direct-entry midwife must have graduated from an accredited midwifery educational program or obtained a substantially equivalent education approved by the director. Such educational requirement does not apply to direct-entry midwives who have registered with the division before July 1, 2003.

(7) For purposes of registration under this article, no credential, licensure, or certification issued by any other state meets the requirements of this article, and therefore there is no reciprocity with other states.

Source: L. 93: Entire article RC&RE, p. 1913, § 2, effective July 1. **L. 96:** (4) and (5)(a) amended and (4.5) added, p. 395, § 2, effective April 17. **L. 2001:** (5)(d) and (5)(e) amended and (6) added, p. 1259, § 4, effective June 5. **L. 2004:** (3) amended, p. 1831, § 73, effective August 4. **L. 2011:** (1), (2), (3), (4.5), IP(5), (5)(d), (5)(e), and (6) amended and (7) added, (SB 11-088), ch. 283, p. 1260, § 6, effective July 1.

12-37-104. Mandatory disclosure of information to clients. (1) Every direct-entry midwife shall provide the following information in writing to each client during the initial client contact:

(a) The name, business address, and business phone number of the direct-entry midwife;

(b) A listing of the direct-entry midwife's education, experience, degrees, membership in any professional organization whose membership includes not less than one-third of all registrants, certificates or credentials related to direct-entry midwifery awarded by any such organization, and the length of time and number of contact hours required to obtain said degrees, certificates, or credentials;

(c) A statement indicating whether or not the direct-entry midwife is covered under a policy of liability insurance for the practice of direct-entry midwifery;

(d) A listing of any license, certificate, or registration in the health care field previously or currently held by the direct-entry midwife and suspended or revoked by any local, state, or national health care agency;

(e) A statement that the practice of direct-entry midwifery is regulated by the department of regulatory agencies. The statement must provide the address and telephone number of the office of midwifery registration in the division and shall state that violation of this article may result in revocation of registration and of the authority to practice direct-entry midwifery in Colorado.

(f) A copy of the emergency plan as provided in section 12-37-105 (6);

(g) A statement indicating whether or not the direct-entry midwife will administer vitamin K to the client's newborn infant and, if not, a list of qualified health care practitioners who can provide that service; and

(h) A statement indicating whether or not the direct-entry midwife will administer Rho(D) immune globulin to the client if she is determined to be Rh-negative and, if not, a list of qualified health care practitioners who can provide that service.

(2) Any changes in the information required by subsection (1) of this section shall be reflected in the mandatory disclosure within five days of the said change.

(3) (Deleted by amendment, L. 2011, (SB 11-088), ch. 283, p. 1261, § 7, effective July 1, 2011.)

Source: L. 93: Entire article RC&RE, p. 1915, § 2, effective July 1. **L. 2011:** IP(1), (1)(d), (1)(e), and (3) amended and (1)(g) and (1)(h) added, (SB 11-088), ch. 283, p. 1261, § 7, effective July 1.

12-37-105. Prohibited acts - practice standards - informed consent - emergency plan - risk assessment - referral - rules. (1) A direct-entry midwife shall not dispense or administer any medication or drugs except in accordance with section 12-37-105.5.

(2) A direct-entry midwife shall not perform any operative or surgical procedure; except that a direct-entry midwife may perform sutures of perineal tears in accordance with section 12-37-105.5.

(3) A direct-entry midwife shall not provide care to a pregnant woman who, according to generally accepted medical standards, exhibits signs or symptoms of increased risk of medical or obstetric or neonatal complications or problems during the completion of her pregnancy, labor, delivery, or the postpartum period. Such conditions include but are not limited to signs or symptoms of diabetes, multiple gestation, hypertensive disorder, or abnormal presentation of the fetus.

(4) A direct-entry midwife shall not provide care to a pregnant woman who, according to generally accepted medical standards, exhibits signs or symptoms of increased risk that her child may develop complications or problems during the first six weeks of life.

(5) (a) A direct-entry midwife shall keep appropriate records of midwifery-related activity, including but not limited to the following:

(I) The direct-entry midwife shall complete and file a birth certificate for every delivery in accordance with section 25-2-112, C.R.S.

(II) The direct-entry midwife shall complete and maintain appropriate client records for every client.

(III) Before accepting a client for care, the direct-entry midwife shall obtain the client's informed consent, which shall be evidenced by a written statement in a form prescribed by the director and signed by both the direct-entry midwife and the client. The form shall certify that

full disclosure has been made and acknowledged by the client as to each of the following items, with the client's acknowledgment evidenced by a separate signature or initials adjacent to each item in addition to the client's signature at the end of the form:

(A) The direct-entry midwife's educational background and training;

(B) The nature and scope of the care to be given, including the possibility of and procedure for transport of the client to a hospital and transferral of care prenatally;

(C) A description of the available alternatives to direct-entry midwifery care, including a statement that the client understands she is not retaining a certified nurse midwife or a nurse midwife;

(D) A description of the risks of birth, including those that are different from those of hospital birth and those conditions that may arise during delivery;

(E) A statement indicating whether or not the direct-entry midwife is covered under a policy of liability insurance for the practice of direct-entry midwifery; and

(F) A statement informing the client that, if subsequent care is required resulting from the acts or omissions of the direct-entry midwife, any physician, nurse, prehospital emergency personnel, and health care institution rendering such care shall be held only to a standard of gross negligence or willful and wanton conduct.

(IV) (A) Until the liability insurance required pursuant to section 12-37-109 (3) is available, each direct-entry midwife shall, before accepting a client for care, provide the client with a disclosure statement indicating that the midwife does not have liability insurance. To comply with this section, the direct-entry midwife shall ensure that the disclosure statement is printed in at least twelve-point bold-faced type and shall read the statement to the client in a language the client understands. Each client shall sign the disclosure statement acknowledging that the client understands the effect of its provisions. The direct-entry midwife shall also sign the disclosure statement and provide a copy of the signed disclosure statement to the client.

(B) In addition to the information required in sub-subparagraph (A) of this subparagraph (IV), the direct-entry midwife shall include the following statement in the disclosure statement and shall display the statement prominently and deliver the statement orally to the client before the client signs the disclosure statement: "Signing this disclosure statement does not constitute a waiver of any right (insert client's name) has to seek damages or redress from the undersigned direct-entry midwife for any act of negligence or any injury (insert client's name) may sustain in the course of care administered by the undersigned direct-entry midwife."

(b) As used in this subsection (5), "full disclosure" includes reading the informed consent form to the client, in a language understood by the client, and answering any relevant questions.

(6) A direct-entry midwife shall prepare a plan, in the form and manner required by the director, for emergency situations. The plan must include procedures to be followed in situations in which the time required for transportation to the nearest facility capable of providing appropriate treatment exceeds limits established by the director by rule. A copy of such plan shall be given to each client as part of the informed consent required by subsection (5) of this section.

(7) A direct-entry midwife shall prepare and transmit appropriate specimens for newborn screening in accordance with section 25-4-1004, C.R.S., and shall refer every newborn child for evaluation, within seven days after birth, to a licensed health care provider with expertise in pediatric care.

(8) A direct-entry midwife shall ensure that appropriate laboratory testing, as determined by the director, is completed for each client.

(9) (a) A direct-entry midwife shall provide eye prophylactic therapy to all newborn children in the direct-entry midwife's care in accordance with section 25-4-301, C.R.S.

(b) A direct-entry midwife shall inform the parents of all newborn children in the direct-entry midwife's care of the importance of critical congenital heart defect screening using pulse oximetry in accordance with section 25-4-1004.3, C.R.S. If a direct-entry midwife is not properly trained in the use of pulse oximetry or does not have the use of or own a pulse oximeter, the direct-entry midwife shall refer the parents to a health care provider who can perform the screening. If a direct-entry midwife is properly trained in the use of pulse oximetry and has the use of or owns a pulse oximeter, the direct-entry midwife shall perform the critical congenital heart defect screening on newborn children in his or her care in accordance with section 25-4-1004.3, C.R.S.

(10) A direct-entry midwife shall be knowledgeable and skilled in aseptic procedures and the use of universal precautions and shall use them with every client.

(11) To assure that proper risk assessment is completed and that clients who are inappropriate for direct-entry midwifery are referred to other health care providers, the director shall establish, by rule, a risk assessment procedure to be followed by a direct-entry midwife for each client and standards for appropriate referral. Such assessment shall be a part of each client's record as required in section 12-37-105 (5)(a)(II).

(12) At the time of renewal of a registration, each registrant shall submit the following data in the form and manner required by the director:

(a) The number of women to whom care was provided since the previous registration;

(b) The number of deliveries performed;

(c) The Apgar scores of delivered infants, in groupings established by the director;

(d) The number of prenatal transfers;

(e) The number of transfers during labor, delivery, and immediately following birth;

(f) Any perinatal deaths, including the cause of death and a description of the circumstances; and

(g) Other morbidity statistics as required by the director.

(13) A registered direct-entry midwife may 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. Each registrant shall complete the minimum training requirements and submit proof of having completed such requirements to the director before administering oxygen to any client.

(14) A registrant shall not practice beyond the scope of his or her education and training.

Source: L. 93: Entire article RC&RE, p. 1915, § 2, effective July 1. **L. 96:** (5)(a)(IV) and (13) added, pp. 396, 397, §§ 3, 4, effective April 17. **L. 2001:** (14) added, p. 1259, § 5, effective June 5. **L. 2011:** (1), IP(5)(a)(III), (5)(a)(III)(C), (5)(a)(III)(D), (5)(a)(III)(F), (5)(a)(IV), (6), (7), (8), IP(12), (12)(f), (13), and (14) amended, (SB 11-088), ch. 283, p. 1262, § 8, effective July 1. **L. 2012:** (9) amended, (HB 12-1058), ch. 71, p. 246, § 6, effective March 24. **L. 2016:** (2), (5)(a)(IV), (9), and (14) amended, (HB 16-1360), ch. 350, p. 1423, § 4, effective August 10.

12-37-105.3. Reporting requirements task force - director to convene - report - repeal. (Repealed)

Source: L. 2016: Entire section added, (HB 16-1360), ch. 350, p. 1424, § 5, effective August 10.

Editor's note: Subsection (3) provided for the repeal of this section, effective July 1, 2017. (See L. 2016, p. 1424.)

12-37-105.5. Limited use of certain medications - limited use of sutures - limited administration of intravenous fluids - emergency medical procedures - rules. (1) A registrant may obtain prescription medications to treat conditions specified in this section from a registered prescription drug outlet, registered manufacturer, or registered wholesaler. An entity that provides a prescription medication to a registrant in accordance with this section, and who relies in good faith upon the registration information provided by the registrant, is not subject to liability for providing the medication.

(2) Except as otherwise provided in subsection (3) of this section, a registrant may obtain and administer:

(a) Vitamin K to newborns by intramuscular injection;

(b) Rho(D) immune globulin to Rh-negative mothers by intramuscular injection;

(c) Postpartum antihemorrhagic drugs to mothers;

(d) Eye prophylaxis; and

(e) Local anesthetics, as specified by the director by rule, to use in accordance with subsection (6) of this section.

(3) (a) If a client refuses a medication listed in paragraph (a) or (b) of subsection (2) of this section, the registrant shall provide the client with an informed consent form containing a detailed statement of the benefits of the medication and the risks of refusal, and shall retain a copy of the form acknowledged and signed by the client.

(b) If a client experiences uncontrollable postpartum hemorrhage and refuses treatment with antihemorrhagic drugs, the registrant shall immediately initiate the transportation of the client in accordance with the emergency plan.

(4) A registrant shall, as part of the emergency medical plan required by section 12-37-105 (6), inform the client that:

(a) If she experiences uncontrollable postpartum hemorrhage, the registrant is required by Colorado law to initiate emergency medical treatment, which may include the administration of an antihemorrhagic drug by the registrant to mitigate the postpartum hemorrhaging while initiating the immediate transportation of the client in accordance with the emergency plan.

(b) If she experiences postpartum hemorrhage, the registrant is prepared and equipped to administer intravenous fluids to restore volume lost due to excessive bleeding.

(5) The director shall promulgate rules to implement this section. In promulgating such rules, the director shall seek the advice of knowledgeable medical professionals to set standards for education, training, and administration that reflect current generally accepted professional standards for the safe and effective use of the medications, methods of administration, and procedures described in this section, including a requirement that, to administer intravenous fluids, the registrant complete an intravenous therapy course or program approved by the

director. The director shall establish a preferred drug list that displays the medications that a registrant can obtain.

(6) (a) Subject to paragraph (b) of this subsection (6), a registrant may perform sutures of first-degree and second-degree perineal tears, as defined by the director by rule, on a client and may administer local anesthetics to the client in connection with suturing perineal tears.

(b) In order to perform sutures of first-degree and second-degree perineal tears, the registrant shall apply to the director, in the form and manner required by the director, and pay any application fee the director may impose, for an authorization to perform sutures of first-degree and second-degree perineal tears. As part of the application, the registrant shall demonstrate to the director that the registrant has received education and training approved by the director on suturing of perineal tears within the year immediately preceding the date of the application or within such other time the director, by rule, determines to be appropriate. The director may grant the authorization to the registrant only if the registrant has complied with the education and training requirement specified in this paragraph (b). An authorization issued under this paragraph (b) is valid, and need not be renewed, if the direct-entry midwife holds a valid registration under this article.

Source: L. 2011: Entire section added, (SB 11-088), ch. 283, p. 1263, § 9, effective July 1. **L. 2012:** (2)(d) amended, (HB 12-1058), ch. 71, p. 246, § 7, effective March 24. **L. 2016:** (2)(c) and (2)(d) amended, (2)(e) added, and (6) RC&RE, (HB 16-1360), ch. 350, p. 1425, § 6, effective August 10.

Editor's note: Prior to it recreation in 2016, subsection (6)(b) provided for the repeal of subsection (6), effective July 1, 2013. (See L. 2011, p. 1263.)

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:

(a) To adopt such rules as may be necessary to carry out the provisions of this article;

(b) To establish the fees for registration and renewal of registration in the manner authorized by section 24-34-105, C.R.S.;

(c) To prepare or adopt suitable education standards for applicants and to adopt a registration examination;

(d) To accept applications for registration that meet the requirements set forth in this article, and to collect the annual registration fees authorized by this article;

(e) To seek, through the office of the attorney general, an injunction in a court of competent jurisdiction to enjoin any person from committing an act prohibited by this article. When seeking an injunction under this paragraph (e), the director shall 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.

(f) To summarily suspend a registration upon the failure of the registrant to comply with any condition of a stipulation or order imposed by the director until the registrant complies with the condition, unless compliance is beyond the control of the registrant.

Source: L. 93: Entire article RC&RE, p. 1918, § 2, effective July 1. **L. 96:** (1)(c) amended, p. 397, § 5, effective April 17. **L. 2011:** (1)(a), (1)(d), and (1)(e) amended and (1)(f) added, (SB 11-088), ch. 283, p. 1265, § 10, effective July 1.

12-37-107. Disciplinary action authorized - grounds for discipline - injunctions - rules. (1) If a direct-entry midwife has violated any of the provisions of section 12-37-103, 12-37-104, 12-37-105, or 12-37-109 (3), the director may deny, revoke, or suspend a 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 such violation. Injunctive proceedings under this subsection (1) shall be in addition to, and not in lieu of, any other penalties or remedies provided in this article.

(2) (a) (I) The director may assess a civil penalty in the form of a fine, not to exceed five thousand dollars, for violation of a rule or order of the director or any other act or omission prohibited by this article.

(II) The director shall adopt rules establishing a fine structure and the circumstances under which fines may be imposed.

(b) Any moneys collected pursuant to this subsection (2) shall be transmitted to the state treasurer, who shall credit such moneys to the general fund.

(3) The director may deny, revoke, or suspend a registration or issue a letter of admonition or place a registrant on probation for any of the following acts or omissions:

(a) Any violation of section 12-37-103, 12-37-104, 12-37-105, or 12-37-109 (3);

(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 that the direct-entry midwife knew or should reasonably have known was false, deceptive, or misleading;

(c) Failing to respond in an honest, materially responsive, and timely manner to a letter of complaint from the director;

(d) Failing to comply with an order of the director, including an order placing conditions or restrictions on the registrant's practice;

(e) 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 client is established;

(f) Abuse or habitual or excessive use of a habit-forming drug, a controlled substance as defined in section 18-18-102 (5), C.R.S., or alcohol;

(g) Procuring or attempting to procure a registration in this or any other state or jurisdiction by fraud, deceit, misrepresentation, misleading omission, or material misstatement of fact;

(h) Having had a license or registration to practice direct-entry midwifery or any other health care profession or occupation suspended or revoked in any jurisdiction;

(i) Violating 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.

(j) Falsifying, failing to make essential entries in, or in a negligent manner making incorrect entries in client records;

(k) Conviction of a felony or acceptance by a court of 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.

(l) Aiding or knowingly permitting any person to violate any provision of this article;

(m) Advertising through newspapers, magazines, circulars, direct mail, directories, radio, television, website, e-mail, text message, or otherwise that the registrant will perform any act prohibited by this article; or

(n) (I) Failing to notify the director, as required by section 12-37-108.5 (1), of a physical illness; a physical condition; or a behavioral, mental health, or substance use disorder that renders the registrant unable, or limits the registrant's ability, to practice direct-entry midwifery with reasonable skill and safety to the client;

(II) Failing to act within the limitations created by a physical illness; a physical condition; or a behavioral, mental health, or substance use disorder that renders the registrant unable to practice direct-entry midwifery with reasonable skill and safety or that may endanger the health or safety of persons under his or her care; or

(III) Failing to comply with the limitations agreed to under a confidential agreement entered pursuant to section 12-37-108.5.

(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. Any final decision of the director shall be subject to judicial review by the court of appeals pursuant to section 24-4-106 (11), 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) (a) The director or an administrative law judge may administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the director. The director may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the director, including copies of 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 or client, to be retained by the custodian of the records from which the copies were made, but shall identify the patient or client by a numbered code. Upon certification by the custodian that the copies are true and complete except for the patient's or client'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 exists with respect to such copies and no liability lies 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.

(b) 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 resides or conducts business, upon application by the director with notice to the subpoenaed person or registrant, may issue to the person or registrant an order requiring that person or registrant 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 to obey the order of the court may be punished by the court as a contempt of court.

(7) (a) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the director, does not warrant formal action by the director but that should not be dismissed as being without merit, the director may issue and send a letter of admonition to the registrant.

(b) When the director sends a letter of admonition to a registrant, the director shall inform the registrant that he or she has the 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 upon which the letter of admonition is based.

(c) If the request for adjudication is timely made, the letter of admonition is vacated and the matter shall be processed by means of formal disciplinary proceedings.

(7.5) When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the director and, in the opinion of the director, the complaint should be dismissed, but the director has noticed indications of possible errant conduct by the registrant that could lead to serious consequences if not corrected, a confidential letter of concern may be issued and sent to the registrant.

(8) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the director, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(9) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a registrant 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, the director may issue an order to cease and desist such activity. 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 practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (9), the respondent may request a hearing on the question of whether acts or practices in violation of this article have occurred. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

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

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (10) shall be promptly notified by the director of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the director for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order is issued. Personal service or mailing of an order or document pursuant to this subsection (10) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the director as provided in paragraph (b) of this subsection (10). The hearing may

be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (10) does not appear at the hearing, the director may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (10) and such other evidence related to the matter as the director deems appropriate. The director shall issue the order within ten days after the director's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(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 or has or is about to engage in acts or practices constituting violations of this article, a final cease-and-desist order may be issued directing such person to cease and desist from further unlawful acts or unregistered practices.

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

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

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

(13) A person aggrieved by the final cease-and-desist order may seek judicial review of the director's determination or of the director's final order in a court of competent jurisdiction.

Source: L. 93: Entire article RC&RE, p. 1918, § 2, effective July 1. **L. 96:** (1) amended and (3) to (6) added, p. 397, § 6, effective April 17. **L. 2001:** (3)(f) and (4) amended, p. 1260, § 6, effective June 5. **L. 2003:** (2) amended, p. 1989, § 26, effective May 22. **L. 2004:** (2) and (6) amended and (7) and (8) added, p. 1831, § 74, effective August 4; (3)(d) amended, p. 1194, § 36, effective August 4. **L. 2006:** (7.5) and (9) to (13) added, p. 797, § 29, effective July 1. **L. 2011:** (1), (2), (3), (6), (7), and (13) amended, (SB 11-088), ch. 283, p. 1265, § 11, effective July 1. **L. 2012:** (3)(f) amended, (HB 12-1311), ch. 281, p. 1612, § 17, effective July 1. **L. 2016:** (3)(l), (3)(m), (7)(a), and (7)(b) amended and (3)(n) added, (HB 16-1360), ch. 350, p. 1425, § 7, effective August 10. **L. 2017:** (3)(n)(I) and (3)(n)(II) amended, (SB 17-242), ch. 263, p. 1274, § 58, effective May 25.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-37-108. Unauthorized practice - penalties. Any person who practices or offers or attempts to practice direct-entry midwifery without an active registration 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, such person commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: L. 93: Entire article RC&RE, p. 1919, § 2, effective July 1. **L. 2002:** Entire section amended, p. 1479, § 78, effective October 1. **L. 2006:** Entire section amended, p. 88, § 28, effective August 7.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

12-37-108.5. Confidential agreement to limit practice - violation - grounds for discipline. (1) If a registered direct-entry midwife has a physical illness; a physical condition; or a behavioral or mental health disorder that renders him or her unable to practice direct-entry midwifery with reasonable skill and safety to clients, the registrant shall notify the director of the physical illness; the physical condition; or the behavioral or mental health disorder in a manner and within a period determined by the director. The director may require the registrant to submit to an examination to evaluate the extent of the physical illness; the physical condition; or the behavioral or mental health disorder and its impact on the registrant's ability to practice direct-entry midwifery with reasonable skill and safety to clients.

(2) (a) Upon determining that a registrant with a physical illness; a physical condition; or a behavioral or mental health disorder is able to render limited services with reasonable skill and safety to clients, the director may enter into a confidential agreement with the registrant in which the registrant agrees to limit his or her practice based on the restrictions imposed by the physical illness; the physical condition; or the behavioral or mental health disorder, as determined by the director.

(b) As part of the agreement, the registrant 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 monitoring.

(3) By entering into an agreement with the director pursuant to this section to limit his or her practice, a registrant is not engaging in activities that are grounds for discipline under section 12-37-107 (3). The agreement does not constitute a restriction or discipline by the director. However, if the registrant fails to comply with the terms of an agreement entered into pursuant to this section, the failure constitutes a ground for discipline pursuant to section 12-37-107 (3)(n), and the registrant is subject to discipline in accordance with section 12-37-107.

(4) This section does not apply to a registrant who is subject to discipline for engaging in activities as described in section 12-37-107 (3)(f).

Source: L. 2016: Entire section added, (HB 16-1360), ch. 350, p. 1426, § 8, effective August 10. **L. 2017:** (1) and (2)(a) amended, (SB 17-242), ch. 263, p. 1274, § 59, effective May 25.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-37-109. Assumption of risk - no vicarious liability - legislative declaration - professional liability insurance required. (1) (a) It is the policy of this state that registrants shall be liable for their acts or omissions in the performance of the services that they provide, and that no licensed physician, nurse, prehospital emergency medical personnel, or health care institution shall be liable for any act or omission resulting from the administration of services by any registrant. This subsection (1) does not relieve any physician, nurse, prehospital emergency personnel, or health care institution from liability for any willful and wanton act or omission or any act or omission constituting gross negligence, or under circumstances where a registrant has a business or supervised relationship with any such physician, nurse, prehospital emergency personnel, or health care institution. A physician, nurse, prehospital emergency personnel, or health care institution may provide consultation or education to the registrant without establishing a business or supervisory relationship, and is encouraged to accept referrals from registrants pursuant to this article.

(b) (Deleted by amendment, L. 2011, (SB 11-088), ch. 283, p. 1268, § 12, effective July 1, 2011.)

(2) (Deleted by amendment, L. 2011, (SB 11-088), ch. 283, p. 1268, § 12, effective July 1, 2011.)

(3) (a) If the director finds that liability insurance is available at an affordable price, registrants shall be required to carry such insurance.

(b) Repealed.

Source: L. 93: Entire article RC&RE, p. 1919, § 2, effective July 1. **L. 96:** (3) amended, p. 399, § 7, effective April 17. **L. 2011:** Entire section amended, (SB 11-088), ch. 283, p. 1268, § 12, effective July 1. **L. 2016:** (3) amended, (HB 16-1360), ch. 350, p. 1427, § 9, effective August 10.

Editor's note: Subsection (3)(b)(III) provided for the repeal of subsection (3)(b), effective December 1, 2016. (See L. 2016, p. 1427.)

12-37-109.5. Immunity. The director, the director's staff, any person acting as a witness or 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 liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as director, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this

article shall be immune from any civil or criminal liability that may result from such participation.

Source: L. 96: Entire section added, p. 399, § 8, effective April 17. **L. 2004:** Entire section amended, p. 1833, § 75, effective August 4.

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 the investigation are provided to the director and either the complaint is dismissed or notice of hearing and charges are served upon the person subject to the investigation.

Source: L. 96: Entire section added, p. 399, § 8, effective April 17. **L. 2011:** Entire section amended, (SB 11-088), ch. 283, p. 1269, § 13, effective July 1.

12-37-110. Repeal of article. (1) This article is repealed, effective September 1, 2021.

(2) Prior to the repeal, the department of regulatory agencies shall review the registering of direct-entry midwives by the division of professions and occupations as provided in section 24-34-104, C.R.S.

Source: L. 93: Entire article RC&RE, p. 1920, § 2, effective July 1. **L. 96:** Entire section amended, p. 400, § 9, effective April 17. **L. 2001:** Entire section amended, p. 1260, § 7, effective June 5. **L. 2011:** (1) amended, (SB 11-088), ch. 283, p. 1258, § 3, effective July 1. **L. 2016:** Entire section amended, (HB 16-1360), ch. 350, p. 1422, § 1, effective August 10.

ARTICLE 37.3

Naturopathic Doctors

12-37.3-101. Short title. This article shall be known and may be cited as the "Naturopathic Doctor Act".

Source: L. 2013: Entire article added, (HB 13-1111), ch. 371, p. 2163, § 1, effective August 7.

12-37.3-102. Definitions. As used in this article 37.3, unless the context otherwise requires:

(1) "ACIP" means the advisory committee on immunization practices to the centers for disease control and prevention in the federal department of health and human services or its successor entity.

(1.3) "Administer" means the direct application of a drug to the body of a patient by injection, inhalation, ingestion, or any other method.

(1.5) "Advisory committee" means the naturopathic medicine advisory committee created in section 12-37.3-103.

(2) "Approved clinical training" means clinical training in naturopathic medicine in an inpatient or outpatient setting that has been approved by the director. "Approved clinical training" may include components of allopathic medicine in addition to naturopathic medicine.

(3) "Approved naturopathic medical college" means:

(a) A naturopathic medical education program in the United States or Canada that grants the degree of doctor of naturopathic medicine or doctor of naturopathy and that:

(I) Is approved by the director;

(II) Offers graduate-level, full-time didactic and supervised clinical training; and

(III) Is accredited or has achieved candidacy status for accreditation by the council on naturopathic medical education or an equivalent accrediting body for naturopathic medical programs recognized by the United States department of education; or

(b) Any other college or program approved by the director and accredited by the council on naturopathic medical education or its successor entity.

(4) "Continuing professional competency" means the ongoing ability of a naturopathic doctor to learn, integrate, and apply the knowledge, skill, and judgment to practice as a naturopathic doctor according to generally accepted standards and professional ethical standards.

(5) "Director" means the director of the division or the director's designee.

(5.5) "Dispense" means the preparation, in a suitable container appropriately labeled for subsequent administration to or use by a patient, of a medicine that a naturopathic doctor is authorized under this article to obtain.

(6) "Division" means the division of professions and occupations in the department of regulatory agencies.

(7) "Homeopathic preparations" means medicines prepared according to the most current version of the Homeopathic Pharmacopoeia of the United States/Revision Service.

(8) "Minor office procedures" means:

(a) The repair, care, and suturing of superficial lacerations and abrasions;

(b) The removal of foreign bodies located in superficial tissue, excluding the ear or eye; and

(c) Obtaining and administering saline, sterile water, topical antiseptics, and local anesthetics, including local anesthetics with epinephrine, in connection with a procedure described in paragraph (a) or (b) of this subsection (8).

(9) "Natural health care services" or "natural health care" includes, but is not limited to:

(a) Healing practices using food; food extracts; over-the-counter dietary supplements, including vitamins, herbs, minerals, and enzymes; nutrients; homeopathic remedies and preparations; the physical forces of heat, cold, water, touch, sound, and light; and mind-body and energetic healing practices;

(b) Education, counseling, or advice regarding healing practices described in paragraph (a) of this subsection (9) and their effects on the structure and functions of the human body; and

(c) Services or care as may be further defined by the director by rule.

(10) "Naturopathic doctor" or "registrant" means a person who is registered by the director to practice naturopathic medicine pursuant to this article.

(11) "Naturopathic formulary" means the list of nonprescription classes of medicines determined by the director that naturopathic doctors use in the practice of naturopathic medicine. "Naturopathic formulary" includes any prescription substance or device that is authorized under this article 37.3.

(12) (a) "Naturopathic medicine", as performed by a naturopathic doctor, means a system of health care for the prevention, diagnosis, evaluation, and treatment of injuries, diseases, and conditions of the human body through the use of education, nutrition, naturopathic preparations, natural medicines and other therapies, and other modalities that are designed to support or supplement the human body's own natural self-healing processes.

(b) "Naturopathic medicine" includes naturopathic physical medicine, which consists of naturopathic manual therapy, the therapeutic use of the physical agents of air, water, heat, cold, sound, light, touch, and electromagnetic nonionizing radiation, and the physical modalities of electrotherapy, diathermy, ultraviolet light, ultrasound, hydrotherapy, and exercise.

Source: L. 2013: Entire article added, (HB 13-1111), ch. 371, p. 2163, § 1, effective August 7. **L. 2015:** (1) and (8)(c) amended and (1.3), (1.5), and (5.5) added, (HB 15-1352), ch. 317, p. 1295, § 1, effective June 5. **L. 2017:** (7) amended, (SB 17-294), ch. 264, p. 1387, § 15, effective May 25; IP, (7), and (11) amended, (SB 17-106), ch. 302, p. 1649, § 3, effective August 9.

Editor's note: Amendments to subsection (7) by SB 17-106 and SB 17-294 were harmonized.

12-37.3-103. Naturopathic medicine advisory committee - creation - membership - duties. (1) (a) The naturopathic medicine advisory committee is hereby created in the department of regulatory agencies as the entity responsible for advising the director in the regulation of the practice of naturopathic medicine by naturopathic doctors and the implementation of this article.

(b) (I) The advisory committee consists of nine members appointed by the director as follows:

(A) Three members who are naturopathic doctors;

(B) Three members who are doctors of medicine or osteopathy licensed pursuant to article 36 of this title;

(C) One member who is a pharmacist licensed pursuant to article 42.5 of this title; and

(D) Two members from the public at large. The director shall make reasonable efforts to appoint public members who are or have been consumers of naturopathic medicine.

(II) The director shall appoint members to the advisory committee no later than January 1, 2014.

(c) (I) Each member of the advisory committee holds office until the expiration of the member's appointed term or until a successor is duly appointed. Except as specified in subparagraph (II) of this paragraph (c), the term of office of each member is four years, and an advisory committee member shall not serve more than two consecutive four-year terms. The director shall fill a vacancy occurring on the advisory committee, other than by expiration of a term, by appointment for the unexpired term of the member.

(II) To ensure staggered terms of office, the initial term of office of one of the naturopathic doctor members, the pharmacist member, and one of the members representing the public is two years. These members are eligible to serve one additional four-year term of office. On and after the expiration of these members' terms, the term of office of persons appointed to

these positions on the advisory committee is as described in subparagraph (I) of this paragraph (c), commencing on January 1 of the applicable year.

(d) The director may remove any advisory committee member for misconduct, incompetence, or neglect of duty.

(2) The advisory committee shall advise the director in the administration and enforcement of this article and rules adopted under this article.

(3) Members of the advisory committee shall not receive compensation for their services but are entitled to reimbursement for actual and necessary expenses they incur in performing their duties.

Source: L. 2013: Entire article added, (HB 13-1111), ch. 371, p. 2165, § 1, effective August 7.

12-37.3-104. Director powers and duties. (1) In addition to any other powers and duties granted or imposed on the director under this article, the director shall:

(a) Adopt rules necessary to administer this article;

(b) Establish the form and manner in which applicants are to apply for a new registration or to renew a registration;

(c) Receive, review, and approve or deny applications for registrations and issue and renew registrations under this article;

(d) Establish fees for registration applications and renewal applications in the manner authorized by section 24-34-105, C.R.S.;

(e) Conduct investigations, hold hearings, take evidence, and pursue disciplinary actions pursuant to section 12-37.3-112 with respect to complaints against naturopathic doctors when the director has reasonable cause to believe that a naturopathic doctor is violating this article or rules adopted pursuant to this article, and to subpoena witnesses, administer oaths, and compel the testimony of witnesses and the production of books, papers, and records relevant to those investigations or hearings. Any subpoena issued pursuant to this article is enforceable by the district court.

(f) Perform other functions and duties necessary to administer this article.

Source: L. 2013: Entire article added, (HB 13-1111), ch. 371, p. 2166, § 1, effective August 7.

12-37.3-105. Practice of naturopathic medicine by naturopathic doctors - exclusions - protected activities - rules. (1) The practice of naturopathic medicine by a naturopathic doctor includes the following:

(a) The prevention and treatment of human injury, disease, or conditions through education or dietary or nutritional advice, and the promotion of healthy ways of living;

(b) The use of physical examinations and the ordering of clinical, laboratory, and radiological diagnostic procedures from licensed or certified health care facilities or laboratories for the purpose of diagnosing and evaluating injuries, diseases, and conditions in the human body;

(c) (I) Obtaining, dispensing, administering, ordering, or prescribing, as specified, medicines listed in the naturopathic formulary, which includes:

(A) Obtaining, administering, or dispensing epinephrine to treat anaphylaxis;

(B) Obtaining and dispensing barrier contraceptives, excluding intrauterine devices;

(C) Obtaining and administering oxygen, but only for emergency use;

(D) Obtaining and administering vitamins B6 and B12;

(E) Obtaining, administering, or dispensing substances that are regulated by the federal food and drug administration but that do not require a prescription order to be dispensed; and

(F) Obtaining and administering vaccines, in accordance with the ACIP guidelines, for patients who are at least eighteen years of age.

(II) A naturopathic doctor may obtain medications described in subparagraph (I) of this paragraph (c) from a manufacturer, wholesaler, or in-state prescription drug outlet registered or licensed by the state board of pharmacy pursuant to article 42.5 of this title. An entity that provides a medication described in subparagraph (I) of this paragraph (c) to a naturopathic doctor in accordance with this section, and that relies in good faith upon the registration information provided by the naturopathic doctor, is not subject to liability for providing the medication.

(d) Performing minor office procedures.

(2) A naturopathic doctor shall not:

(a) Prescribe, dispense, administer, or inject a controlled substance or device identified in the federal "Controlled Substances Act", 21 U.S.C. sec. 801 et seq., as amended;

(b) Perform surgical procedures, including surgical procedures using a laser device;

(c) Use general or spinal anesthetics, other than topical anesthetics;

(d) Administer ionizing radioactive substances for therapeutic purposes;

(e) Treat a child who is less than two years of age, unless the naturopathic doctor:

(I) Provides to the parent or legal guardian of the child a copy of the most recent immunizations schedule recommended by the advisory committee on immunization practices to the centers for disease control and prevention in the federal department of health and human services and recommends that the parent or legal guardian follow the immunizations schedule;

(II) (A) On or after March 26, 2015, except as provided in sub-subparagraph (B) of this subparagraph (II), demonstrates in each year in which the naturopathic doctor treats a child under two years of age, successful completion of five hours per year of education or practicum training solely related to pediatrics in accordance with continuing professional competency requirements approved by the director pursuant to section 12-37.3-108, which includes subject matter related to recognizing a sick infant and when to refer an infant for more intensive care.

(B) If, pursuant to paragraph (f) of this subsection (2), a naturopathic doctor treats children who are two years of age or older but less than eight years of age and successfully completes three hours per year of education or practicum training solely related to pediatrics as required by subparagraph (II) of paragraph (f) of this subsection (2), the naturopathic doctor is required only to successfully complete an additional two hours per year of education or practicum training solely related to pediatrics to comply with the requirements of sub-subparagraph (A) of this subparagraph (II).

(III) (A) Develops and executes a written collaborative agreement with a licensed physician who is a pediatrician or family physician, which agreement includes the duties and responsibilities of each party as part of the collaborative agreement according to each party's standard of care and practice act, a process for consulting with and referring to a licensed physician to facilitate the effective treatment of children under two years of age, and other

provisions as may be established by the director by rule. The naturopathic doctor and the licensed physician shall keep the written collaborative agreement on file and, upon request by the director, for naturopathic doctors, or by the Colorado medical board, for licensed physicians, shall provide a copy of the agreement to the director or board, as applicable.

(B) The naturopathic doctor shall provide to the director the name and license number of the licensed physician and shall ensure that the information filed with the director is current. The director shall make the information available to the Colorado medical board and the naturopathic medicine advisory committee.

(C) Nothing in this subparagraph (III) permits the independent practice of medicine, as defined in section 12-36-106 (1) and (2), by a naturopathic doctor.

(D) Nothing in this subparagraph (III): Limits the ability of a naturopathic doctor to make an independent judgment; requires supervision by a licensed physician; precludes the use of professional judgment or variation according to the needs of the child under two years of age; imposes liability on a licensed physician, in developing or signing a collaborative agreement, for the actions of the naturopathic doctor in treating a child under two years of age; imposes liability on a naturopathic doctor, in developing or signing a collaborative agreement, for the actions of the licensed physician in consulting regarding the treatment of a child less than two years of age; or requires the naturopathic doctor and licensed physician to be practicing in the same community or in close proximity to each other in order to enter into a collaborative agreement.

(IV) Requires the child's parent or legal guardian to sign an informed consent that:

(A) Discloses that the naturopathic doctor is registered pursuant to this article;

(B) Discloses that the naturopathic doctor is not a physician licensed pursuant to article 36 of this title;

(C) Recommends that the child have a relationship with a licensed pediatric health care provider; and

(D) If the child has a relationship with a licensed pediatric health care provider, requests permission from the parent or legal guardian for the naturopathic doctor to attempt to develop and maintain a collaborative relationship with the licensed pediatric health care provider, as defined by director rules; or if the child does not have a relationship with a licensed pediatric health care provider, on the child's first visit, refers the child to at least one licensed pediatric health care provider, physician, or advanced practice nurse who cares for pediatric patients to provide a medical home for the child, with ongoing communication and relationship between the naturopathic doctor and the licensed pediatric health care provider, physician, or advanced practice nurse; and

(V) Complies with rules adopted by the director regarding the training required by subparagraph (II) of this paragraph (e) and referral to and communication with licensed pediatric health care providers, physicians, or advanced practice nurses as required by sub-subparagraph (D) of subparagraph (IV) of this paragraph (e), to ensure the safety of clients who are under two years of age;

(f) Treat a child who is two years of age or older but less than eight years of age, unless the naturopathic doctor:

(I) Provides to the parent or legal guardian of the child a copy of the most recent immunizations schedule recommended by the advisory committee on immunization practices to the centers for disease control and prevention in the federal department of health and human services and recommends that the parent or legal guardian follow the immunizations schedule;

(II) Demonstrates successful completion of three hours per year of education or practicum training solely related to pediatrics in accordance with continuing professional competency requirements approved by the director pursuant to section 12-37.3-108; and

(III) Requires the child's parent or legal guardian to sign an informed consent that:

(A) Discloses that the naturopathic doctor is registered pursuant to this article;

(B) Discloses that the naturopathic doctor is not a physician licensed pursuant to article 36 of this title;

(C) Recommends that the child have a relationship with a licensed pediatric health care provider; and

(D) If the child has a relationship with a licensed pediatric health care provider, requests permission from the parent or legal guardian for the naturopathic doctor to attempt to develop and maintain a collaborative relationship with the licensed pediatric health care provider, as defined by director rules;

(g) Engage in or perform the practice of medicine, surgery, or any other form of healing except as authorized by this article;

(h) Practice obstetrics;

(i) Perform spinal adjustment, manipulation, or mobilization, but this paragraph (i) does not prohibit a naturopathic doctor from practicing naturopathic physical medicine as described in section 12-37.3-102 (12)(b); or

(j) Recommend the discontinuation of, or counsel against, a course of care, including a prescription drug that was recommended or prescribed by another health care practitioner licensed in this state, unless the naturopathic doctor consults with the health care practitioner who recommended the course of care.

(3) (a) A naturopathic doctor has the same authority and is subject to the same responsibilities as a licensed physician under public health laws pertaining to reportable diseases and conditions, communicable disease control and prevention, and recording of vital statistics and health and physical examinations, subject to the limitations of the scope of practice of a naturopathic doctor as specified in this article.

(b) Before conducting an initial examination of a patient, a naturopathic doctor shall obtain the patient's informed consent to the examination, evidenced by a written statement in a form prescribed by the director and signed by both the patient and the naturopathic doctor. The statement must:

(I) Disclose that the naturopathic doctor is not a medical doctor or physician licensed under article 36 of this title 12;

(II) Recommend that the patient have a relationship with a medical doctor or licensed physician;

(III) Indicate that the naturopathic doctor will attempt to develop and maintain a collaborative relationship with the patient's licensed physician, if the patient has a relationship with a licensed physician; and

(IV) Disclose that the naturopathic doctor is registered and not licensed.

(c) A naturopathic doctor shall communicate and cooperate with a patient's other health care providers, if any, to ensure that the patient receives coordinated care.

(d) A naturopathic doctor shall refer a patient to another health care professional if the patient's needs are beyond the naturopathic doctor's scope of knowledge and practice.

(4) This article does not prevent or restrict the practice, services, or activities of:

(a) A person who is licensed, certified, or registered to practice a profession or occupation pursuant to this title and who engages in activities that are within the lawful scope of practice for the profession or occupation for which the person is licensed, certified, or registered;

(b) A person who practices natural health care, provides natural health care services, or advises and educates in the use of natural health care products, as long as the person does not:

(I) Diagnose injuries or diseases;

(II) Prescribe medicines as authorized for registrants pursuant to paragraph (c) of subsection (1) of this section or a prescription drug or controlled substance or device identified in the federal "Controlled Substances Act", 21 U.S.C. sec. 801 et seq., as amended; or

(III) Perform minor office procedures as authorized for registrants pursuant to paragraph (d) of subsection (1) of this section;

(c) A person who sells vitamins, health foods, dietary supplements, herbs, or other natural products, if not otherwise prohibited by state or federal law, and who sells or provides information about the products;

(d) A person who provides truthful and nonmisleading information regarding natural health care products or services;

(e) A person employed by the federal government who practices naturopathic medicine while the person is engaged in the performance of his or her duties;

(f) A person who is licensed or otherwise authorized to practice as a naturopathic doctor in another state or district in the United States who is consulting with a naturopathic doctor in this state as long as the consultation is limited to examination, recommendation, or testimony in litigation;

(g) A student enrolled in an approved naturopathic medical college who practices naturopathic medicine if the performance of services is pursuant to a course of instruction or assignments from and under the supervision of an instructor who is a naturopathic doctor or a licensed professional in the field in which he or she is providing instruction;

(h) A person who administers a domestic or family remedy to oneself or a member of his or her immediate family based on religious or health beliefs; or

(i) A person who renders aid in an emergency when no fee or other consideration of value for the services is charged, received, expected, or contemplated.

(5) Except as provided in subsection (4) of this section, a person who is not registered under this article shall not:

(a) Diagnose injury, disease, ailment, infirmity, deformity, pain, or other condition of the human body;

(b) Dispense, administer, order, or prescribe medicines as authorized for registrants pursuant to paragraph (c) of subsection (1) of this section; or

(c) Use the title "Naturopathic Doctor", or "Doctor of Naturopathy" or the abbreviation "N.D."

(6) Many therapies used by naturopathic doctors, such as the use of nutritional supplements, herbs, foods, homeopathic preparations, and physical forces such as heat, cold, water, touch, and light, are not the exclusive privilege of naturopathic doctors, and this article does not prohibit the use or practice of those therapies by a person who is not registered under this article to practice naturopathic medicine.

(7) As used in this section, "licensed pediatric health care provider" means a licensed physician or advanced practice nurse who treats children.

Source: L. 2013: Entire article added, (HB 13-1111), ch. 371, p. 2167, § 1, effective August 7. **L. 2015:** (2)(e) amended and (7) added, (HB 15-1075), ch. 52, p. 124, § 1, effective March 26; (1)(c) amended, (HB 15-1352), ch. 317, p. 1296, § 2, effective June 5. **L. 2018:** (3)(b) amended, (SB 18-1433), ch. 317, p. 1907, § 1, effective May 29.

12-37.3-106. Registration required - qualifications - examination - registration by endorsement - rules. (1) Effective June 1, 2014, a person shall not practice as a naturopathic doctor in this state without a registration.

(2) An applicant for a registration to practice as a naturopathic doctor in this state shall submit an application to the director in a form and manner determined by the director by rule, accompanied by the fee required pursuant to section 12-37.3-104 (1)(d). The director shall issue a registration to practice as a naturopathic doctor to an applicant upon receipt of satisfactory proof that the applicant:

(a) Is at least twenty-one years of age and of good moral character;

(b) Has obtained a baccalaureate degree from an accredited educational institution or documented experience that provides the same kind, amount, and level of knowledge as a baccalaureate degree, as determined by the director;

(c) Has graduated from and holds a doctor of naturopathic medicine or doctor of naturopathy degree from an approved naturopathic medical college;

(d) Has successfully passed either a director-approved examination or a comprehensive competency-based national naturopathic licensing examination administered by the North American board of naturopathic examiners or a nationally recognized, director-approved successor entity, as determined by the director by rule; and

(e) Has not had a license or other authorization to practice as a naturopathic doctor or other health care license, registration, or certification denied, revoked, or suspended by Colorado or any other jurisdiction for reasons that relate to the applicant's ability to skillfully and safely practice naturopathic medicine, unless the license, registration, or certification is reinstated to good standing by Colorado or another jurisdiction.

(3) The director may issue a registration by endorsement to engage in the practice of naturopathic medicine to an applicant who has a license, certification, or registration in good standing as a naturopathic doctor under the laws of another jurisdiction if the applicant presents satisfactory proof to the director that, at the time of application for a Colorado registration by endorsement, the applicant possesses credentials and qualifications that are substantially equivalent to the requirements of this section. The director may adopt rules concerning the necessary applicant credentials and qualifications.

(4) The director may determine, by rule, the qualifications for registration under this article for a person who satisfies the requirements of paragraphs (a), (b), and (e) of subsection (2) of this section but does not satisfy the requirements for registration under paragraph (c) or (d) of subsection (2) of this section and who is not licensed, certified, or registered to practice a profession or occupation under this title or the laws of any other jurisdiction in the United States. The director's rules may require qualifications the director deems appropriate and may include documented evidence that the person:

(a) Has completed a post-graduate level didactic and supervised clinical educational program from an accredited educational institution, which program is substantially equivalent to

the education requirements set forth in paragraph (c) of subsection (2) of this section, as determined by the director by rule;

(b) Has passed a national examination in naturopathic medicine that is substantially equivalent to the examination required in paragraph (d) of subsection (2) of this section, as determined by the director by rule; and

(c) Has at least ten years of related professional experience.

Source: L. 2013: Entire article added, (HB 13-1111), ch. 371, p. 2170, § 1, effective August 7.

12-37.3-107. Registration renewal or reinstatement - fees. A naturopathic doctor shall renew or reinstate his or her registration pursuant to a schedule established by the director, and the director shall renew or reinstate a registration in accordance with section 24-34-102 (8), C.R.S. The director may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her registration pursuant to the schedule established by the director, the registration expires. A person whose registration expires is subject to the penalties provided in this article or section 24-34-102 (8), C.R.S. The director shall transmit fees collected pursuant to this section or section 12-37.3-106 to the state treasurer for deposit in the division of professions and occupations cash fund pursuant to section 24-34-105, C.R.S.

Source: L. 2013: Entire article added, (HB 13-1111), ch. 371, p. 2172, § 1, effective August 7. **L. 2014:** Entire section amended, (HB 14-1363), ch. 302, p. 1262, § 6, effective May 31.

12-37.3-108. Continuing professional competency - rules. (1) (a) A naturopathic doctor shall maintain continuing professional competency to practice naturopathic medicine.

(b) The director shall adopt rules establishing a continuing professional competency program that includes, at a minimum, the following elements:

(I) A self-assessment of the knowledge and skills of a naturopathic doctor seeking to renew or reinstate a registration;

(II) Development, execution, and documentation of a learning plan based on the assessment; and

(III) Periodic demonstration of knowledge and skills through documentation of activities necessary to ensure continuing competency in the profession; except that a naturopathic doctor need not retake any examination required by section 12-37.3-106 (2)(d) for initial registration.

(c) The director shall establish that a naturopathic doctor satisfies the continuing competency requirements of this section if the naturopathic doctor meets the continuing professional competency requirements of one of the following entities:

(I) A state department, including continuing professional competency requirements imposed through a contractual arrangement with a provider;

(II) An accrediting body recognized by the director; or

(III) An entity approved by the director.

(d) (I) After the program is established, a naturopathic doctor shall satisfy the requirements of the program in order to renew or reinstate a registration to practice naturopathic medicine.

(II) The requirements of this section apply to individual naturopathic doctors, and nothing in this section requires a person who employs or contracts with a naturopathic doctor to comply with the requirements of this section.

(2) Records of assessments or other documentation developed or submitted in connection with the continuing professional competency program are confidential and not subject to inspection by the public or discovery in connection with a civil action against a naturopathic doctor. Neither the director nor any other person shall use the records or documents unless used by the director to determine whether a naturopathic doctor is maintaining continuing professional competency to engage in the profession.

Source: L. 2013: Entire article added, (HB 13-1111), ch. 371, p. 2172, § 1, effective August 7.

12-37.3-109. Compliance with transparency requirements. A naturopathic doctor shall comply with section 24-34-110, C.R.S., regarding the disclosure of information to the director.

Source: L. 2013: Entire article added, (HB 13-1111), ch. 371, p. 2173, § 1, effective August 7.

12-37.3-110. Persons entitled to practice as naturopathic doctors - title protection for naturopathic doctors. (1) A person shall not hold himself or herself out as a naturopathic doctor or use any of the titles or initials referred to in subsection (2) of this section unless the person is registered as a naturopathic doctor pursuant to this article.

(2) A naturopathic doctor may use the title "naturopathic doctor", or "doctor of naturopathy", or the initials "N.D."

(2.5) A naturopathic doctor shall qualify any specialty services provided to the public with "naturopathic" or "naturopath".

(3) A naturopathic doctor shall not use:

(a) The term "physician" in describing the naturopathic doctor's registered naturopathic medicine practice in this state.

(b) The abbreviations "NMD" or "N.M.D.";

(c) The term "naturopathic medical doctor".

(4) Nothing in this section prevents a naturopathic doctor from disclosing membership in national organizations or associations of naturopathic physicians unless the disclosure is false, misleading, or deceptive.

(5) Nothing in this section prevents a person from using the term "doctor" or the title "Dr." if he or she satisfies the requirements of section 6-1-707 (1)(a), C.R.S.

Source: L. 2013: Entire article added, (HB 13-1111), ch. 371, p. 2173, § 1, effective August 7. **L. 2017:** (2) amended, (SB 17-106), ch. 302, p. 1649, § 4, effective August 9. **L. 2018:**

(2), (3)(a), and (4) amended and (2.5) added, (HB 18-1433), ch. 317, p. 1908, § 2, effective May 29.

12-37.3-111. Disclosures - record keeping. (1) A naturopathic doctor shall provide the following information in writing to each patient in a format required by the director:

(a) The naturopathic doctor's name, business address, and telephone number;

(b) The nature of the services to be provided;

(c) A statement that naturopathic doctors are registered by the state to practice naturopathic medicine under the "Naturopathic Doctor Act";

(d) The prohibitions specified in section 12-37.3-105 (2);

(e) The states in which the naturopathic doctor holds an active license or registration; and

(f) How to file a complaint against a naturopathic doctor.

(2) A naturopathic doctor shall obtain a written acknowledgment from the patient stating that the patient has been provided the information described in subsection (1) of this section. The naturopathic doctor shall retain the acknowledgment for seven years after the date on which the last services were provided to the patient.

(3) If a naturopathic doctor treats any patient who is seeking treatment for cancer, the naturopathic doctor shall recommend to the patient that the patient consult with a licensed physician specializing in oncology and document the recommendation in writing.

Source: L. 2013: Entire article added, (HB 13-1111), ch. 371, p. 2174, § 1, effective August 7.

12-37.3-112. Grounds for discipline - disciplinary actions authorized - procedures - definitions. (1) The director may deny, revoke, or suspend the registration of, issue a letter of admonition to, or place on probation a naturopathic doctor for any of the following acts or omissions:

(a) Violating, or aiding or abetting another in the violation of, this article or any rule promulgated by the director pursuant to this article;

(b) Falsifying information in any application, attempting to obtain or obtaining a registration by fraud, deceit, or misrepresentation, or aiding or abetting such act;

(c) Engaging in an act or omission that does not meet generally accepted standards of practice of naturopathic medicine or of safe care for patients, whether or not actual injury to a patient is established;

(d) Habitual or excessive use or abuse of alcohol, a habit-forming drug, or a controlled substance as defined in section 18-18-102 (5), C.R.S.;

(e) Failing to refer a patient to an appropriate health care professional when the services required by the patient are beyond the level of competence of the naturopathic doctor or beyond the scope of naturopathic medicine practice;

(f) Violation of a law or regulation governing the practice of naturopathic medicine in another jurisdiction;

(g) Falsifying, repeatedly failing to make essential entries in, or repeatedly making incorrect essential entries in patient records;

(h) Conviction of a felony, an offense of moral turpitude, or a crime that would constitute a violation of this article. For purposes of this paragraph (h), "conviction" includes the entry of a plea of guilty or nolo contendere or the imposition of a deferred sentence or judgment.

(i) Advertising through newspapers, magazines, circulars, direct mail, directories, radio, television, or otherwise that the naturopathic doctor will perform any act prohibited by this article;

(j) Engaging in a sexual act with a patient during the course of patient care or within six months immediately following the written termination of the professional relationship with the patient. As used in this paragraph (j), "sexual act" means sexual contact, sexual intrusion, or sexual penetration, as those terms are defined in section 18-3-401, C.R.S.

(k) Committing abuse of health insurance, as prohibited by section 18-13-119, C.R.S.;

(l) Advertising through newspapers, magazines, circulars, direct mail, directories, radio, television, or otherwise that the naturopathic doctor will perform any act prohibited by section 18-13-119 (3), C.R.S.;

(m) Violating a valid order of the director;

(n) Failing to report to the director, within thirty days after an adverse action, that an adverse action has been taken against the naturopathic doctor by a licensing agency in another state or country, a peer review body, a health care institution, a professional or naturopathic medical society or association, a governmental agency, a law enforcement agency, or a court for acts or conduct that would constitute grounds for disciplinary or adverse action as described in this article;

(o) Failing to report to the director, within thirty days:

(I) The surrender of a license or other authorization to practice as a naturopathic doctor in another state or jurisdiction; or

(II) The surrender of membership on a medical staff or in a naturopathic medical or professional association or society while under investigation by any of those authorities or bodies for acts or conduct similar to acts or conduct that would constitute grounds for action as described in this article;

(p) (I) Failing to notify the director of a physical illness; a physical condition; or a behavioral, mental health, or substance use disorder that affects the naturopathic doctor's ability to treat patients with reasonable skill and safety or that may endanger the health or safety of persons under his or her care;

(II) Failing to act within the limitations created by a physical illness; a physical condition; or a behavioral, mental health, or substance use disorder that renders the naturopathic doctor unable to practice naturopathic medicine with reasonable skill and safety or that may endanger the health or safety of persons under his or her care; or

(III) Failing to comply with the limitations agreed to under a confidential agreement entered pursuant to section 12-37.3-116;

(q) Failing to timely respond to a complaint filed against the naturopathic doctor;

(r) Failing to develop a written plan for the security of patient medical records in accordance with section 12-37.3-115;

(s) Refusing to submit to a physical or mental examination when so ordered by the director pursuant to section 12-37.3-117;

(t) Failing to obtain and continually maintain professional liability insurance as required by section 12-37.3-114.

(2) In addition to or as an alternative to the discipline authorized by subsection (1) of this section, the director may assess an administrative fine of up to five thousand dollars against a naturopathic doctor who commits any of the acts or omissions described in subsection (1) of this section. The director shall transmit any moneys collected pursuant to this subsection (2) to the state treasurer for deposit in the general fund.

(3) Any person whose registration is revoked or who surrenders his or her registration to avoid discipline is ineligible to apply for a registration under this article for at least two years after the date of revocation or surrender of the registration.

(4) The director shall conduct any proceeding to deny, suspend, or revoke a registration or place a naturopathic doctor on probation in accordance with sections 24-4-104 and 24-4-105, C.R.S. The director may designate an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to conduct the proceeding. The administrative law judge shall conduct the proceeding in accordance with sections 24-4-104 and 24-4-105, C.R.S. A final decision of the director or the administrative law judge is subject to judicial review by the court of appeals pursuant to section 24-4-106 (11), C.R.S.

(5) The director may accept as prima facie evidence of grounds for disciplinary action any disciplinary action taken against a naturopathic doctor by another jurisdiction if the violation that prompted the disciplinary action would be grounds for disciplinary action under this article.

(6) (a) The director or an administrative law judge may administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter before the director or administrative law judge. The director may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the director, including hospital and naturopathic doctor records. The person providing copies of records shall prepare the copies from the original record, deleting the name of the patient and instead identifying 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 are deemed authentic, subject to the right to inspect the originals for the limited purpose of ascertaining the accuracy of the copies. The copies are not confidential, and the director or custodian of the records and their authorized employees are not liable for furnishing or using the copies in accordance with this section.

(b) If a witness or naturopathic doctor fails to comply with a subpoena or process, the director may apply to the district court of the county in which the subpoenaed person or naturopathic doctor resides or conducts business for an order directing the person or naturopathic doctor 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. The director shall provide notice to the subpoenaed person or naturopathic doctor of the director's application to the district court, and the court shall not issue the order absent the notice. If the subpoenaed person or naturopathic doctor fails to obey the court's order, the court may hold the person in contempt of court.

(7) (a) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the director, does not warrant formal action by the director but that should not be dismissed as being without merit, the director may issue a letter of admonition to the naturopathic doctor.

(b) When the director sends a letter of admonition to a registrant, the letter must advise the registrant that he or she has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(c) If the registrant timely requests adjudication, the director shall vacate the letter of admonition and process the matter by means of formal disciplinary proceedings.

(8) When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the director and, in the opinion of the director, should be dismissed, but the director has noticed indications of possible errant conduct by the registrant that could lead to serious consequences if not corrected, the director may send the registrant a confidential letter of concern.

(9) 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 by a deferred settlement, action, judgment, or prosecution.

(10) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a registrant 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, the director may issue an order to cease and desist the activity. The director shall set forth in the order 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 practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (10), the respondent may request a hearing on the question of whether acts or practices in violation of this article have occurred. The director or administrative law judge shall conduct the hearing in accordance with sections 24-4-104 and 24-4-105, C.R.S.

(11) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this article, the director may issue to the person an order to show cause as to why the director should not issue a final order directing the person to cease and desist from the unlawful act or unregistered practice.

(b) The director shall promptly notify the person that he or she has been issued an order to show cause. The director shall include in the notice a copy of the order, the factual and legal basis for the order, and the date set by the director for a hearing on the order. The director may serve the notice on the person by personal service, by first-class United States mail, postage prepaid, or in any other manner that is practicable. Personal service or mailing of an order or document pursuant to this subsection (11) constitutes notice to the person.

(c) (I) The director shall commence the hearing on an order to show cause no earlier than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the director as provided in paragraph (b) of this subsection (11). The director may continue the hearing upon agreement of all parties based upon the complexity of the matter, the number of parties to the matter, and the legal issues presented in the matter, but in no event shall the director continue the hearing more than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (11) does not appear at the hearing, the director may present evidence that notification was properly sent or served upon the person pursuant to paragraph (b)

of this subsection (11) and other evidence related to the matter that the director deems appropriate. The director shall issue the order within ten days after the director's determination related to reasonable attempts to notify the respondent, and the order is final as to that person by operation of law. The director shall conduct the hearing in accordance with sections 24-4-104 and 24-4-105, C.R.S.

(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 or has or is about to engage in acts or practices constituting violations of this article, the director may issue a final cease-and-desist order directing the person to cease and desist from further unlawful acts or unregistered practices.

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

(12) The director may enter into a stipulation with a person if it appears to the director, based upon credible evidence presented to the director, that the person has engaged in or is about to engage in:

(a) An unregistered act or practice;

(b) An act or practice constituting a violation of this article or of any rule promulgated pursuant to this article;

(c) A violation of an order issued pursuant to this article; or

(d) An act or practice constituting grounds for administrative sanction pursuant to this article.

(13) If a person fails to comply with a final cease-and-desist order or a stipulation, the director may request the attorney general or the district attorney for the judicial district in which the alleged violation occurred or is occurring to bring, and if so requested the attorney shall bring, suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

(14) A person aggrieved by the final cease-and-desist order may seek judicial review of the director's determination or of the director's final order in a court of competent jurisdiction.

Source: L. 2013: Entire article added, (HB 13-1111), ch. 371, p. 2174, § 1, effective August 7. **L. 2017:** (1)(p)(I) and (1)(p)(II) amended, (SB 17-242), ch. 263, p. 1275, § 60, effective May 25.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-37.3-113. Unauthorized practice - penalties. A person who practices or offers or attempts to practice as a naturopathic doctor without an active registration issued under this article commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 2013: Entire article added, (HB 13-1111), ch. 371, p. 2180, § 1, effective August 7.

12-37.3-114. Professional liability insurance required - vicarious liability - rules. (1) It is unlawful for a person to practice as a naturopathic doctor in this state unless the person is covered by professional liability insurance in an amount not less than one million dollars.

(2) Professional liability insurance required by this section must cover all acts within the scope of practice of a naturopathic doctor.

(3) A naturopathic doctor is liable for his or her acts or omissions in the performance of naturopathic medicine.

Source: L. 2013: Entire article added, (HB 13-1111), ch. 371, p. 2180, § 1, effective August 7.

12-37.3-114.5. Judgments and settlements - reporting. In accordance with section 10-1-125.5, a naturopathic doctor's malpractice insurance carrier shall report to the director information relating to a final judgment or settlement against the naturopathic doctor for malpractice. The director shall review the information and investigate and, as appropriate, take disciplinary or other action against the naturopathic doctor.

Source: L. 2017: Entire section added, (SB 17-106), ch. 302, p. 1649, § 5, effective August 9.

12-37.3-115. Protection of medical records - registrant's obligations - verification of compliance - noncompliance grounds for discipline - rules. (1) Each naturopathic doctor shall develop a written plan to ensure the security of patient medical records. The plan must address at least the following:

(a) The storage and proper disposal of patient medical records;

(b) The disposition of patient medical records in the event the naturopathic doctor dies, retires, or otherwise ceases to practice or provide naturopathic medical care to patients; and

(c) The method by which patients may access or obtain their medical records promptly if any of the events described in paragraph (b) of this subsection (1) occurs.

(2) Upon initial registration under this article, the applicant or registrant shall attest to the director that he or she has developed a plan in compliance with this section.

(3) A naturopathic doctor shall inform each patient in writing of the method by which the patient may access or obtain his or her medical records if an event described in paragraph (b) of subsection (1) of this section occurs.

(4) The director may adopt rules reasonably necessary to implement this section.

Source: L. 2013: Entire article added, (HB 13-1111), ch. 371, p. 2180, § 1, effective August 7.

12-37.3-116. Confidential agreement to limit practice - violation - grounds for discipline. (1) If a naturopathic doctor has a physical illness; a physical condition; or a behavioral or mental health disorder that renders him or her unable to practice naturopathic

medicine with reasonable skill and safety to patients, the naturopathic doctor shall notify the director of the physical illness; the physical condition; or the behavioral or mental health disorder in a manner and within a period determined by the director. The director may require the naturopathic doctor to submit to an examination to evaluate the extent of the physical illness; the physical condition; or the behavioral or mental health disorder and its impact on the naturopathic doctor's ability to practice naturopathic medicine with reasonable skill and safety to patients.

(2) (a) Upon determining that a naturopathic doctor with a physical illness; a physical condition; or a behavioral or mental health disorder is able to render limited services with reasonable skill and safety to patients, the director may enter into a confidential agreement with the naturopathic doctor in which the naturopathic doctor agrees to limit his or her practice based on the restrictions imposed by the physical illness; the physical condition; or the behavioral or mental health disorder, as determined by the director.

(b) As part of the agreement, the naturopathic doctor 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 monitoring.

(3) By entering into an agreement with the director pursuant to this section to limit his or her practice, a naturopathic doctor is not engaging in activities that are prohibited pursuant to section 12-37.3-112. The agreement does not constitute a restriction or discipline by the director. However, if the naturopathic doctor fails to comply with the terms of an agreement entered into pursuant to this section, the failure constitutes a prohibited activity pursuant to section 12-37.3-112 (1)(p), and the naturopathic doctor is subject to discipline in accordance with section 12-37.3-112.

(4) This section does not apply to a naturopathic doctor subject to discipline for prohibited activities as described in section 12-37.3-112 (1)(d).

Source: L. 2013: Entire article added, (HB 13-1111), ch. 371, p. 2181, § 1, effective August 7. **L. 2017:** (1) and (2)(a) amended, (SB 17-242), ch. 263, p. 1275, § 61, effective May 25.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-37.3-117. Mental and physical examination of registrants. (1) If the director has reasonable cause to believe that a registrant is unable to practice with reasonable skill and safety, the director may require the registrant to take a mental or physical examination by a health care provider designated by the director. If the registrant refuses to undergo a mental or physical examination, unless due to circumstances beyond the registrant's control, the director may suspend the registrant's registration until the results of the examination are known and the director has made a determination of the registrant's fitness to practice. The director shall proceed with an order for examination and determination in a timely manner.

(2) The director shall include in an order issued under subsection (1) of this section the basis of the director's reasonable cause to believe that the registrant is unable to practice with reasonable skill and safety. For the purposes of a disciplinary proceeding authorized by this

article, the registrant is deemed to waive all objections to the admissibility of the examining health care provider's testimony or examination reports on the ground that the testimony and reports are privileged communications.

(3) The registrant may submit to the director testimony or examination reports from a health care provider chosen by the registrant pertaining to the condition that the director alleges may preclude the registrant from practicing with reasonable skill and safety. The director may consider testimony and examination reports submitted by the registrant in conjunction with, but not in lieu of, testimony and examination reports of the health care provider designated by the director.

(4) A person shall not use the results of any mental or physical examination ordered by the director as evidence in any proceeding other than one before the director. The examination results are not public records and are not available to the public.

Source: L. 2013: Entire article added, (HB 13-1111), ch. 371, p. 2181, § 1, effective August 7.

12-37.3-118. Inactive registration - rules. A naturopathic doctor may request that the director inactivate or activate the naturopathic doctor's registration. The director shall promulgate rules governing the activation and inactivation of registrations. Notwithstanding any law to the contrary, the director's rules may limit the applicability of statutory requirements for maintaining professional liability insurance and continuing professional competency for a registrant whose registration is currently inactive. The director need not reactivate an inactive registration if the naturopathic doctor has committed any act that would be grounds for disciplinary action under section 12-37.3-112. A naturopathic doctor whose registration is currently inactive shall not practice naturopathic medicine.

Source: L. 2013: Entire article added, (HB 13-1111), ch. 371, p. 2182, § 1, effective August 7.

12-37.3-119. Repeal of article - definition. (1) This article 37.3 is repealed, effective September 1, 2020. Before its repeal, the department of regulatory agencies shall review the registration of naturopathic doctors in accordance with section 24-34-104.

(2) (a) In conducting its review, the department shall gather and include in its report information from naturopathic doctors regarding the number of children under two years of age that naturopathic doctors treated, the conditions for which naturopathic doctors treated children under two years of age, and the number and description of any adverse events that occurred in connection with treating children under two years of age. Additionally, the department shall review written collaborative agreements kept on file by naturopathic doctors pursuant to section 12-37.3-105 (2)(e)(III) and include a summary of those agreements in its report.

(b) As used in this subsection (2), "adverse event" means any harm to a child under two years of age that the treating naturopathic doctor is aware of and that resulted or likely resulted from the naturopathic doctor's care of the child. Reporting an adverse event to the department pursuant to this section does not, alone, constitute grounds for discipline pursuant to section 12-37.3-112.

Source: L. 2013: Entire article added, (HB 13-1111), ch. 371, p. 2182, § 1, effective August 7. **L. 2015:** Entire section amended, (HB 15-1075), ch. 52, p. 126, § 2, effective March 26. **L. 2017:** (1) amended, (SB 17-106), ch. 302, p. 1648, § 2, effective August 9.

ARTICLE 37.5

Colorado Parental Notification Act

12-37.5-101 to 12-37.5-108. (Repealed)

Source: L. 2018: Entire article repealed, (SB 18-032), ch. 8, p. 150, § 3, effective October 1.

Editor's note: This article 37.5 was added in 1998 as an initiated measure. For amendments to this article 37.5 prior to its repeal in 2018, consult the 2017 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume. This article 37.5 was relocated to part 7 of article 22 of title 13 by SB 18-032. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article 37.5, see the comparative tables located in the back of the index.

ARTICLE 38

Nurses

Editor's note: This article was numbered as article 4 of chapter 97, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1980, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1980, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

PART 1

GENERAL PROVISIONS

12-38-101. Short title. This article shall be known and may be cited as the "Nurse Practice Act".

Source: L. 80: Entire article R&RE, p. 480, § 1, effective July 1.

Editor's note: This section is similar to former § 12-38-101 as it existed prior to 1980.

12-38-102. Legislative declaration. The general assembly hereby declares it to be the policy of this state that, in order to safeguard the life, health, property, and public welfare of the people of this state and in order to protect the people of this state from the unauthorized, unqualified, and improper application of services by individuals in the practice of nursing, it is necessary that a proper regulatory authority be established. The general assembly further declares it to be the policy of this state to regulate the practice of nursing through a state agency with the power to enforce the provisions of this article.

Source: L. 80: Entire article R&RE, p. 480, § 1, effective July 1.

Editor's note: This section is similar to former §§ 12-38-102 and 12-38-201 as they existed prior to 1980.

12-38-103. Definitions - repeal. As used in this article 38, unless the context otherwise requires:

(1) Repealed.

(1.5) "Advanced practice nurse" means an advanced practice registered nurse who is a professional nurse and is licensed to practice pursuant to this article, who obtains specialized education or training as provided in this section, and who applies to and is accepted by the board for inclusion in the advanced practice registry.

(2) "Approved education program" means a course of training conducted by an educational or health care institution which implements the basic practical or professional nursing curriculum prescribed and approved by the board.

(3) "Board" means the state board of nursing.

(4) "Delegated medical function" means an aspect of care that implements and is consistent with the medical plan as prescribed by a licensed or otherwise legally authorized physician, podiatrist, or dentist and is delegated to a registered professional nurse or a practical nurse by a physician, podiatrist, dentist, or physician assistant. For purposes of this subsection (4), "medical plan" means a written plan, verbal order, standing order, or protocol, whether patient specific or not, that authorizes specific or discretionary medical action, which may include but is not limited to the selection of medication. Nothing in this subsection (4) shall limit the practice of nursing as defined in this article.

(5) "Diagnosing", within the terms of this article, means the use of professional nursing knowledge and skills in the identification of, and discrimination between, physical and psychological signs or symptoms to arrive at a conclusion that a condition exists for which nursing care is indicated or for which referral to appropriate medical or community resources is required.

(6) and (7) Repealed.

(7.4) "Licensee" means a person licensed pursuant to this article.

(7.8) "Panel" means either panel of the board created in section 12-38-116.5 (1).

(8) (a) On and after January 18, 2018, "practical nurse", "trained practical nurse", "licensed vocational nurse", or "licensed practical nurse" means a person who holds a license to practice pursuant to this article 38 as a licensed practical nurse in this state or is licensed in another state and is practicing in this state pursuant to section 24-60-3802, with the right to use the title "licensed practical nurse" and its abbreviation, "L.P.N."

(b) (I) On January 18, 2018, through one hundred eighty days after January 18, 2018, "practical nurse", "trained practical nurse", "licensed vocational nurse", or "licensed practical nurse" means a person who holds a license to practice pursuant to this article 38 as a licensed practical nurse in this state or is licensed in another state and is practicing in this state pursuant to section 24-60-3202, with the right to use the title "licensed practical nurse" and its abbreviation, "L.P.N."

(II) This subsection (8)(b) is repealed, effective January 1, 2019.

(8.5) (a) "Practice of advanced practice nursing" means an expanded scope of professional nursing in a scope, role, and population focus approved by the board, with or without compensation or personal profit, and includes the practice of professional nursing, as defined in subsection (10) of this section.

(b) "Practice of advanced practice nursing" includes prescribing medications as may be authorized pursuant to section 12-38-111.6.

(c) Nothing in this subsection (8.5) shall alter the definition of the practice of professional nursing, as defined in subsection (10) of this section.

(9) (a) "Practice of practical nursing" means the performance, under the supervision of a dentist, physician, podiatrist, or professional nurse authorized to practice in this state, of those services requiring the education, training, and experience, as evidenced by knowledge, abilities, and skills required in this article for licensing as a practical nurse pursuant to section 12-38-112, in:

(I) Caring for the ill, injured, or infirm;

(II) Teaching and promoting preventive health measures;

(III) Acting to safeguard life and health; or

(IV) Administering treatments and medications prescribed by:

(A) A legally authorized dentist, podiatrist, or physician; or

(B) Physician assistant implementing a medical plan pursuant to subsection (4) of this section.

(b) "Practice of practical nursing" includes the performance of delegated medical functions.

(c) Nothing in this article shall limit or deny a practical nurse from supervising other practical nurses or other health care personnel.

(10) (a) "Practice of professional nursing" means the performance of both independent nursing functions and delegated medical functions in accordance with accepted practice standards. Such functions include the initiation and performance of nursing care through health promotion, supportive or restorative care, disease prevention, diagnosis and treatment of human disease, ailment, pain, injury, deformity, and physical or mental condition using specialized knowledge, judgment, and skill involving the application of biological, physical, social, and behavioral science principles required for licensure as a professional nurse pursuant to section 12-38-111.

(b) The "practice of professional nursing" shall include the performance of such services as:

(I) Evaluating health status through the collection and assessment of health data;

(II) Health teaching and health counseling;

(III) Providing therapy and treatment that is supportive and restorative to life and well-being either directly to the patient or indirectly through consultation with, delegation to, supervision of, or teaching of others;

(IV) Executing delegated medical functions;

(V) Referring to medical or community agencies those patients who need further evaluation or treatment;

(VI) Reviewing and monitoring therapy and treatment plans.

(11) (a) On and after January 18, 2018, "registered nurse" or "registered professional nurse" means a professional nurse, and only a person who holds a license to practice professional nursing in this state pursuant to this article 38 or who holds a license in another state and is practicing in this state pursuant to section 24-60-3802 may use the title "registered nurse" and its abbreviation, "R.N."

(b) (I) On January 18, 2018, through one hundred eighty days after January 18, 2018, "registered nurse" or "registered professional nurse" means a professional nurse, and only a person who holds a license to practice professional nursing in this state pursuant to this article 38 or who holds a license in another state and is practicing in this state pursuant to section 24-60-3202 may use the title "registered nurse" and its abbreviation, "R.N."

(II) This subsection (11)(b) is repealed, effective January 1, 2019.

(12) "Treating" means the selection, recommendation, execution, and monitoring of those nursing measures essential to the effective determination and management of actual or potential human health problems and to the execution of the delegated medical functions. Such delegated medical functions shall be performed under the responsible direction and supervision of a person licensed under the laws of this state to practice medicine, podiatry, or dentistry.

(13) (a) On and after January 18, 2018, "unauthorized practice" means the practice of practical nursing or the practice of professional nursing by any person who has not been issued a license under this article 38, or is not practicing in this state pursuant to section 24-60-3802, or whose license has been suspended or revoked or has expired.

(b) (I) On January 18, 2018, through one hundred eighty days after January 18, 2018, "unauthorized practice" means the practice of practical nursing or the practice of professional nursing by any person who has not been issued a license under this article 38, or is not practicing in this state pursuant to section 24-60-3202, or whose license has been suspended or revoked or has expired.

(II) This subsection (13)(b) is repealed, effective January 1, 2019.

Source: L. 80: Entire article R&RE, p. 480, § 1, effective July 1. **L. 85:** (1) repealed, p. 532, § 14, effective July 1. **L. 90:** (4) amended, p. 820, § 3, effective May 14; (4) amended, p. 820, § 4, effective July 1; (4), (9), IP(10), and (12) amended, p. 811, § 12, effective July 1. **L. 92:** (4), (9), IP(10), (10)(d), and (12) amended, p. 2054, § 1, effective April 23; (10)(c) amended, p. 2009, § 1, effective June 2. **L. 95:** (10) amended, p. 1073, § 1, effective July 1. **L. 99:** (7.8) added, p. 235, § 2, effective July 1. **L. 2006:** (8), (11), and (13) amended, p. 1555, § 1, effective June 2. **L. 2007:** (7.4) added, p. 731, § 2, effective January 1, 2008. **L. 2009:** (4) and (9) amended, (6) and (7) repealed, and (8.5) added, (SB 09-239), ch. 401, pp. 2172, 2171, §§ 17, 12, effective July 1. **L. 2015:** (1.5) added, (SB 15-197), ch. 197, p. 667, § 1, effective September 1. **L. 2018:** IP, (8), (11), and (13) amended, (SB 18-027), ch. 1, p. 19, § 3, effective January 18.

Editor's note: This section is similar to former §§ 12-38-103 and 12-38-202 as they existed prior to 1980.

Cross references: For the legislative declaration contained in the 1999 act enacting subsection (7.8), see section 1 of chapter 84, Session Laws of Colorado 1999.

12-38-104. State board of nursing created. (1) (a) There is hereby created the state board of nursing in the division of professions and occupations in the department of regulatory agencies, which board shall consist of eleven members who are residents of this state, appointed by the governor as follows:

(I) Two members of the board shall be licensed practical nurses engaged in the practice of practical nursing and licensed in this state;

(II) Seven members of the board shall be licensed professional nurses who are actively employed in their respective nursing professions and licensed in this state. The professional nurse members shall have been employed for at least three years in their respective categories. Members shall be as follows:

(A) One member shall be engaged in professional nursing education;

(B) One member shall be engaged in practical nursing education in a program that prepares an individual for licensure;

(C) One member shall be engaged in home health care;

(D) One member shall be registered as an advanced practice nurse pursuant to section 12-38-111.5;

(E) One member shall be engaged in nursing service administration; and

(F) Two members shall be engaged as staff nurses, including one staff nurse who is employed in a hospital and one employed in a nursing care facility;

(III) Two members of the board shall be persons who are not currently licensed and have not been previously licensed as health care providers, and who are not employed by or in any way connected with, or have any financial interest in, a health care facility, agency, or insurer.

(IV) (Deleted by amendment, L. 2009, (SB 09-239), ch. 401, p. 2165, § 3, effective July 1, 2009.)

(b) Any statutory change in board composition shall be implemented when the terms of current members expire, and no member shall be asked to resign before the end of a term due to such statutory changes.

(b.5) When making appointments to the board, the governor shall strive to achieve geographical, political, urban, and rural balance among the board membership.

(c) (I) Each member of the board shall be appointed for a term of three years; except that members appointed to the board for a first or second term on or after July 1, 2009, shall be appointed for a term of four years.

(II) Any interim appointment necessary to fill a vacancy which has occurred by any reason other than the expiration of a term shall be for the remainder of the term of the individual member whose office has become vacant.

(III) A member may be reappointed for a subsequent term at the pleasure of the governor, but no member shall serve for more than two consecutive terms.

(d) Notwithstanding the provisions of this subsection (1) to the contrary, if, as determined by the governor, an appropriate applicant for membership on the board pursuant to

paragraph (a) of this subsection (1) is not available to serve on the board for a particular term, the governor may appoint a nurse whose license is in good standing to fill the vacancy for the length of that term. At the end of such term, if the governor, after a good-faith attempt, cannot find an appropriate applicant pursuant to paragraph (a) of this subsection (1), the governor may appoint a nurse whose license is in good standing to fill the vacancy for one term.

(1.5) The board shall elect annually from its members a president.

(2) (a) Repealed.

(b) (Deleted by amendment, L. 2009, (SB 09-239), ch. 401, p. 2165, § 3, effective July 1, 2009.)

(3) Each member of the board shall receive the same per diem compensation and reimbursement of expenses as those provided for members of boards and commissions in the division of professions and occupations pursuant to section 24-34-102 (13), C.R.S.

(4) (Deleted by amendment, L. 95, p. 1074, § 2, effective July 1, 1995.)

Source: L. 80: Entire article R&RE, p. 482, § 1, effective July 1. **L. 85:** (2) amended, p. 525, § 1, effective July 1. **L. 91:** (4) amended, p. 682, § 27, effective April 20. **L. 95:** (1) and (4) amended, p. 1074, § 2, effective July 1. **L. 99:** (1.5) added, p. 235, § 3, effective July 1. **L. 2003:** (2)(a) repealed, p. 912, § 13, effective August 6. **L. 2006:** (1)(d) added, p. 655, § 1, effective April 24. **L. 2009:** (1) and (2)(b) amended, (SB 09-239), ch. 401, p. 2165, § 3, effective July 1.

Editor's note: This section is similar to former §§ 12-38-104, 12-38-104.5, 12-38-105, 12-38-204, and 12-38-205 as they existed prior to 1980.

Cross references: For the legislative declaration contained in the 1999 act enacting subsection (1.5), see section 1 of chapter 84, Session Laws of Colorado 1999.

12-38-105. Removal of board members. The governor may remove any board member for negligence in the performance of any duty required by law, for incompetency, for unprofessional conduct, for willful misconduct, or for failure to continue to comply with the requirements of section 12-38-104.

Source: L. 80: Entire article R&RE, p. 483, § 1, effective July 1.

Editor's note: This section is similar to former §§ 12-38-106 and 12-38-206 as they existed prior to 1980.

12-38-106. Meetings of board. The board shall meet at least quarterly during the fiscal year and at such other times as it may determine.

Source: L. 80: Entire article R&RE, p. 483, § 1, effective July 1.

Editor's note: This section is similar to former §§ 12-38-108 and 12-38-207 as they existed prior to 1980.

12-38-107. Employees - executive officer. After consultation with the board, the director of the division of professions and occupations shall appoint an executive administrator for the board and such other personnel as are deemed necessary, pursuant to section 13 of article XII of the state constitution. At least one member of the board shall serve on any panel convened by the department of personnel to interview candidates for the position of executive administrator.

Source: L. 80: Entire article R&RE, p. 483, § 1, effective July 1. **L. 2006:** Entire section amended, p. 799, § 30, effective July 1.

Editor's note: This section is similar to former § 12-38-208 as it existed prior to 1980.

12-38-108. Powers and duties of the board - rules - repeal. (1) The board has the following powers and duties:

(a) To approve, pursuant to rules and regulations adopted by the board, educational programs in this state preparing individuals for licensure, including approving curricula, conducting surveys, and establishing standards for such educational programs; to deny approval of or withdraw approval from such educational programs for failure to meet required standards as established by this article or pursuant to rules and regulations adopted by the board; and to further establish standards in accordance with this article in the form of rules and regulations to determine whether institutions outside this state shall be deemed to have acceptable educational programs and whether graduates of institutions outside this state shall be deemed to be graduates of approved educational programs for the purpose of licensing requirements in this state; and to determine by rule when accreditation by a state or voluntary agency may be accepted in lieu of board approval;

(b) (I) To examine, license, reactivate, and renew licenses of qualified applicants and to grant to such applicants temporary licenses and permits to engage in the practice of practical nursing and professional nursing in this state within the limitations imposed by this article. Licenses shall be renewed, reactivated, or reinstated pursuant to a schedule established by the director of the division of professions and occupations within the department of regulatory agencies and shall be renewed, reactivated, or reinstated pursuant to section 24-34-102 (8), C.R.S. The director of the division of professions and occupations within the department of regulatory agencies may establish renewal fees, reactivation fees, and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S., and may increase fees to obtain or renew a professional nurse license or advanced practice nurse authority consistent with section 24-34-109 (4), C.R.S., to fund the division's costs in administering and staffing the nurse-physician advisory task force for Colorado health care created in section 24-34-109 (1), C.R.S. If a person fails to renew his or her license pursuant to the schedule established by the director of the division of professions and occupations, such license shall expire. Any person whose license has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

(II) In order to facilitate the licensure of qualified applicants, the board may, in its discretion, assign licensing functions in accordance with this article to either panel. Any action taken by a quorum of the assigned panel shall constitute action by the board.

(b.5) To revoke, suspend, withhold, limit the scope of, or refuse to renew any license, to place a licensee or temporary licensee on probation, to impose an administrative fine on a

licensee, or to issue a letter of admonition to a licensee in accordance with the procedures set forth in section 12-38-116.5 upon proof that such licensee has committed an act that constitutes grounds for discipline under section 12-38-117 or 12-42-113;

(c) To permit the executive officer, during the period between board meetings, to administer examinations, issue licenses by endorsement and examination, renew licenses, and issue temporary licenses and permits to qualified applicants, pursuant to rules and regulations adopted by the board;

(d) To adopt and revise rules and regulations concerning qualifications needed to practice as a practical nurse when such practice requires preparation and skill beyond that of a practical nurse pursuant to section 12-38-112;

(e) Repealed.

(f) To provide by regulation for the legal recognition of nurse licensees from other states and jurisdictions;

(g) To charge and collect appropriate fees;

(h) To investigate and conduct hearings upon charges for the discipline of nurses in accordance with the provisions of article 4 of title 24, C.R.S., and to impose disciplinary sanctions as provided in this article;

(i) To cause the prosecution and enjoinder of any person violating the provisions of this article and incur necessary expenses therefor;

(j) To adopt rules and regulations necessary to carry out the purposes of this article, such rules and regulations to be promulgated in accordance with the provisions of article 4 of title 24, C.R.S.;

(k) To administer the licensing and regulation of psychiatric technicians pursuant to article 42 of this title and to adopt and revise rules and regulations consistent with the laws of this state as may be necessary:

(I) To renew, grant, suspend, limit the scope of, and revoke licenses of psychiatric technicians in accordance with article 42 of this title;

(II) To prescribe standards and approve curricula for educational programs preparing persons for licensure as psychiatric technicians;

(III) To provide for surveys of such programs at such times as the board may deem necessary;

(IV) To accredit such programs as meet the requirements of the board and article 42 of this title;

(V) To deny accreditation to or withdraw accreditation from educational programs for failure to meet prescribed standards;

(VI) To conduct hearings pursuant to section 12-42-114;

(VII) To cause the prosecution and enjoinder of any person violating the provisions of article 42 of this title and incur necessary expenses therefor;

(l) (I) (A) Repealed.

(B) To conduct criminal history record checks on any individual under the jurisdiction of the board, against whom a complaint has been filed.

(C) Repealed.

(II) For purposes of this paragraph (l), "criminal history record check" means a written review of an individual's criminal conviction history.

(m) To facilitate the licensure of nurses under the "Enhanced Nurse Licensure Compact", part 38 of article 60 of title 24, as follows:

(I) Appoint a qualified delegate to serve on the Interstate Commission of Nurse Licensure Compact Administrators;

(II) Participate in the coordinated licensure information system, as that is defined in article II c. of section 24-60-3802;

(III) Require an applicant for licensure under the compact to have his or her fingerprints taken by a local law enforcement agency or any third party approved by the Colorado bureau of investigation for the purpose of obtaining a fingerprint-based criminal history record check. The applicant is required to submit payment by certified check or money order for the fingerprints and for the actual costs of the record check at the time the fingerprints are submitted to the Colorado bureau of investigation. Upon receipt of fingerprints and receipt of the payment for costs, the Colorado bureau of investigation shall conduct a state and national fingerprint-based criminal history record check utilizing records of the Colorado bureau of investigation and the federal bureau of investigation and shall forward the results of the criminal history record check to the board. The board shall use the information resulting from the fingerprint-based criminal history record check to investigate and determine whether an applicant is qualified to hold a license pursuant to the compact. The board may verify the information an applicant is required to submit. The results of the criminal history record check are confidential. The board shall not release the results to the public, the Interstate Commission of Nurse Licensure Compact Administrators, or other state licensing boards.

(IV) Notify the Interstate Commission of Nurse Licensure Compact Administrators of any adverse action taken by the board; and

(V) Approve payment of assessments levied by the Interstate Commission of Nurse Licensure Compact Administrators to cover the cost of the operations and activities of the commission and its staff.

(1.1) (a) The board shall appoint advisory committees pursuant to section 12-38-109 of at least three psychiatric technicians to advise the board on matters pertaining to psychiatric technician testing. The board shall, in its discretion, assign matters referred to the board by the psychiatric technicians advisory committee to a panel for consideration and implementation, if necessary.

(b) (Deleted by amendment, L. 92, p. 954, § 3, effective March 19, 1992.)

(2) When the board determines that rules and regulations are completed and established, the board shall make copies available at a reasonable cost.

(3) The board shall, in its discretion, assign matters referred to the board by the nurse aide advisory committee, created pursuant to section 12-38.1-110, to a panel for consideration and implementation, if necessary.

(4) (a) The board shall administer the provisions of the nurse licensure compact pursuant to section 24-60-3202.

(b) This subsection (4) is repealed, effective January 1, 2019.

Source: L. 80: Entire article R&RE, p. 483, § 1, effective July 1. **L. 85:** (1)(e) repealed, p. 532, § 14, effective July 1. **L. 86:** (1.1) amended, p. 409, § 8, effective July 1. **L. 92:** (1.1) amended, p. 954, § 3, effective March 19. **L. 95:** (1)(k)(I) amended, p. 291, § 1, effective July 1; (1)(l) added, p. 1027, § 1, effective October 1. **L. 97:** (1)(l)(I)(C) added, p. 174, § 2, effective

March 31. **L. 99:** (1)(b), (1)(h), and (1.1)(a) amended and (1)(b.5) and (3) added, p. 236, §§ 4, 5, effective July 1. **L. 2003:** (1)(l)(I) and (1)(l)(II) amended, p. 2631, § 4, effective June 5. **L. 2004:** (1)(b)(I) amended, p. 1833, § 76, effective August 4. **L. 2005:** (1)(l)(I)(A) and (1)(l)(I)(C) repealed, p. 1022, § 8, effective August 8. **L. 2006:** (4) added, p. 1556, § 2, effective June 2. **L. 2008:** (1)(b)(I) amended, p. 1760, § 4, effective August 5. **L. 2009:** (1)(b)(I), (1)(b.5), and (1)(l)(I)(B) amended, (SB 09-239), ch. 401, pp. 2179, 2167, 2172, §§ 22, 4, 16, effective July 1. **L. 2015:** (1)(f) amended, (SB 15-197), ch. 197, p. 667, § 2, effective September 1. **L. 2018:** (1)(m) added and (4) amended, (SB 18-027), ch. 1, p. 20, § 4, effective January 18.

Editor's note: This section is similar to former §§ 12-38-107 and 12-38-209 as they existed prior to 1980.

Cross references: (1) For the authority of the executive director of the department of regulatory agencies to change the period of validity and renewal date of any license or certificate issued by any examining or licensing board or commission in the division of professions and occupations, see § 24-34-102 (7) and (8). For provisions concerning the panel referred to in subsections (1)(b)(II), (1.1)(a), and (3), see § 12-38-116.5.

(2) For the legislative declaration contained in the 1999 act amending subsections (1)(b), (1)(h), and (1.1)(a) and enacting subsections (1)(b.5) and (3), see section 1 of chapter 84, Session Laws of Colorado 1999.

12-38-108.5. Limitation on authority. The authority granted the board under the provisions of this article shall not be construed to authorize the board to arbitrate or adjudicate fee disputes between licensees or between a licensee and any other party.

Source: L. 89: Entire section added, p. 673, § 14, effective July 1.

Cross references: For the legislative declaration contained in the 1989 act enacting this section, see section 1 of chapter 111, Session Laws of Colorado 1989.

12-38-109. Advisory committee. The board may appoint advisory committees including professional review committees to assist in the performance of its duties. Each advisory committee shall consist of at least three licensees who have expertise in the area under review. Members of the advisory committees shall receive no compensation for their services but shall be reimbursed for the actual and necessary expenses incurred in the performance of their duties.

Source: L. 80: Entire article R&RE, p. 485, § 1, effective July 1.

Editor's note: This section is similar to former § 12-38-210 as it existed prior to 1980.

12-38-110. Examination. (1) All nurse applicants, unless eligible for licensure by endorsement, shall be required to pass a written examination approved or prepared by the board, relating to the knowledge, skills, and judgments as incorporated in their respective approved educational programs.

(2) In accordance with the requirements of this article, the board shall hold at least two examinations annually for practical nurses and for professional nurses at such places and at such times as the board shall determine.

Source: L. 80: Entire article R&RE, p. 485, § 1, effective July 1.

Editor's note: This section is similar to former § 12-38-211 as it existed prior to 1980.

12-38-111. Requirements for professional nurse licensure. (1) The board shall issue a license to engage in the practice of professional nursing to any applicant who:

(a) Submits an application containing such information as the board may prescribe;

(b) Submits proof satisfactory to the board in such manner and upon such forms as the board may require to show that the applicant has completed a professional nursing educational program which meets the standards of the board for approval of educational programs or which is approved by the board and to show that the applicant holds a certificate of graduation from or a certificate of completion of such approved program;

(c) Repealed.

(d) Passes an examination as provided in section 12-38-110 or is eligible for and is granted licensure by endorsement as provided in subsection (2) of this section;

(e) Pays the required fee.

(2) The board may issue a license by endorsement to engage in the practice of professional nursing in this state to a nurse who is licensed to practice professional nursing in another state or a territory of the United States or in a foreign country if the applicant presents proof satisfactory to the board that, at the time of application for a Colorado license by endorsement, the applicant possesses credentials and qualifications which are substantially equivalent to requirements in Colorado for licensure by examination. The board may specify by rule and regulation what shall constitute substantially equivalent credentials and qualifications.

(3) The board shall design a questionnaire to be sent to all licensees who apply for license renewal. Each applicant for license renewal shall complete the board-designed questionnaire. The purpose of the questionnaire is to determine whether a licensee has acted in violation of this article or been disciplined for any action that might be considered a violation of this article or might make the licensee unfit to practice nursing with reasonable care and safety. If an applicant fails to answer the questionnaire accurately, such failure shall constitute grounds for discipline under section 12-38-117 (1)(v). The board may include the cost of developing and reviewing the questionnaire in the fee paid under paragraph (e) of subsection (1) of this section. The board may refuse an application for license renewal that does not accompany an accurately completed questionnaire.

Source: L. 80: Entire article R&RE, p. 485, § 1, effective July 1. **L. 81:** (1)(c) amended, p. 736, § 12, effective July 1. **L. 82:** (2) amended, p. 262, § 1, effective April 2. **L. 2003:** (3) added, p. 1687, § 1, effective August 6. **L. 2009:** (1)(c) repealed, (SB 09-239), ch. 401, p. 2168, § 6, effective July 1.

Editor's note: This section is similar to former § 12-38-212 as it existed prior to 1980.

12-38-111.5. Requirements for advanced practice nurse registration - legislative declaration - definition - advanced practice registry. (1) The general assembly hereby recognizes that some individuals practicing pursuant to this article have acquired additional preparation for advanced practice and hereby determines that it is appropriate for the state to maintain a registry of such individuals. Such registry shall be known as the "advanced practice registry".

(2) Repealed.

(3) The board shall establish the advanced practice registry and shall require that a nurse applying for registration identify his or her role and population focus. The board shall establish reasonable criteria for designation of specific role and population foci based on currently accepted professional standards. A nurse who is included in the advanced practice registry has the right to use the title "advanced practice nurse" or, if authorized by the board, to use the title "certified nurse midwife", "clinical nurse specialist", "certified registered nurse anesthetist", or "nurse practitioner". These titles may be abbreviated as "A.P.N.", "C.N.M.", "C.N.S.", "C.R.N.A.", or "N.P.", respectively. It is unlawful for any person to use any of the titles or abbreviations listed in this subsection (3) unless included in the registry and authorized by the board to do so.

(4) (a) Repealed.

(b) On and after July 1, 1995, until July 1, 2008, the requirements for inclusion in the advanced practice registry shall include the successful completion of a nationally accredited education program for preparation as an advanced practice nurse or a passing score on a certification examination of a nationally recognized accrediting agency, or both, if applicable, as defined in rules adopted by the board.

(c) On and after July 1, 2008, the requirements for inclusion in the advanced practice registry shall include the successful completion of an appropriate graduate degree as determined by the board; except that individuals who are included in the registry as of June 30, 2008, but have not successfully completed such degree, may thereafter continue to be included in the registry and to use the appropriate title and abbreviation.

(d) On and after July 1, 2010, in addition to the requirements of paragraph (c) of this subsection (4), a professional nurse shall obtain national certification from a nationally recognized accrediting agency, as defined by the board by rule, in the appropriate role and population focus in order to be included in the advanced practice registry; except that professional nurses who are included in the registry as of June 30, 2010, but have not obtained such national certification, may thereafter continue to be included in the registry and to use the appropriate title and abbreviation.

(e) A professional nurse may be included in the advanced practice registry by endorsement if the professional nurse meets one of the following qualifying standards:

(I) The professional nurse is recognized as an advanced practice nurse in another state or jurisdiction and has practiced as an advanced practice nurse for at least two of the last five years immediately preceding the date of application for inclusion in the advanced practice registry; or

(II) The professional nurse holds national certification as provided in paragraph (d) of this subsection (4) and possesses an appropriate graduate degree as determined by the board.

(5) A nurse who meets the definition of advanced practice nurse, as defined in section 12-38-103, and the requirements of section 12-38-111.6, may be granted prescriptive authority as a function in addition to those defined in section 12-38-103 (10).

(6) An advanced practice nurse shall practice in accordance with the standards of the appropriate national professional nursing organization and have a safe mechanism for consultation or collaboration with a physician or, when appropriate, referral to a physician. Advanced practice nursing also includes, when appropriate, referral to other health care providers.

(7) (a) In order to enhance the cost efficiency and continuity of care, an advanced practice nurse may, within his or her scope of practice and within the advanced practice nurse-patient relationship, sign an affidavit, certification, or similar document that:

(I) Documents a patient's current health status;

(II) Authorizes continuing treatment, tests, services, or equipment; or

(III) Gives advance directives for end-of-life care.

(b) Such affidavit, certification, or similar document may not:

(I) Be the prescription of medication unless the advanced practice nurse has been granted prescriptive authority pursuant to section 12-38-111.6; or

(II) Be in conflict with other requirements of law.

Source: L. 94: Entire section added, p. 1116, § 1, effective May 19. **L. 95:** (3) amended and (5) added, p. 1075, § 3, effective July 1. **L. 2000:** (6) added, p. 31, § 3, effective March 10. **L. 2003:** (4)(a) repealed, p. 912, § 14, effective August 6. **L. 2008:** (6) amended and (7) added, p. 124, § 3, effective January 1, 2009. **L. 2009:** (4)(d) added, (SB 09-239), ch. 401, p. 2174, § 19, effective July 1. **L. 2010:** (3), (4)(c), and (4)(d) amended and (4)(e) added, (SB 10-176), ch. 187, p. 673, § 1, effective April 29. **L. 2015:** (2) repealed and (5) amended, (SB 15-197), ch. 197, p. 671, § 4, effective September 1.

12-38-111.6. Prescriptive authority - advanced practice nurses - limits on opioid prescriptions - repeal. (1) The board may authorize an advanced practice nurse who is listed on the advanced practice registry, has a license in good standing without disciplinary sanctions issued pursuant to section 12-38-111, and has fulfilled requirements established by the board pursuant to this section to prescribe controlled substances or prescription drugs as defined in part 1 of article 42.5 of this title.

(2) (a) The board shall adopt rules to implement this section.

(b) Rules adopted pursuant to this section shall reflect current, accepted professional standards for the safe and effective use of controlled substances and prescription drugs.

(3) (a) An advanced practice nurse may be granted authority to prescribe prescription drugs and controlled substances to provide treatment to clients within the role and population focus of the advanced practice nurse.

(b) and (c) (Deleted by amendment, L. 2009, (SB 09-239), ch. 401, p. 2174, § 20, effective July 1, 2009.)

(d) (I) An advanced practice nurse who has been granted authority to prescribe prescription drugs and controlled substances under this article may advise the nurse's patients of their option to have the symptom or purpose for which a prescription is being issued included on the prescription order.

(II) A nurse's failure to advise a patient under subparagraph (I) of this paragraph (d) shall not be grounds for any disciplinary action against the nurse's professional license issued under this article. Failure to advise a patient pursuant to subparagraph (I) of this paragraph (d) shall not

be grounds for any civil action against a nurse in a negligence or tort action, nor shall such failure be evidence in any civil action against a nurse.

(4) Repealed.

(4.5) (a) An advanced practice nurse applying for prescriptive authority shall provide evidence to the board of the following:

(I) An appropriate graduate degree as determined by the board pursuant to section 12-38-111.5 (4)(c);

(II) Satisfactory completion of specific educational requirements in the use of controlled substances and prescription drugs, as established by the board, either as part of a degree program or in addition to a degree program;

(III) National certification from a nationally recognized accrediting agency, as defined by the board by rule pursuant to section 12-38-111.5 (4)(d), unless the board grants an exception;

(IV) Professional liability insurance as required by section 12-38-111.8;

(V) Repealed.

(VI) Inclusion on the advanced practice registry pursuant to section 12-38-111.5; and

(VII) A signed attestation that states he or she has completed at least three years of combined clinical work experience as a professional nurse or as an advanced practice nurse.

(b) Upon satisfaction of the requirements set forth in paragraph (a) of this subsection (4.5), the board may grant provisional prescriptive authority to an advanced practice nurse. The provisional prescriptive authority that is granted is limited to those patients and medications appropriate to the advanced practice nurse's role and population focus. In order to retain provisional prescriptive authority and obtain and retain full prescriptive authority pursuant to this subsection (4.5) for patients and medications appropriate for the advanced practice nurse's role and population focus, an advanced practice nurse shall satisfy the following requirements:

(I) (A) Once the provisional prescriptive authority is granted, the advanced practice nurse must obtain one thousand hours of documented experience in a mutually structured prescribing mentorship either with a physician or with an advanced practice nurse who has full prescriptive authority and experience in prescribing medications. The mentor must be practicing in Colorado and have education, training, experience, and an active practice that corresponds with the role and population focus of the advanced practice nurse.

(A.5) Remote communication with the mentor is permissible within the mentorship as long as the communication is synchronous. Synchronous communication does not include communication by e-mail.

(B) The physician or advanced practice nurse serving as a mentor shall not require payment or employment as a condition of entering into the mentorship relationship, but the mentor may request reimbursement of reasonable expenses and time spent as a result of the mentorship relationship.

(C) Upon successful completion of the mentorship period, the mentor shall provide his or her signature and attestation to verify that the advanced practice nurse has successfully completed the mentorship within the required period after the provisional prescriptive authority was granted.

(D) If an advanced practice nurse with provisional prescriptive authority fails to complete the mentorship required by this subparagraph (I) within three years or otherwise fails to demonstrate competence as determined by the board, the advanced practice nurse's provisional prescriptive authority expires for failure to comply with the statutory requirements.

(II) The advanced practice nurse with provisional prescriptive authority shall develop an articulated plan for safe prescribing that documents how the advanced practice nurse intends to maintain ongoing collaboration with physicians and other health care professionals in connection with the advanced practice nurse's practice of prescribing medication within his or her role and population focus. The articulated plan shall guide the advanced practice nurse's prescriptive practice. The physician or advanced practice nurse that serves as a mentor as described in subparagraph (I) of this paragraph (b) shall provide his or her signature and attestation on the articulated plan to verify that the advanced practice nurse has developed an articulated plan. The advanced practice nurse shall retain the articulated plan on file, shall review the plan annually, and shall update the plan as necessary. The articulated plan is subject to review by the board, and the advanced practice nurse shall provide the plan to the board upon request. If an advanced practice nurse with provisional prescriptive authority fails to develop the required articulated plan within three years or otherwise fails to demonstrate competence as determined by the board, the advanced practice nurse's provisional prescriptive authority expires for failure to comply with the statutory requirements. An articulated plan developed pursuant to this subparagraph (II) must include at least the following:

(A) A mechanism for consultation and referral for issues regarding prescriptive authority;

(B) A quality assurance plan;

(C) Decision support tools; and

(D) Documentation of ongoing continuing education in pharmacology and safe prescribing.

(III) The advanced practice nurse shall maintain professional liability insurance as required by section 12-38-111.8.

(IV) The advanced practice nurse shall maintain national certification, as specified in subparagraph (III) of paragraph (a) of this subsection (4.5), unless the board grants an exception.

(c) An advanced practice nurse who was granted prescriptive authority prior to July 1, 2010, shall satisfy the following requirements in order to retain prescriptive authority:

(I) The advanced practice nurse shall develop an articulated plan as specified in subparagraph (II) of paragraph (b) of this subsection (4.5); except that to verify development of an articulated plan, the advanced practice nurse shall obtain the signature of either a physician or an advanced practice nurse who has prescriptive authority and experience in prescribing medications, is practicing in Colorado, and has education, training, experience, and active practice that corresponds with the role and population focus of the advanced practice nurse developing the plan.

(II) The advanced practice nurse shall maintain professional liability insurance as required by section 12-38-111.8.

(III) The advanced practice nurse shall maintain national certification, as specified in subparagraph (III) of paragraph (a) of this subsection (4.5), unless:

(A) The advanced practice nurse was included on the advanced practice registry prior to July 1, 2010, and has not obtained national certification;

(B) The advanced practice nurse was included on the advanced practice registry prior to July 1, 2008, and has not completed a graduate degree as specified in section 12-38-111.5 (4)(c); or

(C) The board grants an exception.

(d) In order to obtain provisional prescriptive authority and obtain and retain full prescriptive authority in this state, an advanced practice nurse from another state must meet the requirements of this section or substantially equivalent requirements, as determined by the board.

(e) The board shall conduct random audits of articulated plans to ensure that the plans satisfy the requirements of this subsection (4.5) and rules adopted by the board.

(f) Repealed.

(5) and (6) Repealed.

(7) An advanced practice nurse who obtains prescriptive authority pursuant to this section shall be assigned a specific identifier by the board. This identifier shall be available to the Colorado medical board and the board of pharmacy. The board shall establish a mechanism to assure that the prescriptive authority of an advanced practice nurse may be readily verified.

(7.5) (a) An advanced practice nurse with prescriptive authority pursuant to this section shall not prescribe more than a seven-day supply of an opioid to a patient who has not had an opioid prescription in the last twelve months by that advance practice nurse, and may exercise discretion to include a second fill for a seven-day supply. The limits on initial prescribing do not apply if, in the judgment of the advanced practice nurse, the patient:

(I) Has chronic pain that typically lasts longer than ninety days or past the time of normal healing, as determined by the advance practice nurse, or following transfer of care from another advance practice nurse who prescribed an opioid to the patient;

(II) Has been diagnosed with cancer and is experiencing cancer-related pain;

(III) Is experiencing post-surgical pain that, because of the nature of the procedure, is expected to last more than fourteen days; or

(IV) Is undergoing palliative care or hospice care focused on providing the patient with relief from symptoms, pain, and stress resulting from a serious illness in order to improve quality of life.

(b) Prior to prescribing the second fill of any opioid prescription pursuant to this section, an advanced practice nurse must comply with the requirements of section 12-42.5-404 (3.6). Failure to comply with section 12-42.5-404 (3.6) constitutes grounds for discipline under section 12-38-117 only if the advanced practice nurse repeatedly fails to comply.

(c) An advanced practice nurse with prescriptive authority pursuant to this section may prescribe opioids electronically.

(d) A violation of this subsection (7.5) does not create a private right of action or serve as the basis of a cause of action. A violation of this section does not constitute negligence per se or contributory negligence per se and does not alone establish a standard of care. Compliance with this section does not alone establish an absolute defense to any alleged breach of the standard of care.

(e) This subsection (7.5) is repealed, effective September 1, 2021.

(8) (a) The scope of practice for an advanced practice nurse may be determined by the board in accordance with this article.

(b) The board may consider information provided by nursing, medical, or other health professional organizations, associations, or regulatory boards.

(c) (I) Prescriptive authority by an advanced practice nurse shall be limited to those patients appropriate to such nurse's scope of practice. Prescriptive authority may be limited or withdrawn and the advanced practice nurse may be subject to further disciplinary action in

accordance with this article if such nurse has prescribed outside such nurse's scope of practice or for other than a therapeutic purpose.

(II) Nothing in this section shall be construed to require a registered nurse to obtain prescriptive authority to deliver anesthesia care.

(9) All prescriptions must comply with applicable federal and state laws, including article 42.5 of this title and part 2 of article 18 of title 18, C.R.S.

(10) Nothing in this section shall be construed to permit dispensing or distribution, as defined in section 12-42.5-102 (11) and (12), by an advanced practice nurse, except for samples, under article 42.5 of this title and the federal "Prescription Drug Marketing Act of 1987".

(11) No advanced practice nurse registered pursuant to section 12-38-111.5 shall be required to apply for or obtain prescriptive authority.

(12) Nothing in this section shall limit the practice of nursing as defined in section 12-38-103 (9) or (10) by any nurse including, but not limited to, advanced practice nurses.

Source: L. 95: Entire section added, p. 1076, § 4, effective July 1. **L. 2003:** (3)(d) added, p. 765, § 7, effective March 25. **L. 2009:** (3)(a), (3)(b), (3)(c), IP(4), and (6) amended and (4)(e) and (4.5) added, (SB 09-239), ch. 401, pp. 2174, 2175, §§ 20, 21, effective July 1. **L. 2010:** (4.5)(a)(I) and (4.5)(a)(III) amended, (SB 10-176), ch. 187, p. 674, § 2, effective April 29; (4)(d)(III), (4.5)(f), and (7) amended, (HB 10-1260), ch. 403, pp. 1984, 1953, §§ 69, 19, effective July 1. **L. 2012:** (4.5)(c)(I) amended, (HB 12-1065), ch. 73, p. 249, § 1, effective April 2; (1), (9), and (10) amended, (HB 12-1311), ch. 281, p. 1612, § 18, effective July 1. **L. 2015:** (3)(a), IP(4.5)(a), IP(4.5)(b), (4.5)(b)(I), IP(4.5)(b)(II), (4.5)(c)(I), (4.5)(d), and (4.5)(e) amended, (4.5)(a)(V) and (4.5)(f) repealed, and (4.5)(a)(VI) and (4.5)(a)(VII) added, (SB 15-197), ch. 197, p. 667, § 3, effective September 1. **L. 2018:** (7.5) added, (SB 18-022), ch. 221, p. 1404, § 4, effective May 21.

Editor's note: (1) Subsection (5)(d) provided for the repeal of subsection (5), effective July 1, 2000. (See L. 95, p. 1076.)

(2) (a) Subsection (4)(d)(III) was amended by House Bill 10-1260, effective July 1, 2010, but those amendments did not take effect due to the repeal of subsection (4), effective July 1, 2010.

(b) Subsection (4)(e) provided for the repeal of subsection (4), effective July 1, 2010. (See L. 2009, p. 2174.)

(3) Subsection (6)(b) provided for the repeal of subsection (6), effective July 1, 2010. (See L. 2009, p. 2174.)

Cross references: For the federal "Prescription Drug Marketing Act of 1987", see Pub.L. 100-293, 102 Stat. 95.

12-38-111.8. Professional liability insurance required - advanced practice nurses in independent practice - rules. (1) It is unlawful for any advanced practice nurse engaged in an independent practice of professional nursing to practice within the state of Colorado unless the advanced practice nurse purchases and maintains or is covered by professional liability insurance in an amount not less than five hundred thousand dollars per claim with an aggregate liability for all claims during the year of one million five hundred thousand dollars.

(2) Professional liability insurance required by this section shall cover all acts within the scope of practice of an advanced practice nurse as defined in this part 1.

(3) Notwithstanding the requirements of subsection (1) of this section, the board, by rule, may exempt or establish lesser liability insurance requirements for advanced practice nurses.

(4) Nothing in this section shall be construed to confer liability on an employer for the acts of an advanced practice nurse that are outside the scope of employment or to negate the applicability of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S.

Source: L. 2009: Entire section added, (SB 09-239), ch. 401, p. 2185, § 31, effective July 1.

12-38-112. Requirements for practical nurse licensure. (1) The board shall issue a license to engage in the practice of practical nursing to any applicant who:

(a) Submits an application containing such information as the board may prescribe;

(b) Submits proof satisfactory to the board in such manner and upon such forms as the board may require to show that the applicant has completed a practical nursing educational program which meets the standards of the board for approval of educational programs or which is approved by the board and to show that the applicant holds a certificate of graduation from or a certificate of completion of such approved program;

(c) Repealed.

(d) Passes an examination as provided in section 12-38-110 or is eligible for and is granted licensure by endorsement as provided in subsection (2) of this section;

(e) Pays the required fee.

(2) The board may issue a license by endorsement to engage in the practice of practical nursing in this state to any applicant who has been duly licensed or registered as a practical nurse or who is entitled to perform similar services under laws of another state or a territory of the United States or a foreign country if the applicant presents proof satisfactory to the board that, at the time of application for a Colorado license by endorsement, the applicant possesses credentials and qualifications which are substantially equivalent to requirements in Colorado for licensure by examination. The board may specify by rule and regulation what shall constitute substantially equivalent credentials and qualifications.

(3) The board shall design a questionnaire to be sent to all licensed practical nurses who apply for license renewal. Each applicant for license renewal shall complete the board-designed questionnaire. The purpose of the questionnaire is to determine whether a licensee has acted in violation of this article or been disciplined for any action that might be considered a violation of this article or might make the licensee unfit to practice nursing with reasonable care and safety. If an applicant fails to answer the questionnaire accurately, such failure shall constitute grounds for discipline under section 12-38-117 (1)(v). The board may include the cost of developing and reviewing the questionnaire in the fee paid under paragraph (e) of subsection (1) of this section. The board may refuse an application for license renewal that does not accompany an accurately completed questionnaire.

Source: L. 80: Entire article R&RE, p. 486, § 1, effective July 1. **L. 81:** (1)(c) amended, p. 736, § 13, effective July 1. **L. 82:** (2) amended, p. 262, § 2, effective April 2. **L. 2003:** (3)

added, p. 1687, § 2, effective August 6. **L. 2009:** (1)(c) repealed, (SB 09-239), ch. 401, p. 2168, § 7, effective July 1.

Editor's note: This section is similar to former §§ 12-38-113 and 12-38-114 as they existed prior to 1980.

12-38-112.5. Retired volunteer nurse licensure. (1) The board may issue a license to a retired volunteer nurse who meets the requirements set forth in this section.

(2) A retired volunteer nursing license shall only be issued to an applicant who is at least fifty-five years of age and:

(a) Currently holds a license to practice nursing, either as a practical nurse or as a professional nurse and such license is due to expire unless renewed; or

(b) Has retired from the practice of nursing and is not currently engaged in the practice of nursing either full-time or part-time and has, prior to retirement, maintained full licensure in good standing in any state or territory of the United States.

(3) A nurse who holds a retired volunteer nursing license shall not accept compensation for nursing tasks that are performed while in possession of the license. A retired volunteer nursing license shall permit the retired nurse to engage in volunteer nursing tasks within the scope of the nurse's license.

(4) An applicant for a retired volunteer nursing license shall submit to the board an application containing such information as the board may prescribe, a copy of the applicant's most recent nursing license, and a statement signed under penalty of perjury in which the applicant agrees not to receive compensation for any nursing tasks that are performed while in possession of the license.

(5) (Deleted by amendment, L. 2011, (SB 11-242), ch. 244, p. 1068, § 1, effective May 27, 2011.)

(6) A person who possesses a retired volunteer nursing license shall be immune from civil liability for actions performed within the scope of the nursing license unless it is established that injury or death was caused by gross negligence or the willful and wanton misconduct of the licensee. The immunity provided in this subsection (6) shall apply only to the licensee and shall not affect the liability of any other individual or entity. Nothing in this subsection (6) shall be construed to limit the ability of the board to take disciplinary action against a licensee.

(7) The fee for a retired volunteer nursing license, including assessments for legal defense, peer assistance, and other programs for which licenses are assessed, shall be no more than fifty percent of the license renewal fee, including all such assessments, established by the board for an active nursing license.

(8) The board shall design a questionnaire to be sent to all retired volunteer nurses who apply for license renewal. Each applicant for license renewal shall complete the board-designed questionnaire. The purpose of the questionnaire is to determine whether a licensee has acted in violation of this article or been disciplined for any action that might be considered a violation of this article or might make the licensee unfit to practice nursing with reasonable care and safety. If an applicant fails to answer the questionnaire accurately, such failure shall constitute grounds for discipline under section 12-38-117 (1)(v). The board may include the cost of developing and reviewing the questionnaire in the fee paid under subsection (7) of this section. The board may

refuse an application for license renewal that does not accompany an accurately completed questionnaire.

(9) The board shall deny an application for the reactivation of a practical or professional nurse license for a retired volunteer nurse if the board determines that the nurse requesting reactivation has not actively volunteered as a nurse for the two-year period immediately preceding the filing of the application for license reactivation or has not otherwise demonstrated continued competency to return to the active practice of nursing in a manner approved by the board.

Source: L. 2001: Entire section added, p. 198, § 1, effective August 8. **L. 2002:** (2)(b) amended, p. 17, § 1, effective August 7. **L. 2003:** (8) added, p. 1688, § 3, effective August 6. **L. 2011:** IP(2) and (5) amended and (9) added, (SB 11-242), ch. 244, p. 1068, § 1, effective May 27.

12-38-113. Denial of license. (Repealed)

Source: L. 80: Entire article R&RE, p. 486, § 1, effective July 1. **L. 2009:** Entire section repealed, (SB 09-239), ch. 401, p. 2169, § 9, effective July 1.

12-38-114. Persons licensed under previous laws. Any person holding a valid Colorado license to engage in the practice of practical or professional nursing issued prior to July 1, 1980, shall continue to be licensed under the provisions of this article.

Source: L. 80: Entire article R&RE, p. 487, § 1, effective July 1.

Editor's note: This section is similar to former §§ 12-38-112 and 12-38-203 as they existed prior to 1980.

12-38-115. Temporary licenses and permits. (1) The board may issue a temporary license to practice for a period of four months to an applicant for licensure by endorsement, pending compliance with the requirements for licensure. To obtain a temporary license, the applicant for licensure by endorsement shall show evidence of current licensure in another state or country or in a territory of the United States.

(2) Repealed.

(3) The board may issue a permit to practice as a practical or professional nurse for a period not to exceed two years or as determined by the board to any person from another state or a territory of the United States or a foreign country who is in this state for special training or for observation of nursing educational programs upon proof to the board by such person that he is currently licensed to practice as a nurse in the state, territory, or country of his residency. The nursing practice permitted by such permit shall be limited to that practice performed as part of the special training or nursing educational program.

(3.5) The board may, as it deems appropriate, issue a permit to a person who is under the supervision of a professional nurse licensed pursuant to this article.

(4) A person holding a permit may engage in the practice of practical or professional nursing only under the personal and responsible supervision and direction of a person licensed by the board to engage in the practice of professional nursing.

(5) The board shall summarily withdraw a temporary license or permit issued pursuant to this section if the board determines that the license holder fails to meet the requirements of this section or section 12-38-110, 12-38-111, or 12-38-112. The holder of a temporary license or permit summarily withdrawn has the right to a hearing which shall be conducted pursuant to article 4 of title 24, C.R.S., by the board or by an administrative law judge at the board's discretion.

Source: L. 80: Entire article R&RE, p. 487, § 1, effective July 1. **L. 87:** (5) amended, p. 948, § 38, effective March 13. **L. 95:** (3.5) added, p. 1079, § 5, effective July 1. **L. 2009:** (2) repealed, (SB 09-239), ch. 401, p. 2171, § 13, effective July 1.

Editor's note: This section is similar to former § 12-38-214 as it existed prior to 1980.

12-38-116. Approval of educational programs. (1) Any institution in this state desiring to receive from the board approval of its educational program which prepares individuals for licensure as a practical or as a professional nurse shall apply to the board and submit evidence that it is prepared to carry out an educational program which complies with the provisions of this article and with rules and regulations adopted by the board pursuant to this article.

(2) For the practice of practical nursing, such educational program shall include:

(a) Content fundamental to the knowledge and skills required for clinical nursing appropriate to the practice of practical nursing;

(b) Content relating to the principles of biological, physical, social, and behavioral sciences.

(3) For the practice of professional nursing, such educational program shall include:

(a) Content fundamental to the knowledge and skills required for clinical nursing appropriate to the practice of professional nursing;

(b) Content relating to the principles of biological, physical, social, and behavioral sciences.

(4) Any educational program for practical or professional nurses in this state which was accredited by the former boards of nursing prior to July 1, 1980, shall be deemed to be an approved educational program for the purpose of this article, but such approval shall be subject to the powers and duties of the board under section 12-38-108 to deny or to withdraw approval.

Source: L. 80: Entire article R&RE, p. 487, § 1, effective July 1.

Editor's note: This section is similar to former §§ 12-38-111 and 12-38-216 as they existed prior to 1980.

12-38-116.5. Disciplinary procedures of the board - inquiry and hearings panels. (1) (a) The president of the board shall divide the other ten members of the board into two panels of five members each. Members representing the three different categories of membership (licensed

practical nurses, professional nurses, and persons not licensed, employed, or in any way connected with, or with any financial interest in, any health care facility, agency, or insurer) shall be divided between the two panels as equally as possible.

(b) Each panel shall act as both an inquiry and a hearings panel. Members of the board may be assigned from one panel to the other by the president. The president may be a member of both panels, but in no event shall the president or any other member who has considered a complaint as a member of a panel acting as an inquiry panel take any part in the consideration of a formal complaint involving the same matter.

(c) All matters referred to one panel for investigation shall be heard, if referred for formal hearing, by the other panel or a committee of such panel. However, in its discretion, either inquiry panel may elect to refer a case for formal hearing to a qualified administrative law judge, in lieu of a hearings panel of the board, for an initial decision pursuant to section 24-4-105, C.R.S.

(d) The initial decision of an administrative law judge may be reviewed pursuant to section 24-4-105 (14) and (15), C.R.S., by the filing of exceptions to the initial decision with the hearings panel that would have heard the case if it had not been referred to an administrative law judge or by review upon the motion of such hearings panel. The respondent or the board's counsel shall file such exceptions.

(2) Investigations shall be under the supervision of the panel to which they are assigned. The persons making such investigation shall report the results thereof to the assigning panel for appropriate action.

(3) (a) (I) For the purposes of this section:

(A) "Grounds for discipline" includes grounds under sections 12-38-117 and 12-42-113.

(B) "License" includes licensure for a practical nurse or professional nurse and licensure for a psychiatric technician.

(C) "Nurse", "licensee", or "respondent" includes a practical nurse, a professional nurse, and a psychiatric technician as described in section 12-42-102 (4).

(D) "Practice of nursing" includes the practice of practical nursing, the practice of professional nursing, and the practice as a psychiatric technician.

(II) Written complaints relating to the conduct of a nurse licensed or authorized to practice nursing in this state may be made by any person or may be initiated by an inquiry panel of the board on its own motion. The nurse complained of shall be given notice, unless the board determines the complaint to be without merit of investigation, by first-class mail, and the notice shall state the nature of the complaint and shall state that the failure to respond in a materially factual and timely manner constitutes grounds for discipline. The nurse complained of shall be given thirty days to answer or explain in writing the matters described in such complaint. Upon receipt of the nurse's answer or at the conclusion of thirty days, whichever occurs first, the inquiry panel may take further action as set forth in subparagraph (III) of this paragraph (a).

(III) Upon receipt of the nurse's answer or the conclusion of thirty days, the inquiry panel may conduct a further investigation that may be made by one or more members of the inquiry panel, one or more nurses who are not members of the board, a member of the staff of the board, a professional investigator, or any other person or organization as the inquiry panel directs. Any such investigation shall be entirely informal.

(b) The board shall cause an investigation to be made when the board is informed of:

(I) Disciplinary action taken by an employer of a nurse against the nurse or resignation in lieu of a disciplinary action for conduct that constitutes grounds for discipline under section 12-38-117 or 12-42-113. Such employer shall report such disciplinary action or resignation to the board.

(II) An instance of a malpractice settlement or judgment against a nurse;

(III) A nurse who has not timely renewed his or her license and the nurse is actively engaged in the practice of nursing.

(c) On completion of an investigation, the inquiry panel shall make a finding that:

(I) The complaint is without merit and no further action need be taken;

(II) There is no reasonable cause to warrant further action on the complaint;

(III) An instance of conduct occurred that does not warrant formal action by the board and that should be dismissed, but that indications of possible conduct by the nurse were noted that could lead to serious consequences if not corrected. In such a case, a confidential letter of concern shall be sent to the nurse against whom the complaint was made.

(IV) (A) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the board, does not warrant formal action by the board but that should not be dismissed as being without merit, a letter of admonition may be issued and sent, by certified mail, to the licensee.

(B) When a letter of admonition is sent by the board, by certified mail, to a licensee, such licensee shall be advised that he or she has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(C) If the request for adjudication is timely made, the letter of admonition shall be deemed vacated and the matter shall be processed by means of formal disciplinary proceedings.

(V) (A) Facts were disclosed that warrant further proceedings by formal complaint, as provided in subsection (4) of this section, and that the complaint should be referred to the attorney general for preparation and filing of a formal complaint.

(B) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(4) (a) All formal complaints shall be heard and determined in accordance with paragraph (b) of this subsection (4) and section 24-4-105, C.R.S. Except as provided in subsection (1) of this section, all formal hearings shall be conducted by the hearings panel. The nurse may be present in person or represented by counsel, or both, if so desired, to offer evidence and be heard in the nurse's own defense. At formal hearings, the witnesses shall be sworn and a complete record shall be made of all proceedings and testimony.

(b) Except as provided in subsection (1) of this section, an administrative law judge shall preside at the hearing and shall advise the hearings panel on all such legal matters in connection with the hearing as the panel may request. The administrative law judge shall provide such advice or assistance as the hearings panel may request in connection with the preparation of its findings and recommendations or conclusions. Such administrative law judge shall have the authority to administer oaths and affirmations, sign and issue subpoenas, and perform such other duties as the hearings panel may authorize the administrative law judge to perform. Such administrative law judge shall have the qualifications provided in section 24-30-1003 (2), C.R.S.

(c) (I) To warrant a finding of grounds for discipline, the charges shall be established as specified in section 24-4-105 (7), C.R.S. Except as provided in subsection (1) of this section, the hearings panel shall make a report of its findings and conclusions that, when approved by a majority of those members of the hearings panel who have conducted the hearing pursuant to paragraphs (a) and (b) of this subsection (4), shall be the action of the board.

(II) If it is found that the charges are unproven, the hearings panel, or an administrative law judge sitting in lieu of the hearings panel pursuant to subsection (1) of this section, shall enter an order dismissing the complaint.

(III) If the hearings panel finds the charges proven and orders that discipline be imposed, it shall also determine the extent of such discipline, which may be in the form of a letter of admonition regarding a license or suspension for a definite or indefinite period, revocation, or nonrenewal of a license to practice. In addition to any other discipline that may be imposed pursuant to this section, the hearings panel may impose a fine of no less than two hundred fifty dollars but no more than one thousand dollars per violation on any nurse who violates this article or any rule adopted pursuant to this article. The board shall adopt rules establishing a fine structure and the circumstances under which fines may be imposed. All fines collected pursuant to this subparagraph (III) shall be transmitted to the state treasurer who shall credit the same to the general fund. In determining appropriate disciplinary action, the hearings panel shall first consider sanctions that are necessary to protect the public. Only after the panel has considered such sanctions shall it consider and order requirements designed to rehabilitate the nurse. If discipline other than revocation of a license to practice is imposed, the hearings panel may also order that the nurse be granted probation and allowed to continue to practice during the period of such probation. The hearings panel may also include in any disciplinary order that allows the nurse to continue to practice such conditions as the panel may deem appropriate to assure that the nurse is physically, mentally, and otherwise qualified to practice nursing in accordance with generally accepted standards of practice, including any of the following:

(A) Submission by the respondent to such examinations as the hearings panel may order to determine the respondent's physical or mental condition or the respondent's professional qualifications;

(B) The taking by the respondent of such therapy or courses of training or education as may be needed to correct deficiencies found either in the hearing or by such examinations;

(C) The review or supervision of the respondent's practice of nursing as may be necessary to determine the quality of the respondent's practice of nursing and to correct deficiencies therein; or

(D) The imposition of restrictions upon the nature of the respondent's practice to assure that the respondent does not practice beyond the limits of the respondent's capabilities.

(IV) Upon the failure of the respondent to comply with any conditions imposed by the hearings panel pursuant to subparagraph (III) of this paragraph (c), the hearings panel may order revocation or suspension of the respondent's license to practice in this state until such time as the respondent complies with such conditions.

(V) In making any of the orders provided in subparagraphs (III) and (IV) of this paragraph (c), the hearings panel may take into consideration the respondent's prior disciplinary record. If the hearings panel does take into consideration any prior discipline of the respondent, its findings and recommendations shall so indicate.

(VI) In all cases of revocation, suspension, probation, or nonrenewal, the board shall enter in its records the facts of such revocation, suspension, probation, or nonrenewal and of any subsequent action of the board with respect thereto.

(d) The attorney general shall prosecute those charges that have been referred to the office of the attorney general by the inquiry panel pursuant to subparagraph (V) of paragraph (c) of subsection (3) of this section. The board may direct the attorney general to perfect an appeal.

(e) Any person whose license to practice nursing is revoked or who surrenders his or her license to avoid discipline shall not be eligible to apply for any license for two years after the date the license is revoked or surrendered. The two-year waiting period applies to any person whose license to practice nursing or any other health care occupation is revoked by any other legally qualified board.

(5) A majority of the members of the board, three members of the inquiry panel, or three members of the hearings panel shall constitute a quorum. The action of a majority of those present comprising such quorum shall be the action of the board, the inquiry panel, or the hearings panel.

(6) Upon the expiration of any term of suspension, the license shall be reinstated by the board if the board is furnished with evidence that the nurse has complied with all terms of the suspension. If such evidence shows the nurse has not complied with all terms of the suspension, the board may revoke or continue the suspension of the license at a hearing, notice of which and the procedure at which shall be as provided in this section.

(7) In case any nurse is determined to be mentally incompetent or insane by a court of competent jurisdiction and a court enters, pursuant to part 3 or part 4 of article 14 of title 15 or section 27-65-109 (4) or 27-65-127, C.R.S., an order specifically finding that the mental incompetency or insanity is of such a degree that the nurse is incapable of continuing the practice of nursing, the nurse's license shall automatically be suspended by the board, and, notwithstanding any provision of this article to the contrary, such suspension shall continue until the nurse is found by such court to be competent to continue the practice of nursing.

(8) (a) If the board has reasonable cause to believe that a nurse is unable to practice nursing with reasonable skill and safety to patients because of a condition described in section 12-38-117 (1)(i) or (1)(j) or section 12-42-113 (1)(i) or (1)(j), it may require such nurse to submit to mental or physical examinations by a physician or other licensed health care professional designated by the board. If a nurse fails to submit to such mental or physical examinations, the board may suspend the nurse's license until the required examinations are conducted.

(b) Every nurse shall be deemed, by so practicing or by applying for renewal registration of such nurse's license, to have consented to submit to mental or physical examinations when directed in writing by the board. Further, such nurse shall be deemed to have waived all objections to the admissibility of the examining physician's or other licensed health care professional's testimony or examination reports on the ground of privileged communication. Subject to applicable federal law, such nurse shall be deemed to have waived all objections to the production of medical records to the board from health care providers that may be necessary for the evaluations described in paragraph (a) of this subsection (8). Nothing in this section shall prevent the nurse from submitting to the board testimony or examination reports of a physician or other licensed health care professional designated by the nurse to a condition described in paragraph (a) of this subsection (8) that may be considered by the board in conjunction with, but

not in lieu of, testimony and examination reports of the physician or licensed health care professional designated by the board.

(c) The results of any mental or physical examination ordered by the board shall not be used as evidence in any proceeding other than before the board and shall not be deemed a public record nor made available to the public.

(d) The board may require that a nurse submit medical records for review in conjunction with an investigation made pursuant to paragraph (a) of this subsection (8); except that such records shall remain confidential and shall be reviewed by the board only to the extent necessary to conduct an investigation.

(9) (a) Investigations, examinations, hearings, meetings, or any other proceedings of the board conducted pursuant to the provisions of this section shall be exempt from the open meetings provisions of the "Colorado Sunshine Act of 1972" contained in part 4 of article 6 of title 24, C.R.S., requiring that proceedings of the board be conducted publicly, and the open records provisions of article 72 of title 24, C.R.S., requiring that the minutes or records of the board with respect to action of the board taken pursuant to the provisions of this section be open to public inspection.

(b) Notwithstanding the exemptions in paragraph (a) of this subsection (9), records of disciplinary action taken by the board pursuant to this section shall be open to public inspection pursuant to the open records provisions of article 72 of title 24, C.R.S.

(10) A physician or other licensed health care professional who, at the request of the board, examines a nurse shall be immune from suit for damages by the nurse examined if the examining physician or examining licensed health care professional conducted the examination and made findings or a diagnosis in good faith.

(11) All investigations completed or in progress pursuant to section 12-38-117 or 12-42-113, as said sections existed on June 30, 1999, including those cases that have been referred to hearing, are before an administrative law judge, or are awaiting final disposition by the board, shall be referred to a panel of the board by the director of the division of professions and occupations for final adjudication. All actions taken and decisions rendered by the board prior to July 1, 1999, are hereby ratified.

(12) Final board action may be judicially reviewed in the court of appeals, and judicial proceedings for the enforcement of a board order may be instituted in accordance with section 24-4-106, C.R.S.

(13) (a) The board or an administrative law judge shall have the power to administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board. The board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the board including, but not limited to, hospital and physician records. Upon certification of 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 board or the custodian or the custodian's authorized employee for furnishing or using such copies in accordance with this subsection (13).

(b) Upon failure of any witness to comply with such subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board or director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the board or 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 to obey the order of the court may be punished by the court as a contempt of court.

(14) Any member of the board or the board's staff, any person acting as a witness or consultant to the board, 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 liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as board member, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in the making of a complaint or report or participating in any investigative or administrative proceeding pursuant to this article shall be immune from any liability, civil or criminal, that otherwise might result by reason of such participation.

(15) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a licensee or registrant 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 license or registration, the board may issue an order to cease and desist such activity. 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 unlicensed or unregistered practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (15), the respondent may request a hearing on the question of whether acts or practices in violation of this part 1 have occurred. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(16) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this part 1, then, in addition to any specific powers granted pursuant to this part 1, the board may issue to such person an order to show cause as to why the board should not issue a final order directing such person to cease and desist from the unlawful act or unlicensed or unregistered practice.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (16) shall be promptly notified by the board of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the board for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order is issued. Personal service or mailing of an order or document pursuant to this subsection (16) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the board as provided in paragraph (b) of this subsection (16). The hearing may

be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (16) does not appear at the hearing, the board may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (16) and such other evidence related to the matter as the board deems appropriate. The board shall issue the order within ten days after the board's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the board reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required license or registration, or has or is about to engage in acts or practices constituting violations of this part 1, a final cease-and-desist order may be issued, directing such person to cease and desist from further unlawful acts or unlicensed or unregistered practices.

(IV) The board shall provide notice, in the manner set forth in paragraph (b) of this subsection (16), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom such order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

(17) If it appears to the board, based upon credible evidence presented to the board, that a person has engaged in or is about to engage in any unlicensed or unregistered act or practice, any act or practice constituting a violation of this part 1, any rule promulgated pursuant to this part 1, any order issued pursuant to this part 1, or any act or practice constituting grounds for administrative sanction pursuant to this part 1, the board may enter into a stipulation with such person.

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

(19) A person aggrieved by the final cease-and-desist order may seek judicial review of the board's determination or of the board's final order as provided in subsection (12) of this section.

Source: L. 99: Entire section added, p. 236, § 6, effective July 1. **L. 2004:** (3)(c)(IV), (3)(c)(V), (13), and (14) amended, p. 1833, § 77, effective August 4. **L. 2006:** (15) to (19) added, p. 800, § 31, effective July 1. **L. 2009:** IP(4)(c)(III) and (9) amended and (4)(e) added, (SB 09-239), ch. 401, pp. 2167, 2172, 2171, §§ 5, 15, 11, effective July 1; (9) amended, (SB 09-138), ch. 400, p. 2161, § 9, effective July 1. **L. 2010:** (7) amended, (SB 10-175), ch. 188, p. 778, § 10, effective April 29.

Cross references: For the legislative declaration contained in the 1999 act enacting this section, see section 1 of chapter 84, Session Laws of Colorado 1999.

12-38-117. Grounds for discipline. (1) "Grounds for discipline", as used in this article, means any action by any person who:

(a) Has procured or attempted to procure a license by fraud, deceit, misrepresentation, misleading omission, or material misstatement of fact;

(b) (I) Has been convicted of a felony or any crime that would constitute a violation of this article.

(II) (A) For purposes of this paragraph (b), "conviction" includes the entry of a plea of guilty or nolo contendere or the imposition of a deferred sentence.

(B) 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.

(III) Repealed.

(c) Has willfully or negligently acted in a manner inconsistent with the health or safety of persons under his care;

(d) Has had a license to practice nursing 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.

(e) Has violated any provision of this article or has aided or knowingly permitted any person to violate any provision of this article;

(f) Has negligently or willfully practiced nursing in a manner which fails to meet generally accepted standards for such nursing practice;

(g) Has negligently or willfully violated any order, rule, or regulation of the board pertaining to nursing practice or licensure;

(h) Has falsified or in a negligent manner made incorrect entries or failed to make essential entries on patient records;

(i) Excessively uses or abuses alcohol, habit-forming drugs, controlled substances, as defined in section 18-18-102 (5), C.R.S., or other drugs having similar effects, or is diverting controlled substances, as defined in section 18-18-102 (5), C.R.S., or other drugs having similar effects from the licensee's place of employment; except that the board has the discretion not to discipline the licensee if such licensee is participating in good faith in a program approved by the board designed to end such excessive use or abuse;

(j) Has a physical or mental disability which renders him unable to practice nursing with reasonable skill and safety to the patients and which may endanger the health or safety of persons under his care;

(k) Has violated the confidentiality of information or knowledge as prescribed by law concerning any patient;

(l) Has engaged in any conduct which would constitute a crime as defined in title 18, C.R.S., and which conduct relates to such person's employment as a practical or professional nurse. In conjunction with any disciplinary proceeding pertaining to this paragraph (l), the board shall be governed by the provisions of section 24-5-101, C.R.S.

(m) (I) Has violated abuse of health insurance pursuant to section 18-13-119, C.R.S.; or

(II) Has advertised through newspapers, magazines, circulars, direct mail, directories, radio, television, or otherwise that the licensee will perform any act prohibited by section 18-13-119 (3), C.R.S.;

(n) Has engaged in any of the following activities and practices: Willful and repeated ordering or performance, without clinical justification, of demonstrably unnecessary laboratory tests or studies; the administration, without clinical justification, of treatment which is demonstrably unnecessary; the failure to obtain consultations or perform referrals when failing to do so is not consistent with the standard of care for the profession; or ordering or performing, without clinical justification, any service, X ray, or treatment which is contrary to recognized standards of the practice of nursing as interpreted by the board;

(o) Has committed a fraudulent insurance act, as defined in section 10-1-128, C.R.S.;

(p) Has prescribed, distributed, or given to himself or herself or a family member any controlled substance as defined in part 2 of article 18 of title 18, C.R.S., or as contained in schedule II of 21 U.S.C. sec. 812;

(q) Has dispensed, injected, or prescribed an anabolic steroid, as defined in section 18-18-102 (3), C.R.S., for the purpose of hormonal manipulation that is intended to increase muscle mass, strength, or weight without a medical necessity to do so or for the intended purpose of improving performance in any form of exercise, sport, or game;

(r) Has dispensed or injected an anabolic steroid, as defined in section 18-18-102 (3), C.R.S., unless such anabolic steroid is dispensed from a pharmacy pursuant to a written prescription or is dispensed by any person licensed to practice medicine in the course of such person's professional practice;

(s) Has administered, dispensed, or prescribed any habit-forming drug or any controlled substance as defined in section 18-18-102 (5), C.R.S., other than in the course of legitimate professional practice;

(t) Has been disciplined by another state, territory, or country based upon an act or omission that is defined substantially the same as a ground for discipline pursuant to this subsection (1);

(u) Willfully fails to respond in a materially factual and timely manner to a complaint issued pursuant to section 12-38-116.5 (3);

(v) Has failed to accurately complete and submit to the board the designated questionnaire upon renewal of a license pursuant to section 12-38-111 (3), 12-38-112 (3), or 12-38-112.5 (8);

(w) (I) Represents himself or herself to an individual or to the general public by use of any word or abbreviation to indicate or induce others to believe that he or she is a licensed practical or professional nurse unless the person is actually licensed as a practical nurse or professional nurse, respectively; or

(II) Uses the title "nurse", "registered nurse", "R.N.", "practical nurse", "trained practical nurse", "licensed vocational nurse", "licensed practical nurse", or "L.P.N." unless the person is licensed by the board;

(x) Practices as a practical or professional nurse during a period when the person's license has been suspended, revoked, or placed on inactive status pursuant to section 12-38-118.5;

(y) Sells or fraudulently obtains or furnishes a license to practice as a nurse or aids or abets therein;

(z) Has failed to report to the board, within forty-five days after a final conviction, that the person has been convicted of a crime, as defined in title 18, C.R.S.;

(aa) Fails to maintain professional liability insurance in accordance with section 12-38-111.8; or

(bb) Has verified by signature the articulated plan developed by an advanced practice nurse pursuant to sections 12-36-106.4 and 12-38-111.6 (4.5) if the articulated plan fails to comply with the requirements of section 12-38-111.6 (4.5)(b)(II).

(2) to (6) Repealed.

Source: L. 80: Entire article R&RE, p. 488, § 1, effective July 1. **L. 82:** (1)(i) amended, p. 253, § 7, effective May 3. **L. 85:** (1)(b) amended and (1)(m) added, pp. 526, 682, §§ 2, 8, effective July 1. **L. 89:** (1)(n) and (1)(o) added, p. 673, § 15, effective July 1. **L. 95:** IP(1), (1)(b), and (1)(i) amended and (1)(p) to (1)(t) added, p. 1079, § 6, effective July 1. **L. 99:** IP(1) amended, (1)(b)(III) and (2) to (5) repealed, and (1)(u) added, p. 243, §§ 7, 8, effective July 1. **L. 2003:** (1)(o) amended, p. 621, § 32, effective July 1; (1)(v) added, p. 1688, § 4, effective August 6. **L. 2004:** (1)(s) amended, p. 1194, § 37, effective August 4. **L. 2006:** (1)(w) to (1)(y) added with relocated provisions, p. 88, § 29, effective August 7. **L. 2008:** (1)(x) amended, p. 1760, § 2, effective August 5. **L. 2009:** (1)(i) and (1)(v) amended and (1)(z) and (1)(aa) added, (SB 09-239), ch. 401, pp. 2168, 2186, §§ 8, 32, effective July 1. **L. 2012:** (1)(i), (1)(q), (1)(r), and (1)(s) amended, (HB 12-1311), ch. 281, p. 1612, § 19, effective July 1. **L. 2013:** (6) added, (SB 13-014), ch. 178, p. 660, § 6, effective May 10. **L. 2015:** (6) repealed, (SB 15-053), ch. 78, p. 211, § 4, effective April 3; (1)(bb) added, (SB 15-197), ch. 197, p. 672, § 6, effective September 1.

Editor's note: (1) This section is similar to former §§ 12-38-119 and 12-38-217 as they existed prior to 1980.

(2) Subsections (1)(w)(I), (1)(w)(II), (1)(x), and (1)(y) are similar to former § 12-38-123 (1)(b)(I), (1)(b)(II), (1)(c), and (1)(d) as they existed prior to 2006.

Cross references: (1) For an alternative disciplinary action for persons licensed pursuant to this article, see § 24-34-106.

(2) For the legislative declaration contained in the 1999 act amending the introductory portion to subsection (1), repealing subsections (1)(b)(III), (2), (3), (4), and (5), and enacting subsection (1)(u), see section 1 of chapter 84, Session Laws of Colorado 1999. For the legislative declaration in the 2013 act adding subsection (6), see section 1 of chapter 178, Session Laws of Colorado 2013.

12-38-118. Withholding or denial of license - hearing. (1) (a) The board is empowered to determine summarily whether an applicant for a license or a temporary license to practice as a nurse possesses the qualifications required by this article, whether there is probable cause to believe that an applicant has done any of the acts set forth in section 12-38-117 as grounds for discipline, or whether the applicant has had a license to practice nursing or any other health care occupation revoked by any legally authorized board.

(b) As used in this section:

(I) "Applicant" includes a nurse seeking reinstatement or reactivation of a license pursuant to section 12-38-118.5, but does not include a renewal applicant.

(II) "Legally authorized board" means a board created pursuant to the laws of this state or of another state for the purpose of licensing or otherwise authorizing a person to engage in a health care occupation. The term includes any governmental entity charged with licensing or other oversight of persons engaged in a health care occupation.

(2) (a) (I) If the board determines that an applicant does not possess the qualifications required by this article, that probable cause exists to believe that an applicant has done any of the acts set forth in section 12-38-117, or that the applicant has had a nursing or other health care occupation license revoked by another legally authorized board, the board may withhold or deny the applicant a license.

(II) The board may refuse to issue a license or temporary license to practice as a nurse to any applicant during the time the applicant's license is under suspension in another state.

(III) The board may refuse to issue a license or may grant a license subject to terms of probation if the board determines that an applicant for a license has not actively practiced practical or professional nursing, or has not otherwise maintained continued competency, as determined by the board, during the two years immediately preceding the application for licensure under this article.

(b) If the board refuses to issue a license to an applicant pursuant to paragraph (a) of this subsection (2), the provisions of section 24-4-104 (9), C.R.S., shall apply. Upon such refusal, the board shall provide the applicant with a statement in writing setting forth the following:

(I) The basis of the board's determination that the applicant:

(A) Does not possess the qualifications required by this article;

(B) Has had a nursing or other health care occupation license revoked or suspended by another legally authorized board; or

(C) Has not actively practiced practical or professional nursing, or has not maintained continued competency, during the previous two years; or

(II) The factual basis for probable cause that the applicant has done any of the acts set forth in section 12-38-117.

(c) If the board refuses to issue a license to an applicant on the grounds that the applicant's nursing or other health care occupation license was revoked by another legally authorized board, the board may require the applicant to pass a written examination as provided in section 12-38-110, as a prerequisite to licensure. The applicant shall not be allowed to take the written examination until at least two years after the revocation of the nursing or other health care occupation license.

(3) If the applicant requests a hearing pursuant to the provisions of section 24-4-104 (9), C.R.S., and fails to appear without good cause at such hearing, the board may affirm its prior action of withholding or denial without conducting a hearing.

(4) Following a hearing, the board shall affirm, modify, or reverse its prior action in accordance with its findings at such hearing.

(5) No action shall lie against the board for the withholding or denial of a license or temporary license without a hearing in accordance with the provisions of this section if the board acted reasonably and in good faith.

(6) (a) At the hearing, the applicant shall have the burden of proof to show that:

(I) The applicant possesses the qualifications required for licensure under this article;

(II) The applicant's nursing or other health care occupation license was not revoked by another legally authorized board; or

(III) The applicant has actively practiced practical or professional nursing, or has maintained continued competency, during the two years prior to application for a license under this article.

(b) The board shall have the burden of proof to show commission of acts set forth in section 12-38-117.

Source: L. 80: Entire article R&RE, p. 489, § 1, effective July 1. **L. 2008:** (1) amended, p. 1760, § 3, effective August 5. **L. 2009:** (1), (2), and (6) amended, (SB 09-239), ch. 401, p. 2169, § 10, effective July 1.

Editor's note: This section is similar to former §§ 12-38-119.5 and 12-38-217.5 as they existed prior to 1980.

12-38-118.5. Inactive license status - reactivation - repeal. (1) A nurse licensed pursuant to section 12-38-111 or 12-38-112 may request that the board place his or her license on inactive status. Such request shall be made in the form and manner designated by the board.

(2) A nurse requesting inactive license status shall provide an affidavit or other document required by the board certifying that, immediately upon the conferral of inactive status, the nurse shall not practice nursing in the state unless and until the nurse's license is reactivated pursuant to subsection (6) of this section.

(3) Upon receiving the documentation pursuant to subsection (2) of this section, the board shall approve a request for inactive license status. However, the board may deny such a request if the board has probable cause to believe that the requesting nurse has committed any of the acts set forth in section 12-38-117.

(4) (a) A license on inactive status shall constitute a single state license issued by Colorado and without multistate licensure privilege pursuant to part 38 of article 60 of title 24.

(b) (I) A license on inactive status shall constitute a single state license issued by Colorado and without multistate licensure privilege pursuant to part 32 of article 60 of title 24.

(II) This subsection (4)(b) is repealed, effective January 1, 2019.

(5) A nurse with a license on inactive status is not authorized to practice nursing in Colorado. Any nurse practicing nursing while his or her license is inactive shall be subject to disciplinary action pursuant to section 12-38-116.5 and criminal penalties pursuant to section 12-38-123.

(6) (a) A nurse with a license on inactive status who wishes to resume the practice of nursing shall file an application in the form and manner designated by the board and pay the license reactivation fees established pursuant to section 12-38-108. The board shall reactivate such license unless paragraph (b) of this subsection (6) applies.

(b) The board shall deny an application for reactivation of an inactive license:

(I) Pursuant to section 12-38-118; or

(II) If the board determines that the nurse requesting reactivation has not actively practiced nursing in another state for the two-year period immediately preceding the filing of the request for reactivation or has not otherwise demonstrated continued competency to return to the active practice of nursing in a manner approved by the board.

Source: L. 2008: Entire section added, p. 1759, § 1, effective August 5. **L. 2018:** (4) amended, (SB 18-027), ch. 1, p. 22, § 5, effective January 18.

12-38-119. Mental and physical examination of licensees. (Repealed)

Source: L. 80: Entire article R&RE, p. 490, § 1, effective July 1. **L. 99:** Entire section repealed, p. 244, § 10, effective July 1.

Editor's note: This section was similar to former §§ 12-38-123 and 12-38-225 as they existed prior to 1980.

Cross references: For the legislative declaration contained in the 1999 act repealing this section, see section 1 of chapter 84, Session Laws of Colorado 1999.

12-38-120. Disciplinary proceedings - administrative law judges - judicial review. (Repealed)

Source: L. 80: Entire article R&RE, p. 491, § 1, effective July 1. **L. 85:** (6) amended, p. 526, § 3, effective July 1. **L. 87:** (1) and (4) amended, p. 948, § 39, effective July 1. **L. 95:** (4) and (7) amended, p. 1081, § 8, effective July 1. **L. 99:** Entire section repealed, p. 245, § 11, effective July 1.

Editor's note: This section was similar to former §§ 12-38-119.7 and 12-38-218 as they existed prior to 1980.

Cross references: For the legislative declaration contained in the 1999 act repealing this section, see section 1 of chapter 84, Session Laws of Colorado 1999.

12-38-121. Immunity in professional review. (1) If a professional review committee is established pursuant to section 12-38-109 to investigate the quality of care being given by a person licensed pursuant to this article, it shall include in its membership at least three persons licensed in the same category as the licensee under review, but such committee may be authorized to act only by the board.

(2) Any member of the board or of a professional review committee authorized by the board, any member of the board's or committee's staff, any person acting as a witness or consultant to the board or committee, 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 liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as board or committee member, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this article shall be immune from any civil or criminal liability that may result from such participation.

Source: L. 80: Entire article R&RE, p. 492, § 1, effective July 1. **L. 2004:** (2) amended, p. 1835, § 78, effective August 4.

Editor's note: This section is similar to former §§ 12-38-119.1 and 12-38-218.1 as they existed prior to 1980.

12-38-122. Surrender of license. (1) Prior to the initiation of an investigation or hearing, any licensee or temporary license holder may surrender his license to practice nursing.

(2) Following the initiation of an investigation or hearing and upon a finding that to do so would be in the public interest, the board may allow a licensee or temporary license holder to surrender his license to practice.

(3) The board shall not issue a license or temporary license or permit to a former licensee or temporary license or permit holder whose license has been surrendered unless the licensee meets all of the requirements of this article for a new applicant, including the passing of an examination.

(4) The surrender of a license in accordance with this section removes all rights and privileges to practice nursing, including renewal of a license.

Source: L. 80: Entire article R&RE, p. 492, § 1, effective July 1.

Editor's note: This section is similar to former §§ 12-38-119.6 and 12-38-218.5 as they existed prior to 1980.

12-38-123. Unauthorized practice - penalties. (1) It is unlawful for any person:

(a) To practice as a practical or professional nurse unless licensed therefor.

(b) to (d) Repealed.

(2) Any person who practices or offers or attempts to practice practical or professional nursing 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 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: L. 80: Entire article R&RE, p. 493, § 1, effective July 1. **L. 85:** (2) amended, p. 408, § 13, effective July 1. **L. 89:** (2) amended, p. 826, § 25, effective July 1. **L. 2002:** (2) amended, p. 1480, § 80, effective October 1. **L. 2004:** (1)(b) amended, p. 735, § 1, effective May 12. **L. 2006:** (1)(b) to (1)(d) repealed and (2) amended, pp. 89, 88, §§ 32, 30, effective August 7.

Editor's note: (1) This section is similar to former §§ 12-38-120 and 12-38-219 as they existed prior to 1980.

(2) Subsections (1)(b)(I), (1)(b)(II), (1)(c), and (1)(d) were relocated to § 12-38-117 (1)(w)(I), (1)(w)(II), (1)(x), and (1)(y), and subsection (1)(b)(III) was relocated to § 12-38-125 (1)(m), in 2006.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-38-124. Injunctive proceedings. The board, in the name of the people of the state of Colorado, may apply for injunctive relief through the attorney general in any court of competent jurisdiction to enjoin any person who does not possess a currently valid or active practical or professional nurse license from committing any act declared to be unlawful or prohibited by this article. If it is established that the defendant has been or is committing an act declared to be unlawful or prohibited by this article, the court or any judge thereof shall enter a decree perpetually enjoining said defendant from further committing such act. In the case of a violation of any injunction issued under the provisions of this section, the court or any judge thereof may summarily try and punish the offender for contempt of court. Such injunctive proceedings shall be in addition to, and not in lieu of, all penalties and other remedies provided for in this article.

Source: L. 80: Entire article R&RE, p. 493, § 1, effective July 1.

Editor's note: This section is similar to former §§ 12-38-119.8 and 12-38-224 as they existed prior to 1980.

12-38-125. Exclusions. (1) No provision of this article shall be construed to prohibit:

(a) Gratuitous care of friends or members of the family;

(b) Domestic administration of family remedies or care of the sick by domestic servants, housekeepers, companions, or household aides of any type, whether employed regularly or because of an emergency of illness, but who shall not in any way assume to practice practical or professional nursing;

(c) Nursing assistance in the case of an emergency;

(d) The practice of nursing in this state by any legally qualified nurse of another state whose engagement requires him to accompany and care for a patient temporarily residing in this state, during the period of one such engagement, not to exceed six months in length, if such person does not represent or hold himself out as a practical or professional nurse licensed to practice in this state;

(e) The practice of any nurse licensed in this state or another state or a territory of the United States who is employed by the United States government or any bureau, division, or agency thereof while in the discharge of his official duties;

(f) The practice of nursing by students enrolled in an educational program approved by the board when such practice is performed as part of an educational program prior to the graduation of such student;

(g) The practice of nursing by any nurse licensed in any other state or any territory of the United States or any other country enrolled in a baccalaureate or graduate program when such practice is performed as a part of such program;

(h) (I) The administration and monitoring of medications in facilities pursuant to part 3 of article 1.5 of title 25, C.R.S.

(II) Repealed.

(i) (I) The administration of nutrition or fluids through gastrostomy tubes as provided in sections 25.5-10-204 (2)(j) and 27-10.5-103 (2)(i), C.R.S., as a part of residential or day program services provided through service agencies approved by the department of health care policy and financing pursuant to section 25.5-10-206, C.R.S.

(II) Repealed.

(j) The administration of topical and aerosol medications within the scope of physical therapy practice as provided in section 12-41-113 (2);

(k) The practice of administration and monitoring as defined in section 25-1.5-301 (1) and (3), C.R.S.;

(l) The administration of medications by child care providers to children cared for in family child care homes pursuant to section 26-6-119, C.R.S.;

(m) A person who provides nonmedical support services from using the title "Christian Science nurse" when offering or providing services to a member of his or her own religious organization;

(n) (I) The administration of epinephrine auto-injectors by a licensee in a public school or nonpublic school pursuant to a policy adopted in accordance with section 22-1-119.5, C.R.S.;

(II) The issuance by an advanced practice nurse with prescriptive authority of standing orders and protocols for the use of epinephrine auto-injectors for emergency use in a public school or nonpublic school pursuant to a policy adopted in accordance with section 22-1-119.5, C.R.S.; or

(III) The training by a licensee of and the delegation to designated school personnel on the recognition of the symptoms of anaphylactic shock and on the administration of epinephrine auto-injectors in a public school or nonpublic school pursuant to a policy adopted in accordance with section 22-1-119.5, C.R.S.;

(o) A prescription by an advanced practice nurse with prescriptive authority for the use of epinephrine auto-injectors by an authorized entity in accordance with article 47 of title 25, C.R.S.

Source: L. 80: Entire article R&RE, p. 493, § 1, effective July 1. **L. 88:** (1)(h) added, p. 1001, § 5, effective July 1. **L. 91:** (1)(i) added, p. 1163, § 3, effective March 29; (1)(h)(II) amended, p. 930, § 4, effective April 1; (1)(j) added, p. 1667, § 4, effective July 1. **L. 92:** (1)(i)(II) repealed, p. 2010, § 4, effective June 2; (1)(h) amended and (1)(k) added, p. 1149, § 3, effective July 1. **L. 94:** (1)(i)(I) amended, p. 2638, § 79, effective July 1. **L. 96:** (1)(h)(II) amended, p. 797, § 9, effective May 23. **L. 98:** (1)(h) amended, p. 542, § 3, effective July 1. **L. 2002:** (1)(l) added, p. 128, § 3, effective March 26. **L. 2003:** (1)(h)(I) and (1)(k) amended, p. 702, § 14, effective July 1. **L. 2006:** (1)(m) added with relocated provisions, p. 88, § 31, effective August 7. **L. 2009:** (1)(i)(I) amended, (SB 09-044), ch. 57, p. 210, § 17, effective March 25; (1)(h)(II) repealed, (SB 09-128), ch. 365, p. 1914, § 3, effective July 1. **L. 2013:** (1)(n) added, (HB 13-1171), ch. 348, p. 2025, § 3, effective May 25; (1)(i)(I) amended, (HB 13-1314), ch. 323, p. 1801, § 20, effective March 1, 2014. **L. 2015:** (1)(o) added, (HB 15-1232), ch. 191, p. 632, § 3, effective May 14.

Editor's note: (1) This section is similar to former §§ 12-38-121 and 12-38-221 as they existed prior to 1980.

(2) Subsection (1)(m) is similar to former § 12-38-123 (1)(b)(III) as it existed prior to 2006.

12-38-125.5. Prescribing opiate antagonists - definitions. (1) An advanced practice nurse with prescriptive authority pursuant to section 12-38-111.6 may prescribe or dispense, directly or in accordance with standing orders and protocols, an opiate antagonist to:

(a) An individual at risk of experiencing an opiate-related drug overdose event;

(b) A family member, friend, or other person in a position to assist an individual at risk of experiencing an opiate-related drug overdose event;

(c) An employee or volunteer of a harm reduction organization; or

(d) A first responder.

(2) An advanced practice nurse with prescriptive authority who prescribes or dispenses an opiate antagonist pursuant to this section is strongly encouraged to educate persons receiving the opiate antagonist on the use of an opiate antagonist for overdose, including instruction concerning risk factors for overdose, recognizing an overdose, calling emergency medical services, rescue breathing, and administering an opiate antagonist.

(3) An advanced practice nurse with prescriptive authority does not engage in conduct that is grounds for discipline pursuant to section 12-38-117 if the advanced practice nurse issues standing orders and protocols regarding opiate antagonists or prescribes or dispenses an opiate antagonist in a good-faith effort to assist:

(a) An individual who is at risk of experiencing an opiate-related drug overdose event;

(b) A family member, friend, or other person who is in a position to assist an individual who is at risk of experiencing an opiate-related drug overdose event;

(c) A first responder or an employee or volunteer of a harm reduction organization in responding to, treating, or otherwise assisting an individual who is experiencing or is at risk of experiencing an opiate-related drug overdose event or a friend, family member, or other person in a position to assist an at-risk individual.

(4) An advanced practice nurse with prescriptive authority who prescribes or dispenses an opiate antagonist in accordance with this section is not subject to civil liability or criminal prosecution, as specified in sections 13-21-108.7 (4) and 18-1-712 (3), C.R.S., respectively.

(5) This section does not establish a duty or standard of care regarding the prescribing, dispensing, or administering of an opiate antagonist.

(6) As used in this section:

(a) "First responder" means:

(I) A peace officer, as defined in section 16-2.5-101, C.R.S.;

(II) A firefighter, as defined in section 29-5-203 (10), C.R.S.; or

(III) A volunteer firefighter, as defined in section 31-30-1102 (9), C.R.S.

(b) "Harm reduction organization" means an organization that provides services, including medical care, counseling, homeless services, or drug treatment, to individuals at risk of experiencing an opiate-related drug overdose event or to the friends and family members of an at-risk individual.

(c) "Opiate" has the same meaning as set forth in section 18-18-102 (21), C.R.S.

(d) "Opiate antagonist" means naloxone hydrochloride or any similarly acting drug that is not a controlled substance and that is approved by the federal food and drug administration for the treatment of a drug overdose.

(e) "Opiate-related drug overdose event" means an acute condition, including a decreased level of consciousness or respiratory depression, that:

(I) Results from the consumption or use of a controlled substance or another substance with which a controlled substance was combined;

(II) A layperson would reasonably believe to be caused by an opiate-related drug overdose event; and

(III) Requires medical assistance.

(f) "Protocol" means a specific written plan for a course of medical treatment containing a written set of specific directions created by a physician, group of physicians, hospital medical committee, pharmacy and therapeutics committee, or other similar practitioners or groups of practitioners with expertise in the use of opiate antagonists.

(g) "Standing order" means a prescription order written by an advanced practice nurse with prescriptive authority that is not specific to and does not identify a particular patient.

Source: L. 2015: Entire section added, (SB 15-053), ch. 78, p. 209, § 3, effective April 3.

12-38-126. Religious exclusions. No provision in this article shall be construed as applying to a person who nurses or cares for the sick in accordance with the practice or tenets of any church or religious denomination which teaches reliance upon spiritual means through prayer for healing, and who does not hold himself out to the public to be a licensed practical or professional nurse.

Source: L. 80: Entire article R&RE, p. 494, § 1, effective July 1.

Editor's note: This section is similar to former § 12-38-222 as it existed prior to 1980.

12-38-127. Continuing education. In addition to any other authority conferred upon the board by this article, the board is authorized to require no more than twenty hours of continuing education every two years as a condition of renewal of licenses and to establish procedures and standards for such educational requirements. The board shall, to assure that the continuing education requirements imposed do not have the effect of restraining competition among providers of such education, recognize a variety of alternative means of compliance with such requirements. The board shall adopt rules and regulations that are necessary to carry out the provisions of this section, such rules and regulations to be promulgated in accordance with the provisions of article 4 of title 24, C.R.S.

Source: L. 80: Entire article R&RE, p. 494, § 1, effective July 1.

Editor's note: This section is similar to former § 12-38-223 as it existed prior to 1980.

12-38-128. Independent practice - direct reimbursement. Nothing in this article shall be deemed to prohibit any licensee from practicing practical or professional nursing independently for compensation upon a fee for services basis. Nothing in this article shall be deemed to prohibit or require the direct reimbursement for nursing services and care through qualified governmental and insurance programs to persons duly licensed in accordance with this article.

Source: L. 80: Entire article R&RE, p. 494, § 1, effective July 1.

12-38-129. Disposition of fees - appropriation. All fees collected pursuant to the authority of the state board of nursing shall be transmitted to the state treasurer who shall credit the same pursuant to section 24-34-105, C.R.S., and the general assembly shall make annual appropriations pursuant to said section for the expenditures of the board incurred in the performance of its duties.

Source: L. 80: Entire article R&RE, p. 494, § 1, effective July 1. **L. 95:** Entire section amended, p. 1027, § 2, effective October 1. **L. 2009:** Entire section amended, (SB 09-239), ch. 401, p. 2172, § 14, effective July 1.

Editor's note: This section is similar to former §§ 12-38-118 and 12-38-215 as they existed prior to 1980.

12-38-130. Limitation of article. Nothing in this article shall be interpreted as conveying to the practice of nursing the performance of medical practice as regulated by article 36 of this title.

Source: L. 80: Entire article R&RE, p. 494, § 1, effective July 1.

12-38-131. Nursing peer health assistance or nurse alternative to discipline program - fund - rules. (1) As a condition of licensure and for the purpose of supporting a nursing peer health assistance program or a nurse alternative to discipline program, every applicant for an initial license or to reinstate a license and any person renewing a license issued pursuant to this article shall pay to the administering entity designated pursuant to paragraph (c) of subsection (3) of this section a fee in an amount set by the board, not to exceed twenty-five dollars per year; except that the board may adjust such amount each January 1 to reflect changes in the United States department of labor's bureau of labor statistics consumer price index, or its successor index, for the Denver-Boulder consolidated metropolitan statistical area for the price of goods paid by urban consumers.

(2) (a) No later than June 30, 2008, the board shall transfer any remaining balance in the impaired professional diversion fund, as such fund existed prior to January 1, 2008, to the administering entity chosen by the board pursuant to paragraph (c) of subsection (3) of this section.

(b) Money in the fund shall be used to support a nursing peer health assistance program or nurse alternative to discipline program in providing assistance to licensees needing help in dealing with physical, emotional, psychiatric, or psychological problems or behavioral, mental health, or substance use disorders that may be detrimental to their ability to practice nursing.

(3) (a) The board shall select one or more recognized peer health assistance organizations or nurse alternative to discipline programs as designated providers. For purposes of selecting designated providers, the board shall use a competitive bidding process that encourages participation from interested vendors. To be eligible for designation by the board pursuant to this section, a peer health assistance organization or nurse alternative to discipline program shall:

(I) Offer assistance and education to licensees concerning the recognition, identification, and prevention of physical, emotional, psychiatric, or psychological problems or behavioral,

mental health, or substance use disorders and provide for intervention when necessary or under circumstances that may be established in rules promulgated by the board;

(II) Evaluate the extent of physical, emotional, psychiatric, or psychological problems or behavioral, mental health, or substance use disorders and refer the licensee for appropriate treatment;

(III) Monitor the status of a licensee who has been referred for treatment, including assessing continued public protection;

(IV) Provide counseling and support for a licensee and for the family of a licensee referred for treatment;

(V) Receive referrals from the board; and

(VI) Make services available to all licensees statewide.

(b) The board contract with the designated provider or providers selected pursuant to paragraph (a) of this subsection (3) shall include specific deliverables, performance measures, and documentation of results.

(c) The board shall designate an administering entity for a program established pursuant to this section. Such entity shall be a nonprofit private entity that is qualified under 26 U.S.C. sec. 501 (c)(3) of the federal "Internal Revenue Code of 1986", as amended, and shall be dedicated to providing support for charitable, benevolent, educational, or scientific purposes that are related to nursing, nursing education, nursing research and science, and other nursing charitable purposes.

(d) The administering entity shall:

(I) Collect the required annual payments, directly or through the board;

(II) Distribute the moneys collected, less expenses, to the approved designated provider, as directed by the board;

(III) Provide an annual accounting to the board of all amounts collected, expenses incurred, and amounts disbursed; and

(IV) Post a surety performance bond in an amount specified by the board to secure performance under this section.

(e) The administering entity may recover from the fee required by subsection (1) of this section the actual administrative costs incurred in performing its duties under this section. Such recovery shall not exceed ten percent of the total amount collected.

(f) The board, at its discretion, may collect the required annual payments payable to the administering entity for the benefit of the administering entity and shall transfer all such payments to the administering entity. All required annual payments collected or due to the board for each fiscal year shall be deemed custodial funds that are not subject to appropriation by the general assembly, and such funds shall not constitute state fiscal year spending for purposes of section 20 of article X of the state constitution.

(4) Notwithstanding sections 12-38-116.5 and 24-4-104, C.R.S., the board may immediately suspend the license of any licensee who is referred to a peer health assistance program or nurse alternative to discipline program by the board and who fails to attend or to complete the program. If the licensee objects to the suspension, he or she may submit a written request to the board for a formal hearing on the suspension within ten days after receiving notice of the suspension, and the board shall grant the request. In the hearing, the licensee shall bear the burden of proving that his or her license should not be suspended.

(5) The records of a proceeding pertaining to the rehabilitation of a licensee under a program established pursuant to this section shall be confidential and shall not be subject to subpoena unless the licensee has been referred to the board for disciplinary action.

(6) Nothing in this section shall be construed to create any liability of the board, members of the board, or the state of Colorado for the actions of the board in making awards to peer health assistance organizations or nurse alternative to discipline programs or in designating licensees to participate in the programs of such organizations. No civil action may be brought or maintained against the board, its members, or the state for an injury alleged to have been the result of an act or omission of a licensee participating in or referred to a program provided by a peer health assistance organization or to a nurse alternative to discipline program. However, the state shall remain liable under the provisions of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S., if an injury alleged to have been the result of an act or omission of a licensee participating in or referred to a peer health assistance diversion program or nurse alternative to discipline program occurred while such licensee was performing duties as an employee of the state.

(7) The board is authorized to promulgate rules necessary to implement this section.

Source: L. 89: Entire section added, p. 691, § 1, effective July 1. **L. 91:** (4)(b) and (6)(a) amended, p. 973, § 1, effective May 6. **L. 95:** Entire section R&RE, p. 1081, § 9, effective July 1. **L. 2002:** (1)(b)(II) amended, p. 655, § 1, effective May 28. **L. 2003:** (2)(a), (2)(b), (2)(c)(I), (2)(c)(IV), and (8)(c) amended, p. 912, § 15, effective August 6. **L. 2004:** (11) amended, p. 1836, § 79, effective January 1, 2005. **L. 2007:** Entire section R&RE, p. 729, § 1, effective January 1, 2008. **L. 2009:** (1) amended, (SB 09-239), ch. 401, p. 2174, § 18, effective July 1. **L. 2010:** (3)(d)(I) amended and (3)(f) added, (HB 10-1128), ch. 172, p. 616, § 14, effective April 29. **L. 2017:** (2)(b), (3)(a)(I), and (3)(a)(II) amended, (SB 17-242), ch. 263, p. 1276, § 62, effective May 25.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-38-132. Delegation of nursing tasks. (1) Any registered nurse, as defined in section 12-38-103 (11), may delegate any task included in the practice of professional nursing, as defined in section 12-38-103 (10), subject to the requirements of this section. In no event may a registered nurse delegate to another person the authority to select medications if such person is not, independent of such delegation, authorized by law to select medications.

(2) Delegated tasks shall be within the area of responsibility of the delegating nurse and shall not require any delegatee to exercise the judgment required of a nurse.

(3) No delegation shall be made without the delegating nurse making a determination that, in his or her professional judgment, the delegated task can be properly and safely performed by the delegatee and that such delegation is commensurate with the patient's safety and welfare.

(4) The delegating nurse shall be solely responsible for determining the required degree of supervision the delegatee will need, after an evaluation of the appropriate factors which shall include but not be limited to the following:

(a) The stability of the condition of the patient;

(b) The training and ability of the delegatee;

(c) The nature of the nursing task being delegated; and

(d) Whether the delegated task has a predictable outcome.

(5) An employer of a nurse may establish policies, procedures, protocols, or standards of care which limit or prohibit delegations by nurses in specified circumstances.

(6) The board may promulgate rules pursuant to this section, including but not limited to standards on the assessment of the proficiency of the delegatee to perform delegated tasks, and standards for accountability of any nurse who delegates nursing tasks. Such rules shall be consistent with the provisions of part 3 of article 1.5 of title 25, C.R.S., section 25.5-10-204 (2)(j), C.R.S., and section 27-10.5-103 (2)(i), C.R.S.

Source: L. 92: Entire section added, p. 2009, § 2, effective June 2. **L. 2003:** (6) amended, p. 702, § 15, effective July 1. **L. 2013:** (6) amended, (HB 13-1314), ch. 323, p. 1801, § 21, effective March 1, 2014.

12-38-132.3. School nurses - over-the-counter medication. (1) This part 1 does not prohibit a person who has been appropriately trained from dispensing an over-the-counter medication to a minor as long as the person has written instructions from the minor's parent or guardian and there is a physician's standing medical order.

(2) This section is not intended to affect the authority of a professional nurse to delegate nursing tasks.

Source: L. 2017: Entire section added, (SB 17-033), ch. 81, p. 254, § 1, effective August 9.

12-38-132.5. Licensee duties relating to assistance animals - definitions. (1) A licensee who is approached by a patient seeking an assistance animal as a reasonable accommodation in housing shall either:

(a) Make a written finding regarding whether the patient has a disability and, if a disability is found, a separate written finding regarding whether the need for the animal is related to that disability; or

(b) Make a written finding that there is insufficient information available to make a finding regarding disability or the disability-related need for the animal.

(2) This section does not:

(a) Change any laws or procedures related to a service animal under Title II and Title III of the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq.;

(b) Affect in any way the right of pet ownership in public housing established in 42 U.S.C. sec. 1437z-3, as amended; or

(c) Limit the means by which a person with a disability may demonstrate, pursuant to state or federal law, that the person has a disability or that the person has a disability-related need for an assistance animal.

(3) A licensee shall not make a determination related to subsection (1) of this section unless the licensee:

(a) Has met with the patient in person;

(b) Is sufficiently familiar with the patient and the disability; and

(c) Is legally and professionally qualified to make the determination.

(4) For purposes of this section:

(a) "Assistance animal" means an animal that qualifies as a reasonable accommodation under the federal "Fair Housing Act", 42 U.S.C. sec. 3601 et seq., as amended, or section 504 of the federal "Rehabilitation Act of 1973", 29 U.S.C. sec. 794, as amended.

(b) "Disability" has the same meaning as set forth in the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq., and its related amendments and implementing regulations and includes a handicap as that term is defined in the federal "Fair Housing Act", 42 U.S.C. sec. 3601 et seq., as amended, and 24 CFR 100.201.

(c) "Service animal" has the same meaning as set forth in the implementing regulations of Title II and Title III of the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq.

Source: L. 2016: Entire section added, (HB 16-1426), ch. 309, p. 1243, § 3, effective January 1, 2017.

Cross references: For the legislative declaration in HB 16-1426, see section 1 of chapter 309, Session Laws of Colorado 2016.

12-38-133. Repeal of article - review of functions. (1) This article is repealed, effective July 1, 2020.

(2) The provisions of section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the state board of nursing created by this article.

Source: L. 95: Entire section added, p. 1087, § 10, effective July 1. **L. 2007:** (1) amended, p. 382, § 2, effective August 3. **L. 2009:** (1) amended, (SB 09-239), ch. 401, p. 2165, § 1, effective July 1.

PART 2

THE NURSING SHORTAGE ALLEVIATION ACT
OF 2002

12-38-201 and 12-38-202. (Repealed)

Source: L. 2009: Entire part repealed, (SB 09-239), ch. 401, p. 2185, § 30, effective July 1.

Editor's note: This part 2 was added in 2002 and was not amended prior to its repeal in 2009. For the text of this part 2 prior to 2009, consult the 2008 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

PART 3

PILOT PROGRAM IMPLEMENTATION
COMMITTEE

12-38-301. (Repealed)

Editor's note: (1) This part 3 was added in 2008 and was not amended prior to its repeal in 2011. For the text of this part 3 prior to 2011, consult the 2010 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Subsection (8) provided for the repeal of this part 3, effective July 1, 2011. (See L. 2008, p. 705.)

ARTICLE 38.1

Nurse Aides

PART 1

GENERAL PROVISIONS

12-38.1-101. Legislative declaration. It is declared to be the policy of the state of Colorado that, in order to safeguard life, health, property, and the public welfare of the people of the state of Colorado, and in order to protect the people of the state of Colorado against unauthorized, unqualified, and improper application of services by nurse aides in a medical facility, it is necessary that a proper regulatory authority be established. The general assembly further declares it to be the policy of this state to regulate the practice of nurse aides in medical facilities through a state agency with the power to enforce the provisions of this article. Any person who practices as a nurse aide in a medical facility without qualifying for proper certification and without submitting to the regulations provided in this article endangers the public health thereby. The general assembly hereby finds and declares that this article will meet the requirements of the federal "Omnibus Budget Reconciliation Act of 1987".

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 5, § 1, effective July 7.

Cross references: For the federal "Omnibus Budget Reconciliation Act of 1987", see Pub.L. 100-203, 101 Stat. 1330.

12-38.1-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Approved education program" means:

(a) A course of training conducted by an educational or health care institution which implements the basic nurse aide curriculum prescribed and approved by the board.

(b) Repealed.

(2) "Board" means the state board of nursing in the division of professions and occupations in the department of regulatory agencies, created in section 12-38-104.

(3) "Certified nurse aide" means a person who meets the qualifications specified in this article and who is currently certified by the board. Only a person who holds a certificate to practice as a nurse aide in this state pursuant to the provisions of this article shall have the right to use the title "Certified Nurse Aide" and its abbreviation, "C.N.A.".

(3.5) "Home health agency" means a provider of home health services, as defined in section 25.5-4-103 (7), C.R.S., that is certified by the department of public health and environment.

(4) "Medical facility" means a nursing facility licensed by the department of public health and environment or home health agencies certified to receive medicare or medicaid funds, pursuant to the federal "Social Security Act", as amended, distinct part nursing facilities, or home health agencies or entities engaged in nurse aide practices as such practices are defined in subsection (5) of this section. "Medical facility" does not include hospitals and other facilities licensed or certified pursuant to section 25-1.5-103 (1)(a), C.R.S.

(4.5) "Nursing facility" shall have the same meaning as set forth in section 25.5-4-103 (14), C.R.S.

(5) "Practice of a nurse aide" or "nursing aide practice" means the performance of services requiring the education, training, and skills specified in this article for certification as a nurse aide. Such services are performed under the supervision of a dentist, physician, podiatrist, professional nurse, licensed practical nurse, or other licensed or certified health care professional acting within the scope of his license or certificate.

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 5, § 1, effective July 7. **L. 93:** (3) and (4) amended, p. 1745, § 2, effective July 1. **L. 2002:** (3.5) and (4.5) added, p. 1287, § 1, effective June 7; (1) amended, p. 958, § 2, effective July 1. **L. 2003:** (4) amended, p. 702, § 16, effective July 1. **L. 2006:** (3.5) and (4.5) amended, p. 2000, § 43, effective July 1.

Editor's note: Subsection (1)(b)(II) provided for the repeal of subsection (1)(b), effective July 1, 2008. (See L. 2002, p. 958.)

12-38.1-103. Certification - state board of nursing - rules. (1) In addition to all other powers and duties conferred and imposed upon the board by law, the board shall have the authority to certify nurse aides to practice in the state of Colorado, and the board shall implement the provisions of this article.

(2) The department of public health and environment, which is otherwise responsible for the regulation of certain medical facilities, shall, as necessary, assist the board in implementing the provisions of this article.

(3) The board shall promulgate rules and regulations to carry out the purposes of this article and to ensure compliance with federal law and regulation relating to nurse aides.

(4) The board shall maintain a registry of all certified nurse aides as well as a record of all final disciplinary action taken against persons under the provisions of this article. Such registry shall conform to all requirements of federal law and regulation.

(5) (a) The board shall not issue a certificate to a former holder of a certificate whose certificate was revoked unless the applicant meets the requirements of this article, has successfully repeated an approved education program as required by the board, and has repeated and passed a competency evaluation.

(b) No nurse aide certificate holder who has had a certificate revoked may apply for recertification before a one-year waiting period after such revocation.

(6) Funding for the nurse aide certification program, as operated by the department of regulatory agencies, shall be provided by the federal medicaid and medicare programs. Medicaid funding shall be secured by the department of health care policy and financing and medicare funding shall be secured by the department of public health and environment. All such funding shall be forwarded to the department of regulatory agencies for its use in operating the nurse aide certification program. The departments of health care policy and financing and public health and environment shall take all reasonable and necessary steps to secure such funding from the federal medicaid and medicare programs.

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 6, § 1, effective July 7. **L. 93:** (5) and (6) added, p. 1746, § 3, effective July 1. **L. 94:** (2) and (6) amended, pp. 2728, 2623, §§ 337, 39, effective July 1.

12-38.1-104. Application for certification - fee. (1) Every applicant for certification as a nurse aide, whether qualifying by competency evaluation or by endorsement, shall submit the application on forms provided by the board.

(2) (a) The application submitted pursuant to subsection (1) of this section shall be accompanied by an application fee established pursuant to section 24-34-105, C.R.S.

(b) The board may reduce the application fee if federal funds are available. Such fee shall not be subject to the provisions of section 24-34-104.4, C.R.S.

(3) (a) Repealed.

(b) (Deleted by amendment, L. 2003, p. 2631, § 5, effective June 5, 2003.)

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 6, § 1, effective July 7. **L. 95:** Entire section amended, p. 1028, § 3, effective October 1. **L. 2002:** (3) amended, p. 959, § 3, effective July 1. **L. 2003:** (3) amended, p. 2631, § 5, effective June 5. **L. 2005:** (3)(a) repealed, p. 1021, § 5, effective August 8.

12-38.1-105. Application for certification by competency evaluation. (1) Every applicant for certification by competency evaluation shall pay the required application fee and shall submit written evidence that said applicant:

(a) Has not committed any act or omission that would be grounds for discipline or denial of certification under this article; and

(b) Has successfully completed an approved education program.

(c) Repealed.

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 6, § 1, effective July 7. **L. 95:** Entire section amended, p. 1028, § 4, effective October 1. **L. 2002:** (1)(c) amended, p. 959, § 4, effective July 1. **L. 2005:** (1)(c) repealed, p. 1022, § 6, effective August 8.

12-38.1-106. Application for certification by endorsement. (1) Every applicant for certification by endorsement shall pay the required application fee, shall submit the information

required by the board in the manner and form specified by the board, and shall submit written evidence that said applicant:

(a) Is certified to practice as a nurse aide by another state or territory of the United States with requirements that are essentially similar to the requirements for certification set out in this article and that such certification is in good standing;

(b) Has not committed any act or omission that would be grounds for discipline or denial of certification under this article;

(c) Has successfully completed an education program approved by the board or a nurse aide training program that meets the standards for such programs specified in this article and those standards set by the board; and

(d) Has no record of abuse, negligence, or misappropriation of resident's property or any disciplinary action taken or pending in any other state or territory against such certification.

(e) Repealed.

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 7, § 1, effective July 7. **L. 95:** (1)(e) added, p. 1028, § 5, effective October 1. **L. 2002:** (1)(e) amended, p. 959, § 5, effective July 1. **L. 2005:** (1)(e) repealed, p. 1022, § 7, effective August 8.

12-38.1-107. Certification by competency evaluation. (1) All applicants except those certified by endorsement shall be required to pass a clinical competency evaluation. Such evaluation shall be in a written or oral form and shall include the following areas:

(a) Basic nursing skills;

(b) Personal care skills;

(c) Recognition of mental health and social services needs;

(d) Basic restorative services;

(e) Resident or patient rights.

(2) Competency evaluations shall be held at such times and places as the board determines but shall be held at least four times per year.

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 7, § 1, effective July 7.

12-38.1-108. Approved nurse aide training programs. (1) Except for any medical facility or program that has been explicitly disapproved by the department of public health and environment, the board may approve any nurse aide training program offered by or held in a medical facility or offered and held outside a medical facility. Such approval by the board shall be sufficient to authorize and permit the operation of such training program.

(2) The curriculum content for nurse aide training must include material which will provide a basic level of both knowledge and demonstrable skills for each individual completing the program and be presented in such a manner which will take into consideration individuals with limited literacy skills. The curriculum content must include needs of populations which may be served by an individual medical facility.

(3) The following topics shall be included in the curriculum:

(a) Communication and interpersonal skills;

(b) Infection control;

(c) Safety and emergency procedures;

(d) Promoting residents' and patients' independence;

(e) Respecting residents' and patients' rights.

(4) The training program shall be designed to enable participants to develop and demonstrate competency in the following areas:

(a) Basic nursing skills;

(b) Personal care skills;

(c) Recognition of mental health and social services needs;

(d) Basic restorative services;

(e) Resident or patient rights.

(5) The board or its designee shall inspect and survey each nurse aide training program it approves during the first year following such approval and every two years thereafter. Such inspection or survey may be made in conjunction with surveys of medical facilities conducted by the department of public health and environment.

(6) The board may require a nurse aide training program to include up to twenty-five percent more hours than the minimum requirements established in the federal "Omnibus Budget Reconciliation Act of 1987", as amended, Pub.L. 100-203, 101 Stat. 1330 (1987). Any additional training hours shall be within the subject areas required by federal law.

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 7, § 1, effective July 7. **L. 94:** (1) and (5) amended, p. 2728, § 338, effective July 1. **L. 2009:** (6) amended, (SB 09-138), ch. 400, p. 2163, § 11, effective July 1.

12-38.1-108.5. Scope of practice - rules. (1) In addition to any nursing tasks delegated to a certified nurse aide pursuant to section 12-38-132, a certified nurse aide who is deemed competent by a registered nurse licensed pursuant to article 38 of this title may perform the following tasks:

(a) Digital stimulation, insertion of a suppository, or the use of an enema, or any other medically acceptable procedure to stimulate a bowel movement;

(b) Gastrostomy-tube and jejunostomy-tube feedings; and

(c) Placement in a client's mouth of presorted medication that has been boxed or packaged by a registered nurse, a licensed practical nurse, or a pharmacist.

(2) The board shall promulgate rules concerning the competency requirements for a certified nurse aide to perform the tasks listed in subsection (1) of this section.

(3) The duties performed by a certified nurse aide in paragraphs (a), (b), and (c) of subsection (1) of this section are not considered a delegation of nursing tasks pursuant to section 12-38-132.

(4) A registered nurse who in good faith determines that a certified nurse aide is competent to perform the tasks listed in subsection (1) of this section is not liable for the actions of the certified nurse aide in the performance of the tasks.

Source: L. 2015: Entire section added, (HB 15-1182), ch. 66, p. 182, § 1, effective August 5.

12-38.1-109. Renewal of certification. Each certificate to practice as a nurse aide shall be renewed or reinstated pursuant to a schedule established by the director of the division of

professions and occupations within the department of regulatory agencies and shall be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director of the division of professions and occupations within the department of regulatory agencies may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her certification pursuant to the schedule established by the director of the division of professions and occupations, such certificate shall expire. Any person whose certificate has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 8, § 1, effective July 7. **L. 93:** Entire section amended, p. 1746, § 4, effective July 1. **L. 2003:** Entire section amended, p. 2631, § 6, effective June 5. **L. 2004:** Entire section amended, p. 1837, § 81, effective August 4.

12-38.1-110. Advisory committee. (1) To assist in the performance of its duties under this article, the board may designate an advisory committee, which shall report to the board. Such committee shall be composed of seven members who have expertise in an area under review. One member shall be a certified nurse aide; one member shall be a licensed professional nurse or a licensed practical nurse as defined in section 12-38-103, who supervises certified nurse aides; one member shall represent a home health agency; one member shall represent a nursing facility; one member shall be a department of public health and environment employee; and two members shall be members of the public. Committee members shall receive a per diem allowance pursuant to section 24-34-102 (13), C.R.S., for their services and shall be reimbursed for the actual and necessary expenses in the performance of their duties from the division of professions and occupations cash fund by the general assembly.

(2) (Deleted by amendment, L. 93, p. 1747, § 5, effective July 1, 1993.)

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 8, § 1, effective July 7. **L. 93:** (1) and (2) amended, p. 1747, § 5, effective July 1. **L. 94:** (1) amended, p. 2728, § 339, effective July 1. **L. 2003:** (1) amended, p. 2632, § 7, effective June 5. **L. 2009:** (1) amended, (SB 09-138), ch. 400, p. 2158, § 4, effective July 1.

12-38.1-110.3. Medication administration advisory committee - created - department of regulatory agencies - report. (Repealed)

Source: L. 2002: Entire section added, p. 1287, § 2, effective June 7. **L. 2003:** (5) added, p. 2632, § 8, effective June 5. **L. 2006:** (5) repealed, p. 2000, § 44, effective July 1. **L. 2009:** Entire section repealed, (SB 09-138), ch. 400, p. 2158, § 5, effective July 1.

12-38.1-110.5. Medication aides - training - scope of duties - rules. (1) Prior to a certified nurse aide obtaining authority as a medication aide to administer medications, the certified nurse aide shall meet all applicable requirements as established by rules of the board. The board shall promulgate rules regarding the scope of practice, education, experience, and certification requirements for a nurse aide to obtain authority to administer medications. The board shall consider, but not be limited to, reducing the number of required hours of education, expanding the allowable routes of administration, reducing or eliminating the required hours of

work experience, and developing different scopes of practice depending on practice setting, if appropriate.

(2) and (3) (Deleted by amendment, L. 2009, (SB 09-138), ch. 400, p. 2161, § 10, effective July 1, 2009.)

(4) The board shall promulgate rules regarding the supervision requirements for a medication aide, the requirements for a registered nurse to perform a patient assessment before a medication aide administers medications to the patient, and requirements for a registered nurse to review medications to be administered by a medication aide.

(5) The administration of medications by medication aides shall not alter any requirement or limitation applicable to the delegation of nursing tasks pursuant to section 12-38-132.

(6) (Deleted by amendment, L. 2009, (SB 09-138), ch. 400, p. 2161, § 10, effective July 1, 2009.)

Source: L. 2005: Entire section added, p. 1019, § 1, effective August 8. **L. 2009:** (1), (2), (3), and (6) amended, (SB 09-138), ch. 400, p. 2161, § 10, effective July 1.

12-38.1-111. Grounds for discipline. (1) The board may suspend, revoke, or deny any person's certification to practice as a nurse aide or authority to practice as a medication aide, or may issue to the person a letter of admonition, upon proof that the person:

(a) Has procured or attempted to procure a certificate by fraud, deceit, misrepresentation, misleading omission, or material misstatement of fact;

(b) Has been convicted of a felony or has had a court accept a plea of guilty or nolo contendere to a felony. A certified copy of such conviction or plea from a court of competent jurisdiction shall be prima facie evidence of such conviction or plea. In considering discipline based on the grounds specified in this paragraph (b), the board shall be governed by the provisions of section 24-5-101, C.R.S.

(c) (Deleted by amendment, L. 2003, p. 2633, § 10, effective June 5, 2003.)

(d) Has had a certification to practice as a nurse aide or to practice 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.

(e) Has violated any provision of this article or has aided or knowingly permitted any person to violate any provision of this article;

(f) (Deleted by amendment, L. 2003, p. 2633, § 10, effective June 5, 2003.)

(g) Has negligently or willfully violated any order, rule, or regulation of the board pertaining to practice or certification as a nurse aide;

(h) Has verbally or physically abused a person under the care of the certified nurse aide;

(i) Has an alcohol use disorder, as defined in section 27-81-102, or a substance use disorder, as defined in section 27-82-102, or excessively uses any habit-forming drug or any controlled substance, as defined in section 18-18-102 (5), or other drugs having similar effects, or is diverting controlled substances, as defined in section 18-18-102 (5), or other drugs having similar effects from the person's place of employment;

(j) Has misused any drug or controlled substance, as defined in section 18-18-102 (5), C.R.S.;

(k) Has a physical or mental disability which renders him unable to practice as a certified nurse aide with reasonable skill and safety to the patients and which may endanger the health or safety of persons under his care;

(l) Has violated the confidentiality of information or knowledge as prescribed by law concerning any patient;

(m) Has misappropriated patient or facility property;

(n) Has engaged in any conduct that would constitute a crime as defined in title 18, C.R.S., if such conduct relates to the person's ability to practice as a nurse aide. In considering discipline based upon the grounds specified in this paragraph (n), the board shall be governed by the provisions of section 24-5-101, C.R.S.

(o) Has neglected a person under the care of the certified nurse aide;

(p) Has willfully or negligently acted in a manner inconsistent with the health or safety of persons under his or her care;

(q) Has willfully or negligently practiced as a medication aide in a manner that does not meet generally accepted standards for such practice;

(r) Has willfully or negligently violated any order or rule of the board pertaining to the practice or authorization as a medication aide;

(s) Has practiced in a medical facility as a nurse aide except as provided in this article;

(t) (Deleted by amendment, L. 2009, (SB 09-138), ch. 400, p. 2160, § 6, effective July 1, 2009.)

(u) Has practiced as a nurse aide during any period when his or her certificate has been suspended or revoked;

(v) Has sold or fraudulently obtained or furnished a certificate to practice as a nurse aide or has aided or abetted therein;

(w) Has failed to respond in a materially factual and timely manner to a complaint as grounds for discipline pursuant to section 12-38.1-114;

(x) Has failed to report a criminal conviction to the board within forty-five days after the conviction.

(2) Except as otherwise provided in subsection (1) of this section, the board need not find that the actions which form the basis for the disciplinary action were willful. However, the board, in its discretion, may consider whether such action was willful in determining the sanctions it imposes on the nurse aide.

(3) (Deleted by amendment, L. 2003, p. 2633, § 10, effective June 5, 2003.)

(4) An employer of a medication aide shall report conduct that constitutes grounds for discipline pursuant to this section to the board and any disciplinary action taken by the employer against a medication aide or the resignation of a medication aide in lieu of a disciplinary action resulting from such conduct.

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 8, § 1, effective July 7. **L. 93:** (1)(m) amended and (3) added, p. 1747, § 6, effective July 1. **L. 95:** (1)(n) added, p. 1029, § 6, effective October 1. **L. 2003:** IP(1), (1)(c), (1)(f), (1)(h) to (1)(j), and (3) amended and (1)(o) added, p. 2633, § 10, effective June 5. **L. 2004:** IP(1) amended, p. 1837, § 82, effective August 4; (1)(i) amended, p. 1195, § 38, effective August 4. **L. 2005:** IP(1) amended and (1)(p), (1)(q), (1)(r), and (4) added, p. 1021, §§ 2, 3, effective August 8. **L. 2006:** (1)(s) to (1)(v) added with relocated provisions, p. 89, § 33, effective August 7. **L. 2009:** IP(1), (1)(i), and (1)(t) amended

and (1)(w) and (1)(x) added, (SB 09-138), ch. 400, p. 2160, § 6, effective July 1. **L. 2012:** (1)(i) amended, (HB 12-1311), ch. 281, p. 1613, § 20, effective July 1. **L. 2017:** IP(1) and (1)(i) amended, (SB 17-242), ch. 263, p. 1276, § 63, effective May 25.

Editor's note: Subsections (1)(s), (1)(t), (1)(u), and (1)(v) are similar to former § 12-38.1-118 (1)(a), (1)(b), (1)(c), and (1)(d) as they existed prior to 2006.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-38.1-112. Withholding or denial of certification. (1) If the board determines that an applicant for an initial certificate to practice as a nurse aide does not possess the qualifications specified in section 12-38.1-105 or 12-38.1-106, that section 12-38.1-111 (1)(n) is applicable, or that there is reasonable cause to believe that the applicant has committed any of the acts set forth in section 12-38.1-111 as grounds for discipline, it may deny the applicant a certificate. When the board denies a certificate, it shall comply with the following procedures:

(a) The provisions of section 24-4-104, C.R.S., shall apply, and the board shall provide the applicant with a written statement that sets forth the basis for the board's determination.

(b) If the applicant requests a hearing pursuant to section 24-4-104 (9), C.R.S., the following shall apply:

(I) An applicant whose certification has been denied on the basis of a lack of qualifications has the burden of proof to show that he possesses the qualifications required under this article.

(II) For an applicant whose certification has been denied on the basis of reasonable cause to believe that grounds for discipline exist, the board has the burden of proof to show the commission of acts constituting grounds for discipline under this article.

(c) If a hearing is conducted, the board shall affirm, modify, or reverse its prior determination and action in accordance with the findings resulting from such hearing.

(d) If an applicant who has requested a hearing pursuant to section 24-4-104 (9), C.R.S., fails to appear at such hearing, absent a determination by the board that there was good cause for such failure to appear, the board may affirm its prior action of withholding certification without conducting a hearing on the matter.

(e) If the board withholds certification without a hearing in accordance with the provisions of this section, it shall be immune from suit concerning such withholding unless it has acted unreasonably or has failed to act in good faith.

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 9, § 1, effective July 7. **L. 95:** IP(1) amended, p. 1029, § 7, effective October 1.

12-38.1-113. Mental and physical competency of nurse aides. (1) If a certified nurse aide is determined by a court of competent jurisdiction to have a mental health disorder, the board shall automatically suspend his or her certification, and the suspension must continue until the certified nurse aide is determined by the court to be restored to competency; duly discharged as restored to competency; or otherwise determined to be competent in any other manner provided by law.

(2) (a) If the board has reasonable cause to believe that a certified nurse aide's physical or mental health has resulted in the nurse aide being unable to practice with reasonable skill or that the practice of the nurse aide is a threat to the safety of his or her patients, the board may require the nurse aide to submit to a mental or physical examination by a physician or other licensed health care provider designated by the board.

(b) If a nurse aide fails to submit to a mental or physical examination, the board may suspend the nurse aide's certification until the required examination or examinations are conducted.

(3) Every person who applies to the board for certification as a nurse aide shall be deemed by virtue of such application to have given his consent to undergo a physical or mental examination at any time if the board so requests. Any request by the board to a nurse aide to submit to such an examination shall be in writing and shall contain the basis upon which the board determined that reasonable cause to believe the condition specified in paragraph (a) of subsection (2) of this section exists.

(4) A certified nurse aide who has been requested to submit to a physical or mental examination may provide the board with information concerning his or her physical or mental health from a physician of the nurse aide's own choice. The board may consider such information in conjunction with, but not in lieu of, testimony and information provided by the physician designated by the board to examine the nurse aide.

(5) The results of any mental or physical examination requested by the board pursuant to this section shall not be used as evidence in any proceeding except a proceeding conducted pursuant to this article. The results of such examination shall not be deemed to be public records and shall not be made available to the public.

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 10, § 1, effective July 7. **L. 2009:** (2) amended, (SB 09-138), ch. 400, p. 2161, § 8, effective July 1. **L. 2017:** (1), (2)(a), and (4) amended, (SB 17-242), ch. 263, p. 1277, § 64, effective May 25.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-38.1-114. Disciplinary proceedings - hearing officers. (1) The board, through the department of regulatory agencies, may employ hearing officers to conduct hearings as provided by this article or to conduct hearings on any matter within the board's jurisdiction, upon such conditions and terms as the board determines to be appropriate.

(2) A proceeding for discipline of a certified nurse aide may be commenced when the board has reasonable grounds to believe that a nurse aide certified by the board has committed acts which may violate the provisions of this article.

(3) The license of a person certified by the board as a nurse aide may be revoked or such person may otherwise be disciplined upon written findings by the board that the licensee has committed acts that violate the provisions of this article.

(4) Any certified nurse aide disciplined under subsection (3) of this section shall be notified by the board, by a certified letter to the most recent address provided to the board by the certified nurse aide, no later than thirty days following the date of the board's action, of the

action taken, the specific charges giving rise to the action, and the certified nurse aide's right to request a hearing on the action taken.

(5) (a) Within thirty days after notification is sent by the board, the certified nurse aide may file a written request with the board for a hearing on the action taken. Upon receipt of the request the board shall grant a hearing to the certified nurse aide. If the certified nurse aide fails to file a written request for a hearing within thirty days, the action of the board shall be final on that date.

(b) (Deleted by amendment, L. 93, p. 1747, § 7, effective July 1, 1993.)

(6) The attendance of witnesses and the production of books, patient records, papers, and other pertinent documents at the hearing may be summoned by subpoenas issued by the board, which shall be served in the manner provided by the Colorado rules of civil procedure for service of subpoenas.

(7) Disciplinary proceedings shall be conducted in the manner prescribed by article 4 of title 24, C.R.S., and the hearing and opportunity for review shall be conducted pursuant to said article by the board or a hearing officer at the board's discretion.

(8) Failure of the certified aide to appear at the hearing without good cause shall be deemed a withdrawal of his or her request for a hearing, and the board's action shall be final on that date. Failure, without good cause, of the board to appear at the hearing shall be deemed cause to dismiss the proceeding.

(9) (a) No previously issued certificate to engage in practice as a nurse aide shall be revoked or suspended except under the procedure set forth in this section, except in emergency situations as provided by section 24-4-104, C.R.S.

(b) The denial of an application to renew an existing certificate shall be treated in all respects as a revocation.

(10) (a) The board or an administrative law judge shall have the power to administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board. The board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the board. The person providing documents shall prepare them from the original record and shall delete from the copy provided pursuant to the subpoena the name of the patient, but the patient shall be identified by a numbered code to be retained by the custodian of the records from which the copies were made. Upon certification of the custodian that the copies are true and complete except for the patient's name, they 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 board or the custodian or the custodian's authorized employee for furnishing or using such copies in accordance with this subsection (10).

(b) Upon failure of any witness to comply with such subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board or director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the board or 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 to obey the order of the court may be punished by the court as a contempt of court.

(10.5) When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the board and, in the opinion of the board, the complaint should be dismissed, but the board has noticed indications of possible errant conduct by the certificate holder that could lead to serious consequences if not corrected, a confidential letter of concern may be issued and sent to the certificate holder.

(11) Any member of the board, any member of the board's staff, any person acting as a witness or consultant to the board, 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 liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as board member, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in the making of a complaint or report or participating in any investigative or administrative proceeding pursuant to this article shall be immune from any criminal or civil liability that otherwise might result by reason of such participation.

(12) An employer of a nurse aide shall report to the board any disciplinary action taken against the nurse aide or any resignation in lieu of a disciplinary action for conduct which constitutes a violation of this article.

(13) Except when a decision to proceed with a disciplinary action has been agreed upon by a majority of the board or its designee and notice of formal complaint is drafted and served on the licensee by first-class mail, any investigations, examinations, hearings, meetings, or any other proceedings of the board related to discipline that are conducted pursuant to the provisions of this section shall be exempt from the open records provisions of article 72 of title 24, C.R.S., requiring that the proceedings of the board be conducted publicly or that the minutes or records of the board with respect to action of the board taken pursuant to the provisions of this section be open to public inspection.

(14) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a certificate holder 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 certificate, the board may issue an order to cease and desist such activity. 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 uncertified practices immediately cease.

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

(15) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this part 1, then, in addition to any specific powers granted pursuant to this part 1, the board may issue to such person an order to show cause as to why the board should not issue a final order directing such person to cease and desist from the unlawful act or uncertified practice.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (15) shall be promptly notified by the board of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the board for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order is issued. Personal service or mailing of an order or document pursuant to this subsection (15) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the board as provided in paragraph (b) of this subsection (15). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (15) does not appear at the hearing, the board may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (15) and such other evidence related to the matter as the board deems appropriate. The board shall issue the order within ten days after the board's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the board reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required certificate, or has or is about to engage in acts or practices constituting violations of this part 1, a final cease-and-desist order may be issued, directing such person to cease and desist from further unlawful acts or uncertified practices.

(IV) The board shall provide notice, in the manner set forth in paragraph (b) of this subsection (15), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

(16) If it appears to the board, based upon credible evidence presented to the board, that a person has engaged in or is about to engage in any uncertified act or practice, any act or practice constituting a violation of this part 1, any rule promulgated pursuant to this part 1, any order issued pursuant to this part 1, or any act or practice constituting grounds for administrative sanction pursuant to this part 1, the board may enter into a stipulation with such person.

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

(18) A person aggrieved by the final cease-and-desist order may seek judicial review of the board's determination or of the board's final order as provided in section 12-38.1-116.

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 11, § 1, effective July 7. **L. 93:** (3) to (9) amended and (10) to (13) added, p. 1747, § 7, effective July 1. **L. 2003:** (3) and (13) amended, p. 2633, §§ 11, 12, effective June 5. **L. 2004:** (10) and (11) amended, p. 1837, § 83, effective August 4. **L. 2006:** (10.5) and (14) to (18) added, p. 801, § 32, effective July 1.

12-38.1-115. Surrender of certificate. (1) Prior to the initiation of an investigation or hearing, any certified nurse aide may surrender his certificate to practice as a nurse aide to the board.

(2) Following the initiation of an investigation or hearing and upon a finding that to conduct such an investigation or hearing would not be in the public interest, the board may allow a certified nurse aide to surrender his certificate to practice.

(3) The board shall not issue a certificate to a former holder of a certificate whose certificate has been denied, revoked, or surrendered unless a two-year waiting period has passed since the date of the surrender and the applicant has met the requirements of this article, has successfully repeated an approved education program, and has repeated and passed a competency evaluation.

(4) The surrender of a certificate in accordance with this section removes all rights and privileges to practice as a nurse aide, including the right to apply for renewal of a certificate.

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 12, § 1, effective July 7. **L. 93:** (3) amended, p. 1750, § 8, effective July 1. **L. 2009:** (3) amended, (SB 09-138), ch. 400, p. 2163, § 13, effective July 1.

12-38.1-116. Judicial review. The court of appeals shall have initial jurisdiction to review all final actions and orders of the board that are subject to judicial review. Such proceedings shall be conducted in accordance with section 24-4-106 (11), C.R.S.

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 12, § 1, effective July 7.

12-38.1-117. Exclusions. (1) This article shall not be construed to affect or apply to:

(a) The gratuitous care of friends or family members;

(b) A person for hire who does not represent himself or herself as or hold himself or herself out to the public as a certified nurse aide. However, no person for hire who is not a nurse aide certified under this article shall perform the duties of or hold himself or herself out as being able to perform the full duties of a certified nurse aide.

(c) Nursing assistance in the case of an emergency;

(d) A person who is directly employed by a medical facility while acting within the scope and course of such employment for the first four consecutive months of such person's employment at such medical facility if such person is pursuing initial certification as a nurse aide. A person may utilize this exclusion only once in any twelve-month period. This exclusion shall not apply to any person who has allowed his or her certification to lapse, had his or her certification as a nurse aide suspended or revoked, or had his or her application for such certification denied.

(e) Any person licensed, certified, or registered by the state of Colorado who is acting within the scope of such license, certificate, or registration;

(f) Any person performing services pursuant to sections 12-38-132, 25.5-10-204 (2)(j), 27-10.5-103 (2)(i), C.R.S., and part 3 of article 1.5 of title 25, C.R.S.

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 12, § 1, effective July 7. **L. 93:** (1)(f) added, p. 1750, § 9, effective July 1. **L. 2003:** (1)(b) and (1)(d) amended, p. 2634, § 13, effective June 5; (1)(f) amended, p. 703, § 17, effective July 1. **L. 2009:** (1)(d) amended, (SB 09-138), ch. 400, p. 2163, § 12, effective July 1. **L. 2013:** (1)(f) amended, (HB 13-1314), ch. 323, p. 1801, § 22, effective March 1, 2014.

12-38.1-118. Unauthorized practices - penalties.

(1) Repealed.

(2) Any person who practices or offers or attempts nursing aide practice or medication administration without an active certificate of authority issued under this article; practices in a medical facility as a nurse aide except as provided in this article; uses any designation in connection with his or her name that tends to imply that he or she is a certified nurse aide unless he or she is so certified under this article; practices as a nurse aide during any period when his or her certificate has been suspended or revoked; or sells or fraudulently obtains or furnishes a certificate to practice as a nurse aide or aids or abets therein 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 any person committing a second or subsequent offense commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 13, § 1, effective July 7. **L. 93:** (2) amended, p. 1750, § 10, effective July 1. **L. 2002:** (2) amended, p. 1480, § 81, effective October 1. **L. 2006:** (1) repealed and (2) amended, p. 89, §§ 35, 34, effective August 7. **L. 2009:** (2) amended, (SB 09-138), ch. 400, p. 2160, § 7, effective July 1.

Editor's note: Subsections (1)(a), (1)(b), (1)(c), and (1)(d) were relocated to § 12-38.1-111 (1)(s), (1)(t), (1)(u), and (1)(v) in 2006.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-38.1-119. Injunctive proceedings. The board may apply for injunctive relief through the attorney general in any court of competent jurisdiction to enjoin any person who does not possess a current valid certificate as a nurse aide issued under the provisions of this article from committing any act declared to be unlawful under or prohibited by this article. Such injunctive proceedings shall be in addition to and not in lieu of all penalties and other remedies provided for in this article.

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 13, § 1, effective July 7.

12-38.1-120. Repeal of article. This article is repealed, effective September 1, 2020. Prior to such repeal, the certification functions of the state board of nursing shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 13, § 1, effective July 7. **L. 91:** Entire section amended, p. 683, § 28, effective April 20. **L. 93:** Entire section amended, p. 1751, § 11, effective July 1. **L. 2003:** Entire section amended, p. 2630, § 1, effective June 5. **L. 2004:** Entire section amended, p. 348, § 10, effective July 1. **L. 2009:** Entire section amended, (SB 09-138), ch. 400, p. 2157, § 1, effective July 1.

PART 2

DIRECT CARE PROVIDER CAREER PATH
PILOT PROGRAM

12-38.1-201 to 12-38.1-208. (Repealed)

Editor's note: (1) This part 2 was added in 2002. For amendments to this part 2 prior to its repeal in 2008, consult the 2007 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Section 12-38.1-208 provided for the repeal of this part 2, effective July 1, 2008. (See L. 2002, p. 958.)

ARTICLE 39

Nursing Home Administrators

Editor's note: This article was numbered as article 8 of chapter 91, C.R.S. 1963. This article was repealed and reenacted in 1978 and was subsequently repealed and reenacted in 1993, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1993, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers prior to 1993 are shown in editor's notes following those sections that were relocated.

12-39-101. Legislative declaration. The general assembly declares that the intent of this article is to provide a measure of protection to the residents of nursing homes in this state who are aged or who have disabilities by establishing a means to regulate nursing home administrators to ensure quality administration and sound management of nursing homes. It is also the intent of the general assembly that the board of examiners of nursing home administrators be adequately funded to carry out the duties and functions specified by this article as well as the legislative intent expressed in this section.

Source: L. 93: Entire article R&RE, p. 1469, § 1, effective July 1; entire section amended, p. 1632, § 11, effective July 1.

Editor's note: (1) This section is similar to former § 12-39-101 as it existed prior to 1993.

(2) Amendments to this section by Senate Bill 93-15 and Senate Bill 93-242 were harmonized.

12-39-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Board" means the board of examiners of nursing home administrators.

(2) "Nursing home administrator" means any individual licensed and responsible for planning, organizing, directing, and controlling the operation of a nursing home or who in fact performs such functions, whether or not such functions are shared by one or more other persons.

(3) "Nursing home administrator-in-training" means an individual registered with the board pursuant to the provisions of this article.

(4) "Nursing home facility" shall have the same meaning as that set forth in section 25-1-1002, C.R.S., and shall include nursing care facilities, whether proprietary or nonprofit, which are licensed under section 25-1.5-103 (1)(a)(I), C.R.S., or pursuant to the rules for nursing homes promulgated by the department of public health and environment. The term "nursing home" includes but is not limited to nursing homes owned or administered by the state government or any agency or political subdivision thereof.

(5) "Practice of nursing home administration" means the planning, organizing, directing, and control of the operation of a nursing home.

(6) "Reasonable grounds" means facts and circumstances sufficiently strong to warrant a prudent person to believe that the facts and circumstances are true.

Source: L. 93: Entire article R&RE, p. 1469, § 1, effective July 1. **L. 94:** (4) amended, p. 2729, § 340, effective July 1. **L. 2003:** (4) amended, p. 703, § 18, effective July 1.

Editor's note: This section is similar to former § 12-39-103 as it existed prior to 1993.

12-39-103. Administrator license required. No person shall practice or offer to practice nursing home administration in this state or use any title, sign, card, or device to indicate that such person is a nursing home administrator, unless such person has been duly licensed as a nursing home administrator as required by this article.

Source: L. 93: Entire article R&RE, p. 1470, § 1, effective July 1.

Editor's note: This section is similar to former § 12-39-102 as it existed prior to 1993.

12-39-103.5. State training school. The nursing home administrator in each of the three state home and training schools at Grand Junction, Pueblo, and Wheat Ridge is not required to be the superintendent of such facility.

Source: L. 93: Entire article R&RE, p. 1470, § 1, effective July 1.

Editor's note: This section is similar to former § 12-39-102 as it existed prior to 1993.

12-39-104. Board of examiners of nursing home administrators - creation - subject to termination. (1) (a) The board of examiners of nursing home administrators is hereby

created in the division of professions and occupations in the department of regulatory agencies. The board is composed of the following members appointed by the governor:

(I) Three members who are practicing nursing home administrators duly licensed under this article, at least one of whom shall be from nonprofit facility administration.

(II) Repealed.

(III) Three members shall be representative of the public at large; except that upon the expiration of the term of office of the one member of the board representing the public whose term expires on July 1, 2011, the board shall consist of two members representative of the public at large.

(b) No more than three of the members of the board shall be officials or full-time employees of state government or local governments. The term of office for each member of the board shall be four years. No member of the board shall serve more than two consecutive terms. All the members of the board shall be residents of this state.

(2) (a) The governor shall make appointments to the board. In making an appointment to fill a vacancy on the board in the position of, or to fill the remainder of an unexpired term for, a nursing home administrator who is from nonprofit facility administration, as required by subparagraph (I) of paragraph (a) of subsection (1) of this section, if the governor, after a good-faith attempt, is unable to find a nursing home administrator candidate who comes from nonprofit facility administration to fill the vacancy or complete the unexpired term, the governor may appoint any qualified nursing home administrator to complete the unexpired term or fill the vacancy in that board position. If the appointment is to fill a vacancy, the board member may serve the full term and is eligible for appointment for a second term.

(b) The governor may remove any board member for negligence, incompetency, unprofessional conduct, or willful misconduct. Actions constituting neglect of duty include but are not limited to three unexcused absences from scheduled meetings in any one calendar year. The governor shall fill a vacancy in the membership of the board for the remainder of the unexpired term. A member who is a practicing nursing home administrator or long-term care professional shall serve for a full term only if, during such term, such member is actively employed as a practicing member of his or her profession without a lapse of employment greater than one hundred twenty days.

(3) The board shall elect annually from its membership a chair and vice-chair. The board shall hold two or more meetings each year. At any meeting a majority shall constitute a quorum.

(4) The board shall exercise its powers and perform its duties and functions specified by this article under the department of regulatory agencies and the executive director thereof and the division of professions and occupations as if the same were transferred to the department by a **type 1** transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.

(5) The director of the division of professions and occupations in the department of regulatory agencies may appoint, subject to section 13 of article XII of the state constitution, a program director to the board. The program director shall not be a member of the board, but shall have such powers and shall perform such duties as are prescribed by law and the rules of the board. Additional staff may be appointed by the director of the division of professions and occupations to adequately assist the board and the program director in keeping records and in the performance of their duties. These employees, if any, shall be appointed and serve in accordance with section 13 of article XII of the state constitution.

(6) The provisions of section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the board of examiners of nursing home administrators created by this section.

(7) Repealed.

Source: L. 93: Entire article R&RE, p. 1470, § 1, effective July 1. **L. 99:** (1) and (2) amended, p. 359, § 1, effective July 1. **L. 2003:** (7) repealed, p. 913, § 16, effective August 6. **L. 2009:** IP(1)(a), (1)(a)(II), (1)(a)(III), and (5) amended, (SB 09-169), ch. 225, p. 1022, § 4, effective May 4. **L. 2012:** IP(1)(a), (1)(a)(I), and (2) amended, (SB 12-091), ch. 121, p. 410, § 1, effective September 1.

Editor's note: (1) This section is similar to former § 12-39-104 as it existed prior to 1993.

(2) Subsection (1)(a)(II)(D) provided for the repeal of subsection (1)(a)(II), effective July 1, 2011. (See L. 2009, p. 1022.)

12-39-104.5. Qualifications of board members. (1) A nursing home administrator is qualified to be appointed to the board if the person:

(a) Is a legal resident of Colorado;

(b) Is currently licensed as a nursing home administrator; and

(c) Has been actively engaged as a licensed nursing home administrator for at least three years.

(2) Notwithstanding subsection (1) of this section, a person convicted of a felony in Colorado or any other state or of violating this article or any law governing the practice of nursing home administrators shall not be appointed to or serve on the board.

Source: L. 99: Entire section added, p. 360, § 2, effective July 1. **L. 2009:** (1)(c) amended, (SB 09-169), ch. 225, p. 1022, § 5, effective May 4. **L. 2012:** (1) amended, (SB 12-091), ch. 121, p. 411, § 2, effective September 1.

12-39-105. Powers and duties of the board - rules. (1) (a) The board has the following powers and duties:

(I) (A) To adopt rules defining standards of nursing home administration, including the responsibilities and duties of nursing home administrators, consistent with this article. The standards established in the rules shall be met by individuals in order to receive and retain a license and shall be designed to ensure that nursing home administrators are qualified by education and training in the appropriate field to serve as nursing home administrators.

(B) To develop and apply appropriate techniques, including examinations and investigations, for determining whether an individual meets such standards;

(II) To issue licenses to individuals determined, after application of such techniques, to meet such standards specified in subparagraph (I) of this paragraph (a);

(III) To revoke, suspend, withhold, or refuse to renew any license previously issued by the board, to place a licensee or temporary license holder on probation, or to issue a letter of admonition to a licensee in accordance with section 12-39-111 (3) in any case where the individual holding any such license is determined to have failed to conform to the standards

developed pursuant to subparagraph (I) of this paragraph (a) or to have committed an act that constitutes grounds for discipline as set forth in section 12-39-111;

(IV) To establish and carry out procedures designed to ensure that individuals licensed as nursing home administrators will, during any period that they serve as such, comply with the requirements of such standards specified in subparagraph (I) of this paragraph (a);

(V) To conduct investigations, hold hearings, and take evidence in all matters relating to the exercise and performance of the powers and duties vested in the board and, in connection with any investigation following the filing of a signed complaint, an investigation initiated by the board, or any hearing, to administer oaths and issue subpoenas compelling the attendance and testimony of witnesses and the production of books, papers, or records relevant to an investigation or hearing;

(VI) (Deleted by amendment, L. 2009, (SB 09-169), ch. 225, p. 1023, § 6, effective May 4, 2009.)

(b) The board or an administrative law judge shall have the power to administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board. The board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the board. The person providing documents shall prepare them from the original record and shall delete from the copy provided pursuant to the subpoena the name of the resident, but shall identify the resident by a numbered code, to be retained by the custodian of the records from which the copies were made. Upon certification of the custodian that the copies are true and complete except for the resident's name, they 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 the copies, and no liability shall lie against the board, the custodian, or the custodian's authorized employee for furnishing or using the copies in accordance with this subsection (1).

(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 licensee resides or conducts business, upon application by the board or director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the board or 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 to obey the order of the court may be punished by the court as a contempt of court.

(2) Repealed.

(3) (a) The board shall develop rules, with input from long-term care facility provider associations, the department of public health and environment, the office of the state attorney general, and consumer representatives, concerning factors to be considered in determining performance that fails to meet generally accepted standards for nursing home administrators and whether or not remedial or disciplinary actions are warranted. The board may create an advisory committee to assist the board in developing standards that describe the responsibilities and duties of nursing home administrators.

(b) If after an investigation the board determines that there are reasonable grounds to believe that the performance of a licensed administrator is inconsistent with the health or safety

of residents in the care of the facility in which the administrator works and is contrary to standards adopted by the board, the board may initiate disciplinary action as may be warranted.

(4) The board shall have the authority to make rules consistent with law as may be necessary for the proper performance of its duties and to take such other actions as may be necessary to enable the state to meet the requirements set forth in section 1908 of the federal "Social Security Act", the federal rules promulgated thereunder, and other pertinent federal requirements.

Source: L. 93: Entire article R&RE, p. 1471, § 1, effective July 1. **L. 94:** IP(2)(a) and (3)(a) amended, p. 2729, § 341, effective July 1. **L. 95:** (1)(a)(III) amended, p. 1093, § 7, effective May 31. **L. 96:** (1)(a)(VI) amended, p. 1243, § 104, effective August 7. **L. 99:** (2) repealed, p. 360, § 3, effective July 1. **L. 2004:** (1)(b) amended and (1)(c) added, p. 1838, § 84, effective August 4. **L. 2009:** (1)(a)(I)(A), (1)(a)(III), (1)(a)(V), (1)(a)(VI), (1)(b), and (3)(a) amended, (SB 09-169), ch. 225, p. 1023, § 6, effective May 4.

Editor's note: This section is similar to former §§ 12-39-105 and 12-39-117 as they existed prior to 1993.

Cross references: For the legislative declaration contained in the 1996 act amending subsection (1)(a)(VI), see section 1 of chapter 237, Session Laws of Colorado 1996.

12-39-106. Qualifications for admission to examination. (1) The board shall admit to examination for licensure as a nursing home administrator any applicant who pays a fee as determined by the board, who submits evidence of suitability prescribed by the board, who is twenty-one years of age or older, and who provides written documentation that the applicant meets one of the following requirements:

(a) The applicant has successfully completed the administrator-in-training program pursuant to section 12-39-107; or

(b) The applicant has successfully completed a bachelor's degree or higher degree in public health administration or health administration, a master's degree in management or business administration, or any degree or degrees deemed appropriate by the board; or

(c) (I) The applicant has successfully completed an associate's degree or higher degree in a health care-related field or a bachelor's degree in business or public administration and has a minimum of one year of experience in administration in a nursing home or hospital. For the purposes of this section, a registered nurse who is a graduate of a three-year diploma program meets the associate degree requirement.

(II) For purposes of the experience required by this paragraph (c), an applicant must have day-to-day, on-site responsibility for supervising, directing, managing, monitoring, or exercising reasonable control over subordinates for one year.

(2) If the applicant fails to provide evidence satisfactory to the board that the applicant meets the requirements of subsection (1) of this section, the applicant shall not be admitted to take the licensing examination, and the applicant shall not be entitled to or be granted a license as a nursing home administrator.

(3) (Deleted by amendment, L. 99, p. 361, § 4, effective July 1, 1999.)

Source: L. 99: Entire section amended, p. 361, § 4, effective July 1. **L. 2009:** (1)(b), (1)(c), and (2) amended, (SB 09-169), ch. 225, p. 1024, § 7, effective May 4. **L. 2012:** (1) amended, (SB 12-091), ch. 121, p. 411, § 3, effective September 1.

Editor's note: This section is similar to former § 12-39-106 as it existed prior to 1993.

12-39-107. Administrator-in-training. (1) The board may grant admission into the nursing home administrator-in-training program to an applicant for a nursing home administrator's license who meets the board's criteria for education and experience, pursuant to section 12-39-107.5. Upon successful completion of the one-thousand-hour training period, the applicant is eligible to take the examination.

(2) (Deleted by amendment, L. 2009, (SB 09-169), ch. 225, p. 1024, § 8, effective May 4, 2009.)

(3) Every nursing home administrator-in-training shall register the fact of such training with the board in accordance with the rules and on forms provided by the board.

(4) The board shall, by rule, establish a monitoring mechanism that will provide oversight of the administrator-in-training program, including a requirement that an administrator-in-training submit periodic progress reports to the board.

(5) (Deleted by amendment, L. 99, p. 362, § 5, effective July 1, 1999.)

(6) The board may waive any portion required by subsection (1) of this section if it finds that the applicant has prior experience or training sufficient to satisfy requirements established by rule of the board.

Source: L. 93: Entire article R&RE, p. 1474, § 1, effective July 1. **L. 99:** (1) and (5) amended, p. 362, § 5, effective July 1. **L. 2009:** (2), (4), and (6) amended, (SB 09-169), ch. 225, p. 1024, § 8, effective May 4. **L. 2012:** (1) amended, (SB 12-091), ch. 121, p. 412, § 4, effective September 1.

Editor's note: This section is similar to former § 12-39-111 as it existed prior to 1993.

12-39-107.5. Board to promulgate rules. The board shall promulgate rules defining the criteria for the education and experience necessary for admittance to the administrator-in-training program. The board shall furnish copies of the appropriate rules to members of the public upon request. Such criteria for the education and experience necessary for admittance to the administrator-in-training program shall not exceed successful completion of two years of college level study in an accredited institution of higher education in areas relating to health care or two years of board approved experience in nursing home administration or comparable health management experience for each year of required education.

Source: L. 99: Entire section added, p. 362, § 6, effective July 1.

12-39-108. Licenses. (1) Any license issued by the board shall be valid for a period determined pursuant to a schedule established by the director of the division of professions and occupations within the department of regulatory agencies and shall be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director of the division of professions and

occupations within the department of regulatory agencies may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license pursuant to the schedule established by the director of the division of professions and occupations, such license shall expire. Any person whose license has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

(2) Repealed.

(3) Only an individual who has qualified as a licensed nursing home administrator under the provisions of this article and who holds a valid current license pursuant to the provisions of this section has the privilege of using the title "nursing home administrator" and the right and the privilege of using the abbreviation "N.H.A." after such person's name.

(4) The board shall maintain a list of all licensed nursing home administrators, which list shall show: the place of residence, the name and age of each licensee, any action taken by the board, the number of the license issued to the licensee, and such other pertinent information as the board may deem necessary. The department shall keep a list of applicants who are denied.

(5) The board may issue a temporary license to an applicant for a period not to exceed six months. The board shall promulgate rules and regulations for the issuance of such a temporary license.

(6) A temporary license shall be granted to an applicant who is employed as a hospital administrator by a general hospital licensed or certified by the department of public health and environment. Such temporary permit shall be granted for a period not to exceed twelve months and shall be void at such time the license holder is no longer employed by the general hospital.

(7) The board shall establish, pursuant to section 24-34-105, C.R.S., and publish annually a schedule of fees for the licensing of nursing home administrators.

(8) All moneys collected or received by the board shall be transmitted to the state treasurer who shall credit the same as provided in section 24-34-105, C.R.S., and the general assembly shall make annual appropriations pursuant to said section for the expenditures of the board incurred in the performance of its duties under this article, which expenditures shall be made from such appropriations upon vouchers and warrants drawn pursuant to law.

(9) No nursing home administrator who has had a license revoked may apply for licensure before a one-year waiting period following the date of such revocation and must comply with all requirements established by rules and regulations of the board.

(10) Each licensee shall, within thirty days, notify the board of any conviction of a felony or the acceptance of a guilty plea or a plea of nolo contendere to a felony.

Source: L. 93: Entire article R&RE, p. 1475, § 1, effective July 1. **L. 94:** (6) amended, p. 2729, § 342, effective July 1. **L. 2004:** (1) amended, p. 1839, § 85, effective August 4. **L. 2009:** (2) repealed, (SB 09-169), ch. 225, p. 1025, § 9, effective May 4.

Editor's note: This section is similar to former § 12-39-109 as it existed prior to 1993.

12-39-109. Examinations. (1) The board shall determine the subjects of the state examination for all applicants for licensure as nursing home administrators.

(2) Examinations shall be held at least semiannually at such times and places as the board shall designate. Any examination shall be prepared or approved by the board.

(3) The board shall have the authority to select and administer a national examination.

Source: L. 93: Entire article R&RE, p. 1476, § 1, effective July 1.

Editor's note: This section is similar to former § 12-39-107 as it existed prior to 1993.

12-39-110. Endorsement. (1) (a) The board shall issue a license to any person duly licensed to practice nursing home administration in another state or territory of the United States who:

(I) Provides written documentation verifying that the applicant has passed a national examination administered by a nationally recognized testing entity for nursing home administrators and has passed an examination in another state; and

(II) Successfully completes the Colorado state examination provided in section 12-39-109.

(b) For purposes of this section, "state or territory" includes the District of Columbia and the commonwealth of Puerto Rico.

(2) An applicant for licensure under this section shall submit to the board, in a manner prescribed by the board, all of the following:

(a) Evidence that the applicant holds a current, active license to practice nursing home administration issued by a state or territory of the United States other than Colorado. Such evidence shall include a license history from the state or territory that issued the license, indicating whether any disciplinary or other adverse actions are currently pending or have ever been taken in connection with that license and the final disposition of such actions, if any. If an applicant is or has been licensed in more than one state or territory other than Colorado, the applicant shall submit a license history or similar record as described in this paragraph (a) from each such state or territory.

(b) A license history or similar record, as described in paragraph (a) of this subsection (2), relating to any license or registration which the applicant holds or has held in any other health care occupation in any state or territory other than Colorado. For purposes of this section, "health care occupation" includes without limitation the practices of medicine, dentistry, psychiatry, psychology, nursing, physical therapy, gerontology, chiropractic, podiatry, midwifery, optometry, pharmacy, and any other practice in which individuals are treated for medical or psychological problems or conditions, as well as the rendition of any service supportive to or ancillary to those practices.

(c) (I) Verification that the applicant has been engaged in the practice of nursing home administration, has taught in a health care administration program, or has served as a member of a nursing home survey or accreditation team for one year immediately preceding the date of the receipt of the application, or has been engaged in one of the services described in this subparagraph (I) for three of the five years immediately preceding the date of the receipt of the application; or

(II) Evidence that the applicant has demonstrated competency as a nursing home administrator as determined by the board.

Source: L. 93: Entire article R&RE, p. 1476, § 1, effective July 1. **L. 2010:** IP(2) and (2)(c) amended, (HB 10-1175), ch. 46, p. 174, § 4, effective July 1, 2011. **L. 2012:** (1) amended, (SB 12-091), ch. 121, p. 412, § 5, effective September 1.

Editor's note: This section is similar to former § 12-39-110 as it existed prior to 1993.

12-39-111. Grounds for discipline. (1) The board has the power to revoke, suspend, withhold, or refuse to renew any license, to place on probation a licensee or temporary license holder, or to issue a letter of admonition to a licensee in accordance with the procedures set forth in subsection (3) of this section, upon proof that the person:

(a) Has procured or attempted to procure a license by fraud, deceit, misrepresentation, misleading omission, or material misstatement of fact;

(b) Has been convicted of a felony or pled guilty or nolo contendere to a felony. A certified copy of the judgment of conviction by a court of competent jurisdiction shall be prima facie evidence of such conviction. In considering a possible revocation, suspension, or nonrenewal of a license or temporary license the board shall be governed by the provisions of section 24-5-101, C.R.S.

(c) Has had a license to practice nursing home administration 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.

(d) Has violated or aided or abetted a violation of any provision of this article, any rule or regulation adopted under this article, or any lawful order of the board;

(e) Has committed or engaged in any act or omission which fails to meet generally accepted standards for such nursing home administration practice or licensure;

(f) Has falsified or made incorrect entries or failed to make essential entries on resident records;

(g) Has an alcohol use disorder, as defined in section 27-81-102, or a substance use disorder, as defined in section 27-82-102, 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 (5), or participates in the unlawful use of controlled substances as specified in section 18-18-404; except that the board has the discretion not to discipline the licensee if such person is participating, in good faith, in a substance use disorder treatment program approved by the board;

(h) Has a physical disability or an intellectual and developmental disability that renders the licensee unable to practice nursing home administration with reasonable skill and safety to the residents and that may endanger the health or safety of persons under the licensee's care;

(i) Has violated the confidentiality of information or knowledge as prescribed by law concerning any resident;

(j) Has violated section 18-13-119, C.R.S., concerning the abuse of health insurance;

(k) Has failed to post in the nursing home facility in a conspicuous place and in clearly legible type a notice giving the address and telephone number of the board and stating that complaints may be made to the board;

(l) Has practiced as a nursing home administrator without a license;

(m) Has used in connection with the person's name any designations tending to imply that the person is a licensed nursing home administrator, unless the person in fact holds a valid license;

(n) Has practiced as a nursing home administrator during a period when the person's license has been suspended or revoked; or

(o) Has sold, fraudulently obtained, or furnished a license to practice as a nursing home administrator, or has aided or abetted therein.

(2) The board need not find that the actions which are grounds for discipline were willful or negligent, but it may consider the same in determining the nature of disciplinary sanctions to be imposed.

(3) (a) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the board, does not warrant formal action by the board but that should not be dismissed as being without merit, a letter of admonition may be issued and sent, by certified mail, to the licensee.

(b) When a letter of admonition is sent by the board, by certified mail, to a licensee, such licensee shall be advised that he or she has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(c) If the request for adjudication is timely made, the letter of admonition shall be deemed vacated and the matter shall be processed by means of formal disciplinary proceedings.

(4) If the board finds the charges proven and orders that discipline be imposed, it may also require the licensee to participate in a treatment program or course of training or education as a requirement for reinstatement as may be needed to correct any deficiency found in the hearing.

(5) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

Source: L. 93: Entire article R&RE, p. 1477, § 1, effective July 1. **L. 2004:** (1)(g) amended, p. 1195, § 39, effective August 4; (3) amended and (5) added, p. 1839, § 86, effective August 4. **L. 2006:** (1)(l) to (1)(o) added with relocated provisions, p. 89, § 36, effective August 7. **L. 2009:** (1)(f), (1)(h), and (1)(i) amended, (SB 09-169), ch. 225, p. 1025, § 10, effective May 4. **L. 2012:** (1)(g) amended, (HB 12-1311), ch. 281, p. 1613, § 21, effective July 1. **L. 2017:** IP(1), (1)(g), and (1)(h) amended, (SB 17-242), ch. 263, p. 1277, § 65, effective May 25.

Editor's note: (1) This section is similar to former § 12-39-112 as it existed prior to 1993.

(2) Subsections (1)(l), (1)(m), (1)(n), and (1)(o) are similar to former § 12-39-116 (1)(a), (1)(b), (1)(c), and (1)(d) as they existed prior to 2006.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-39-112. Withholding or denial of license - hearing. The board has the authority, pursuant to article 4 of title 24, C.R.S., to determine whether an applicant for a license or a temporary license to practice as a nursing home administrator possesses the qualifications required by this article, or whether there are reasonable grounds to believe that such applicant has done any of the acts set forth in section 12-39-111 as grounds for discipline. As used in this section, "applicant" does not include a person seeking the renewal of a license.

Source: L. 93: Entire article R&RE, p. 1479, § 1, effective July 1.

Cross references: For an alternative disciplinary action for persons licensed or registered pursuant to this article, see § 24-34-106.

12-39-113. Mental and physical examination of licensees. (1) (a) If the board has reasonable grounds to believe that a licensee or temporary license holder is unable to practice with reasonable skill and safety to residents because of a condition described in section 12-39-111 (1)(g) or (1)(h), it may require the person to submit to a mental or physical examination by a physician or other licensed health care professional it designates. Upon the failure of the person to submit to the mental or physical examination, unless due to circumstances beyond the person's control, the board may suspend the person's license until the person submits to the required examinations.

(b) Every licensee or temporary license holder by engaging in the practice of nursing home administration in this state or by applying for the renewal of a license or temporary license shall be deemed to have given consent to submit to a mental or physical examination when so directed in writing by the board. The direction to submit to such an examination shall contain the basis of the board's reasonable grounds to believe that the licensee is unable to practice with reasonable skill and safety to residents because of a condition described in section 12-39-111 (1)(g) or (1)(h). The licensee shall be deemed to have waived all objections to the admissibility of the examining physician's or other licensed health care professional's testimony or examination reports on the ground of privileged communication.

(2) Nothing in this section shall prevent the licensee from submitting testimony or examination reports of a physician or other licensed health care professional designated by the licensee that pertains to a condition described in section 12-39-111 (1)(g) or (1)(h) that may be considered by the board in conjunction with, but not in lieu of, testimony and examination reports of the physician or other licensed health care professional designated by the board.

(3) The results of any mental or physical examination ordered by the board shall not be used as evidence in any proceeding other than one before the board and shall not be deemed public records nor made available to the public.

Source: L. 93: Entire article R&RE, p. 1479, § 1, effective July 1. **L. 2009:** (1) and (2) amended, (SB 09-169), ch. 225, p. 1025, § 11, effective May 4.

12-39-114. Disciplinary proceedings - administrative law judge - judicial review - publicly recorded votes. (1) The board, through the department of regulatory agencies, has the authority to designate an administrative law judge to conduct hearings on any matter within the board's jurisdiction. Any designated administrative law judge shall have the powers and duties set forth in article 4 of title 24, C.R.S., and shall be appointed pursuant to part 10 of article 30 of title 24, C.R.S.

(2) Disciplinary proceedings may be commenced when the board has reasonable grounds to believe that a licensee under the board's jurisdiction has committed acts in violation of section 12-39-111.

(3) Disciplinary proceedings shall be conducted in the manner prescribed by article 4 of title 24, C.R.S., and the hearing and opportunity for review shall be conducted pursuant to said article by the board or an administrative law judge, at the board's discretion.

(4) No previously issued license to engage in the practice of nursing home administration shall be revoked or suspended until a hearing has been conducted pursuant to section 24-4-105, C.R.S., or, for emergency situations, pursuant to section 24-4-104 (4), C.R.S. The denial of an application to renew an existing license shall be treated in all respects as a revocation.

(5) Any person participating in good faith in the making of a complaint or report or participating in any investigative or administrative proceeding pursuant to this article shall be immune from any liability, civil or criminal, that otherwise might result by reason of such action.

(6) Complaints, investigations, hearings, meetings, or any other proceedings of the board conducted pursuant to the provisions of this article 39 and relating to disciplinary proceedings are exempt from the provision of any law requiring that proceedings of the board be conducted publicly or that the minutes or records of the board with respect to action of the board taken pursuant to the provisions of this article 39 be open to public inspection; except that this exemption applies only when the board, or an administrative law judge acting on behalf of the board, specifically determines that it is in the best interest of a complainant or other recipient of services to keep such proceedings or documents relating thereto closed to the public, or if the licensee is violating section 12-39-111 (1)(g), participating in good faith in a substance use disorder treatment program approved by the board or designed by the board to end any addiction or dependency specified in said section, and the licensee has not violated any provisions of the board order regarding participation in such a treatment program. If the board determines that it is in the best interest of a complainant or other recipient of services to keep such proceedings or documents relating thereto closed to the public, then the final action of the board is open to the public without disclosing the name of the client or other recipient. Final board actions and orders appropriate for judicial review may be judicially reviewed in the court of appeals in accordance with section 24-4-106 (11).

(7) When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the board and, in the opinion of the board, the complaint should be dismissed, but the board has noticed indications of possible errant conduct by the licensee that could lead to serious consequences if not corrected, a confidential letter of concern may be issued and sent to the licensee.

(8) All votes to impose discipline or dismiss a complaint must be recorded in the board's publicly available minutes and indicate how each board member voted on the question.

Source: L. 93: Entire article R&RE, p. 1480, § 1, effective July 1. **L. 2006:** (7) added, p. 803, § 33, effective July 1. **L. 2017:** (6) amended, (SB 17-242), ch. 263, p. 1278, § 66, effective May 25. **L. 2018:** (8) added, (HB 18-1294), ch. 277, p. 1750, § 3, effective July 1.

Editor's note: This section is similar to former § 12-39-112 as it existed prior to 1993.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-39-115. Temporary advisory committees - immunity. (1) The board may appoint temporary advisory committees, including temporary professional review committees, to assist in the performance of its duties with respect to individual investigations. Each temporary advisory committee shall consist of at least three licensees who have expertise in the area under review. Members of temporary advisory committees shall receive no compensation for their services but shall be reimbursed for the actual and necessary expenses incurred in the performance of their duties.

(2) If a professional review committee is established pursuant to subsection (1) of this section to investigate the quality of care being given by a person licensed pursuant to this article, such committee shall include in its membership at least three persons licensed in the same category as the licensee under review, but such committee may be authorized to act only by the board.

(3) Any member of the board or of a professional review committee, any member of the board's or committee's staff, any person acting as a witness or consultant to the board or committee, 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 liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as board or committee member, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this article shall be immune from any civil or criminal liability that may result from such participation.

Source: L. 93: Entire article R&RE, p. 1481, § 1, effective July 1. **L. 2004:** (3) amended, p. 1840, § 87, effective August 4.

12-39-116. Unauthorized practice - penalties.

(1) Repealed.

(2) Any person who practices or offers or attempts to practice as a nursing home administrator 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 any person who commits a second or subsequent offense commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: L. 93: Entire article R&RE, p. 1481, § 1, effective July 1. **L. 2002:** (2) amended, p. 1480, § 82, effective October 1. **L. 2006:** (1) repealed and (2) amended, p. 90, §§ 38, 37, effective August 7.

Editor's note: (1) This section is similar to former § 12-39-113 as it existed prior to 1993.

(2) Subsections (1)(a), (1)(b), (1)(c), and (1)(d) were relocated to § 12-39-111 (1)(l), (1)(m), (1)(n), and (1)(o) in 2006.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-39-117. Cease-and-desist orders. (1) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a 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 license, the board may issue an order to cease and desist such activity. 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 unlicensed practices immediately cease.

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

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

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

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

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (2) does not appear at the hearing, the board may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (2) and such other evidence related to the matter as the board deems appropriate. The board shall issue the order within ten days after the board's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

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

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

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

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

(5) A person aggrieved by the final cease-and-desist order may seek judicial review of the board's determination or of the board's final order as provided in section 12-39-114 (6).

Source: L. 93: Entire article R&RE, p. 1482, § 1, effective July 1. **L. 2006:** Entire section amended, p. 804, § 34, effective July 1.

12-39-118. Injunctive proceedings. The board, in the name of the people of the state of Colorado, may apply for injunctive relief through the attorney general or the district attorney in any court of competent jurisdiction to enjoin any person who does not possess a currently valid or active nursing home administrator's license from committing any act declared to be unlawful or prohibited by this article. In any action taken pursuant to this section the court shall not require the board to plead or prove irreparable injury or inadequacy of a remedy at law or to post a bond. If it is established that the defendant has been or is committing an act declared to be unlawful or prohibited by this article, the court or any judge thereof shall enter a decree perpetually enjoining said defendant from further committing such act. In the case of a violation of any injunction issued under the provisions of this section, the court or any judge thereof may summarily try and punish the offender for contempt of court. Such injunctive proceedings shall be in addition to, and not in lieu of, all penalties and other remedies provided in this article.

Source: L. 93: Entire article R&RE, p. 1482, § 1, effective July 1.

Editor's note: This section is similar to former § 12-39-114 as it existed prior to 1993.

12-39-119. Administration of nursing homes relying on treatment by spiritual means. A person who serves as an administrator of a nursing home conducted exclusively for persons who rely upon treatment by spiritual means alone, through prayer in accordance with the creed or tenets of a church or religious denomination, shall be exempt from the provisions of this article.

Source: L. 93: Entire article R&RE, p. 1482, § 1, effective July 1.

Editor's note: This section is similar to former § 12-39-118 as it existed prior to 1993.

12-39-120. Records. The board shall keep formal records of all complaints it receives and of the final disposition of such complaints. The board shall be responsible for implementing a tracking system to facilitate the retrieval of such records.

Source: L. 93: Entire article R&RE, p. 1483, § 1, effective July 1.

12-39-121. Repeal of article. (1) This article 39 is repealed, effective September 1, 2023.

(2) Prior to the repeal, the licensing functions of the board of examiners of nursing home administrators are scheduled for review in accordance with section 24-34-104.

Source: L. 93: Entire article R&RE, p. 1482, § 1, effective July 1. **L. 99:** (1) amended, p. 362, § 7, effective July 1. **L. 2009:** (1) amended, (SB 09-169), ch. 225, p. 1021, § 1, effective May 4. **L. 2018:** Entire section amended, (HB 18-1294), ch. 277, p. 1749, § 1, effective July 1.

ARTICLE 40

Optometrists

12-40-101. Legislative declaration. The practice of optometry in the state of Colorado is declared to affect the public health and safety and is subject to regulation and control in the public interest. Optometry is declared to be a learned profession, and it is further declared to be a matter of public interest and concern that the practice of optometry as defined in this article be limited to qualified persons having been examined and meeting this state's minimum acceptable level of competence and having been admitted to the practice of optometry under the provisions of this article. The priority of this article shall be to protect the consumers of the services provided through appropriate disciplinary procedures. This article shall be liberally construed to carry out these objects and purposes in accordance with this declaration of policy.

Source: L. 61: p. 578, § 1. **CRS 53:** § 102-2-1. **C.R.S. 1963:** § 102-1-1. **L. 92:** Entire section amended, p. 2020, § 1, effective July 1.

12-40-102. Practice of optometry defined. (1) (a) The "practice of optometry" means the evaluation, diagnosis, prevention, or treatment of diseases, disorders, or conditions of the vision system, eyes, and adjacent and associated structures, including the use or prescription of lenses, prisms, vision therapy, vision rehabilitation, and prescription or nonprescription drugs including schedule II controlled narcotic substances limited to hydrocodone combination drugs and schedule III, IV, and V controlled narcotic substances for ocular disease, so long as an optometrist is practicing within the scope of his or her education as is commonly taught in accredited schools and colleges of optometry and is practicing in accordance with applicable federal and Colorado law and board rules.

(b) The following are part of the practice of optometry:

(I) The removal of superficial foreign bodies from the human eye or its appendages;

(II) Postoperative care in the following situations:

(A) With referral from a physician;

(B) If ninety days have expired after the surgery unless the physician justifies medically indicated reasons for extending the postoperative period; and

(C) If the patient has been released by the physician;

(III) The treatment of anterior uveitis;

(IV) The treatment of glaucoma with all topical and oral antiglaucoma drugs;

(V) Epilation;

(VI) Dilation and irrigation of the lacrimal system;

(VII) Punctal plug insertion and removal;

(VIII) Anterior corneal puncture;

(IX) Corneal scraping for cultures;

(X) Debridement of corneal epithelium; and

(XI) Removal of corneal epithelium.

(c) Any person who is engaged in the prescribing or performing without referral of visual training or orthoptics, the prescribing of any contact lenses, including plano or cosmetic contact lenses, the fitting or adaptation of such contact lenses to the human eye, the use of scientific instruments to train the visual system or any abnormal condition of the eyes for the correction or improvement of, or the relief to, the visual function, or who holds oneself out as being able to do so, is engaged in the practice of optometry.

(d) The "practice of optometry" does not include:

(I) Surgery of or injections into the globe, orbit, eyelids, or ocular adnexa. "Surgery" means any procedure in which human tissue is cut, altered, or otherwise infiltrated by mechanical or laser means.

(II) The use of schedule I or II narcotics, except for hydrocodone combination drugs;

(III) Treatment of posterior uveitis; or

(IV) The use of injectable drugs, except for the use of an epinephrine auto-injector to counteract anaphylactic reaction.

(2) A licensed optometrist who uses or prescribes prescription or nonprescription drugs shall provide the same level and standard of care to his or her patients as the standard of care provided by an ophthalmologist using or prescribing the same drugs.

(3) A therapeutic optometrist is an optometrist licensed pursuant to this article who meets the requirements of section 12-40-109.5 (1.5) and (3). A licensed optometrist shall not use prescription or nonprescription drugs for treatment of eye disease or disorder or for any therapeutic purpose unless he or she is a therapeutic optometrist.

(4) (Deleted by amendment, L. 2011, (SB 11-094), ch. 129, p. 443, § 10, effective April 22, 2011.)

(5) (a) (Deleted by amendment, L. 2011, (SB 11-094), ch. 129, p. 443, § 10, effective April 22, 2011.)

(b) Nothing in this section prohibits an optometrist from charging a fee for prescribing, adjusting, fitting, adapting, or dispensing drugs for ophthalmic purposes and ophthalmic devices, such as contact lenses, that are classified by the federal food and drug administration as a drug or device, as long as the drug prescribed, dispensed, or delivered by the ophthalmic device is not a schedule I or II controlled substance, with the exception of hydrocodone combination drugs.

(6) (Deleted by amendment, L. 2011, (SB 11-094), ch. 129, p. 443, § 10, effective April 22, 2011.)

(7) (a) An optometrist who meets the requirements established by the board pursuant to sections 12-40-107 (1)(n) and 12-40-109.5 (3) may treat anterior uveitis and glaucoma.

(b) (Deleted by amendment, L. 2002, p. 60, § 5, effective July 1, 2002.)

Source: L. 61: p. 579, § 1. **CRS 53:** § 102-2-4. **C.R.S. 1963:** § 102-1-4. **L. 79:** Entire section amended, p. 528, § 1, effective June 7; entire section amended, p. 1666, § 136, effective July 19. **L. 83:** Entire section amended, p. 545, § 1, effective July 1. **L. 88:** Entire section amended, p. 528, § 1, effective July 1. **L. 92:** (5) amended, p. 2020, § 2, effective July 1. **L. 96:** (1), (3), and (5) amended and (6) and (7) added, p. 1885, § 1, effective July 1. **L. 2002:** (5) and (7) amended, pp. 59, 60, §§ 4, 5, effective July 1. **L. 2009:** (5) amended, (SB 09-251), ch. 249, p. 1121, § 2, effective July 1. **L. 2011:** (1) to (6) amended, (SB 11-094), ch. 129, p. 443, § 10, effective April 22. **L. 2014:** (1)(a), (1)(d)(II), and (5)(b) amended, (HB 14-1099), ch. 37, p. 194, § 1, effective March 14.

12-40-103. Proprietor defined. (1) The term "proprietor", as used in this article, includes any person, group, association, or corporation not licensed under this article who:

(a) For financial gain employs optometrists in the operation of an optometry office;

(b) Places, directly or indirectly, in possession of an optometrist such materials or equipment as may be necessary for the operation of an optometrist's office on the basis of any fee splitting, income division, profit sharing, or similar agreement or on any basis that has the effect of any such agreement, but the term "proprietor" does not include the bona fide seller of optometry equipment or material secured by chattel mortgage, conditional sales contract, or other title retention agreements or the bona fide leasing of such equipment by the manufacturer or by his or her franchised dealer; or

(c) Under the guise of a rental percentage lease or sublease or other leasing or rental arrangement, participates in the direction and control of a licensee's practice and business or in the receipts or profits accruing therefrom, but a bona fide percentage sale lease basing the rental of the premises let upon a percentage of gross income of not to exceed the reasonable, going rate for like quarters and location, as determined by the board after investigation, shall not be deemed an avoidance of the provisions of this section. Certified copies of all such leasing and rental arrangements and renewals thereof shall be filed with the board by the licensee within thirty days after execution.

Source: L. 61: p. 579, § 1. **CRS 53:** § 102-2-5. **C.R.S. 1963:** § 102-1-5. **L. 2011:** (1)(a) and (1)(b) amended, (SB 11-094), ch. 129, p. 445, § 11, effective April 22.

12-40-104. Persons entitled to practice optometry - title protection of optometrists. It shall be unlawful for any person to practice optometry in this state, except those who are duly licensed optometrists before July 1, 1961, pursuant to the law of this state and those who are duly licensed optometrists pursuant to the provisions of this article. A person licensed as an optometrist pursuant to the provisions of this article may use the title "optometrist", the initials "O.D.", or the term "doctor of optometry". No other person shall use the title "optometrist",

"O.D.", "doctor of optometry", or any other word or abbreviation to indicate or induce others to believe that one is licensed to practice optometry in this state.

Source: L. 61: p. 578, § 1. **CRS 53:** § 102-2-2. **C.R.S. 1963:** § 102-1-2. **L. 92:** Entire section amended, p. 2021, § 3, effective July 1.

12-40-105. Persons excluded from operation of this article. (1) This article does not apply to:

(a) Professional practice by a physician or surgeon licensed to practice medicine under the laws of the state of Colorado and ancillary or technical assistants working under the direction of any such physician or surgeon, with the exception of the fitting of contact lenses which must be done under the physician's or surgeon's direct supervision;

(b) The practice of optometry in the discharge of their official duties by optometrists or physicians and surgeons in the service of the United States armed forces, public health service, Coast Guard, or veterans administration;

(c) Opticians, persons, firms, and corporations who duplicate or repair spectacles or eyeglasses; opticians, persons, firms, and corporations who supply or sell spectacles, eyeglasses, or ophthalmic lenses, including but not limited to contact lenses, if such spectacles, eyeglasses, and ophthalmic lenses are provided pursuant to a valid prescription;

(d) Persons serving a post-doctorate residency or an optometry student internship under the supervision of an optometrist licensed in Colorado as part of a curriculum from an accredited college of optometry.

Source: L. 61: p. 578, § 1. **CRS 53:** § 102-2-3. **C.R.S. 1963:** § 102-1-3. **L. 79:** (1)(c) added, p. 528, § 2, and (1) amended, p. 529, § 3, effective June 7. **L. 92:** Entire section amended, p. 2021, § 4, effective July 1. **L. 2002:** (1)(c) amended, p. 60, § 6, effective July 1. **L. 2011:** IP(1) and (1)(d) amended, (SB 11-094), ch. 129, p. 445, § 12, effective April 22.

12-40-106. State board of optometry - subject to termination. (1) (a) The state board of optometry, referred to in this article as the "board", is under the supervision and control of the division of professions and occupations as provided by section 24-34-102, C.R.S. The board consists of five optometrists and two members-at-large, to be appointed by the governor to serve for terms of four years; except that no person shall be appointed to serve more than two consecutive terms. Each member of the board, except for the members-at-large, must have been actually engaged and licensed in the practice of optometry in Colorado for the five years preceding the member's appointment. At least one of the two members-at-large must not be a member or representative of, nor have any direct interest in, any profession, agency, or institution providing health services.

(b) Any four members of the board constitute a quorum for the purpose of holding examinations, granting licenses, or transacting any business connected with the board.

(c) The governor shall fill a vacancy in the membership of the board for the remainder of the unexpired term. The governor may remove a member of the board for misconduct, incompetency, or neglect of duty.

(d) A board member having a personal or private interest in any matter before the board shall disclose such fact to the board and shall not participate in related discussions or votes.

(2) The board shall organize annually by electing one of its members as president and one as vice-president.

(3) (a) Repealed.

(b) (Deleted by amendment, L. 92, p. 2021, § 5, effective July 1, 1992.)

Source: L. 61: p. 580, § 1. **CRS 53:** § 102-2-6. **C.R.S. 1963:** § 102-1-6. **L. 68:** p. 123, § 119. **L. 73:** p. 1073, § 1. **L. 76:** (3) added, p. 624, § 23, effective July 1. **L. 79:** IP(1), (1)(b), and (1)(c) amended, p. 529, § 3, effective June 7. **L. 85:** (1) and (2) amended, p. 533, § 1, effective July 1. **L. 87:** (1) amended, p. 904, § 8, effective June 15. **L. 91:** (3) amended, p. 683, § 30, effective April 20. **L. 92:** (1) and (3) amended, p. 2021, § 5, effective July 1. **L. 2002:** (3)(a) repealed, p. 62, § 12, effective July 1. **L. 2011:** (1) and (2) amended, (SB 11-094), ch. 129, p. 442, § 9, effective April 22.

12-40-107. Powers and duties of the board - rules. (1) In addition to all other powers and duties conferred upon the board by this article, the board has the following powers and duties:

(a) To determine acceptability of scores from tests administered by any approved or accredited national testing organization;

(b) To prescribe rules to carry out effectively the provisions of this article. The board shall set the passing score of any examination at a minimum acceptable level of competence for the practice of optometry.

(c) Repealed.

(d) To grant licenses in conformity with this article to such applicants as have been found qualified;

(e) and (f) Repealed.

(g) To adopt and promulgate such rules and regulations as the board may deem necessary or proper to carry out the provisions and purposes of this article;

(h) Repealed.

(i) (Deleted by amendment, L. 92, p. 2022, § 6, effective July 1, 1992.)

(j) To aid the several district attorneys of this state in the enforcement of this article and in the prosecution of all persons, firms, associations, or corporations charged with the violation of any of its provisions;

(k) To establish programs of education for optometrists wishing to enter new, proven, and generally accepted areas of lawful practice involving techniques for which they have not received appropriate education;

(l) To prepare and distribute to consumers as is reasonably necessary written communication providing information concerning the board and the regulation of optometry in Colorado;

(m) (I) To make investigations, hold hearings, and take evidence in all matters relating to the exercise and performance of the powers and duties vested in the board.

(II) The board or an administrative law judge shall have the power to administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board. The board may

appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the board.

(III) Upon failure of any witness to comply with such subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board or director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the board or 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 to obey the order of the court may be punished by the court as a contempt of court.

(n) To prescribe rules authorizing optometrists to utilize therapeutic procedures and therapeutic techniques in the practice of optometry as defined in section 12-40-102. These rules shall in no way expand the practice of optometry as defined in section 12-40-102 nor shall such rules include the use of therapeutic or cosmetic lasers. Such rules shall specify approved programs of education offered by an accreditation organization recognized or approved by the commission on recognition of postsecondary accreditation or the United States department of education or their successors.

(2) Repealed.

Source: L. 61: p. 580, § 1. **CRS 53:** § 102-2-7. **C.R.S. 1963:** § 102-1-7. **L. 79:** IP(1), (1)(b), and (1)(c) amended and (1)(g) to (1)(k) added, p. 529, § 4, effective June 7. **L. 82:** (1)(j) amended, p. 622, § 12, effective April 4. **L. 83:** (1)(l) amended, p. 830, § 22, effective July 1. **L. 85:** (1)(g) amended, p. 534, § 2, and (1)(c), (1)(e), (1)(f), and (1)(h) repealed, p. 539, § 15, effective July 1. **L. 92:** Entire section amended, p. 2022, § 6, effective July 1. **L. 96:** (1)(n) added, p. 1886, § 2, effective July 1. **L. 2002:** (2) repealed, p. 60, § 7, effective July 1. **L. 2004:** (1)(m) amended, p. 1841, § 88, effective August 4. **L. 2011:** (1)(a), (1)(b), (1)(k), and (1)(l) amended, (SB 11-094), ch. 129, p. 446, § 13, effective April 22.

12-40-107.2. Volunteer optometrist license. (1) A person licensed to practice optometry pursuant to this article may apply to the board for volunteer licensure status. The board shall designate the form and manner of the application. The board may:

(a) Grant the application by issuing a volunteer license; or

(b) Deny the application if the licensee has been disciplined for any of the causes set forth in section 12-40-118.

(2) A person applying for a license under this section:

(a) Must either:

(I) Hold an active and unrestricted license to practice optometry in Colorado and be in active practice in this state; or

(II) Have been on inactive status pursuant to article 70 of this title for not more than two years; and

(b) Shall:

(I) Pay a reduced license fee in lieu of the fee authorized by section 24-34-105, C.R.S. The director shall reduce the volunteer optometrist license fee from the license fee charged pursuant to section 12-40-113 (1)(a).

(II) Attest that, after a date certain, the applicant will no longer earn income as an optometrist;

(III) Maintain liability insurance as provided in section 12-40-126; and

(IV) Comply with the continuing education requirements established in section 12-40-113 (1)(f); except that the board may establish lesser continuing education requirements for volunteer licensees.

(3) The face of each volunteer license issued pursuant to this section shall plainly indicate the volunteer status of the licensee.

(4) The board may conduct disciplinary proceedings pursuant to section 12-40-119 against any person licensed under this section for an act committed while the person was licensed pursuant to this section.

(5) A person licensed under this section may apply to the board for a return to active licensure status by filing an application in the form and manner designated by the board. The board may approve such application and issue a license to practice optometry or may deny the application if the licensee has been disciplined for or engaged in any of the activities set forth in section 12-40-118.

(6) An optometrist with a volunteer license shall provide optometry services only if the services are performed on a limited basis for no fee or other compensation.

Source: L. 2011: Entire section added, (SB 11-094), ch. 129, p. 437, § 4, effective April 22.

12-40-107.5. Limitation on authority. The authority granted the board under the provisions of this article shall not be construed to authorize the board to arbitrate or adjudicate fee disputes between licensees or between a licensee and any other party.

Source: L. 89: Entire section added, p. 673, § 16, effective July 1.

Cross references: For the legislative declaration contained in the 1989 act enacting this section, see section 1 of chapter 111, Session Laws of Colorado 1989.

12-40-108. Application for license - licensure by endorsement. (1) A person who desires to practice optometry in the state may file with the board an application for a license, giving the information required in a form and manner approved by the board. The applicant shall demonstrate that he or she possesses the following qualifications:

(a) The applicant has attained the age of twenty-one years.

(b) The applicant has graduated with the degree of doctor of optometry from a school or college of optometry accredited by a regional or professional accreditation organization that is recognized or approved by the council on postsecondary accreditation or the United States secretary of education. The board has the authority, upon its investigation and approval of the standards thereof, to approve any other college of optometry.

(c) The applicant has successfully passed the written examination of the national board of examiners in optometry. The board shall have the authority, upon its investigation and approval of the examination standards, to approve some body other than the national board of examiners in optometry as the examining body.

(c.5) Repealed.

(d) The applicant does not have an alcohol use disorder, as defined in section 27-81-102, or a substance use disorder, as defined in section 27-82-102, or has not habitually or excessively used or abused alcohol, habit-forming drugs, or controlled substances as defined in section 18-18-102 (5).

(e) After July 1, 1988, the applicant has satisfied the requirements of section 12-40-109.5 or equivalent requirements approved by the board, including passing a standardized national examination in the treatment and management of ocular disease.

(f) After July 1, 1996, the applicant has satisfied the requirements of section 12-40-109.5 (3) or equivalent requirements approved by the board, including passing a standardized national examination in the treatment and management of ocular disease.

(2) (Deleted by amendment, L. 2011, (SB 11-094), ch. 129, p. 446, § 14, effective April 22, 2011.)

(3) (a) The board may issue a license by endorsement to engage in the practice of optometry to an applicant who:

(I) (A) Is currently licensed and is in practice and good standing in another state or territory of the United States or in a foreign country if the applicant presents proof satisfactory to the board at the time of application for a Colorado license by endorsement;

(B) Pays a fee as prescribed by the board; and

(II) (A) Possesses credentials and qualifications that are substantially equivalent to requirements for licensure by examination; or

(B) Has demonstrated competency as an optometrist as determined by the board.

(b) The board shall specify by rule what shall constitute substantially equivalent credentials and qualifications or competency.

Source: L. 61: p. 581, § 1. **CRS 53:** § 102-2-8. **C.R.S. 1963:** § 102-1-8. **L. 73:** p. 529, § 67. **L. 77:** (1)(a) amended, p. 643, § 6, effective March 16. **L. 79:** (1)(b) and (1)(c) amended and (1)(c.5) added, p. 530, § 5, effective June 7. **L. 81:** (1)(d) amended, p. 736, § 14, effective July 1. **L. 85:** IP(1) and (1)(c) amended, p. 534, § 3, and (1)(c.5) repealed, p. 539, § 15, effective July 1. **L. 88:** (1)(e) amended, p. 529, § 2, effective July 1. **L. 92:** (3) added, p. 2024, § 7, effective July 1. **L. 96:** IP(1) amended and (1)(f) added, p. 1887, § 3, effective July 1. **L. 2002:** (1)(a), (1)(b), (1)(c), (1)(d), and (1)(e) amended, p. 61, § 10, effective July 1. **L. 2004:** (1)(d) amended, p. 1195, § 40, effective August 4. **L. 2010:** (3) amended, (HB 10-1175), ch. 46, p. 175, § 5, effective July 1, 2011. **L. 2011:** IP(1), (1)(b), and (2) amended, (SB 11-094), ch. 129, p. 446, § 14, effective April 22. **L. 2012:** (1)(d) amended, (HB 12-1311), ch. 281, p. 1614, § 22, effective July 1. **L. 2013:** (1)(b) amended, (HB 13-1300), ch. 316, p. 1668, § 21, effective August 7. **L. 2017:** (1)(d) amended, (SB 17-242), ch. 263, p. 1278, § 67, effective May 25.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-40-108.5. Current licensees - treatment and therapeutic practice. On and after July 1, 1988, a person who is licensed under this article as an optometrist on June 30, 1988, and who is otherwise qualified under this article may use prescription or nonprescription drugs for examination purposes. However, such optometrist may use prescription or nonprescription drugs

for treatment of eye disease or disorder or for any therapeutic purpose only if he or she meets the requirements of section 12-40-109.5 (1.5) and (3) on or after July 1, 1988.

Source: L. 88: Entire section added, p. 529, § 3, effective July 1. **L. 96:** Entire section amended, p. 1887, § 4 effective July 1. **L. 2011:** Entire section amended, (SB 11-094), ch. 129, p. 447, § 15, effective April 22.

12-40-109. Examination - licenses. (1) The applicant shall take and submit test scores from the board-approved exam. The examination shall be of such a character as to test the qualifications of the applicant to practice optometry.

(2) Each person who makes a passing grade on the practical and clinical examination and who is otherwise qualified shall be granted a license signed by the board. The license provided for in this section shall be in such form and wording as may be adopted by the board. The optometrist shall display his or her license for viewing by his or her patients, as provided in section 12-40-115. An application for initial licensure as an optometrist shall be accompanied by a processing fee in an amount to be determined by the board pursuant to section 24-34-105, C.R.S.

(3) Any person denied a license under this article and believing himself aggrieved thereby may pursue the remedy for review as provided under article 4 of title 24, C.R.S., if such action is instituted within a period of sixty days after the date of denial.

(4) A person who fails to pass the examination provided for in this section may retake the examination the next time said examination is given.

Source: L. 61: p. 582, § 1. **CRS 53:** § 102-2-9. **C.R.S. 1963:** § 102-1-9. **L. 79:** (1) and (2) amended, p. 531, § 6, effective June 7. **L. 85:** (2) and (3) amended and (4) added, p. 534, § 4, effective July 1. **L. 88:** (2) amended, p. 530, § 4, effective July 1. **L. 92:** (1) amended, p. 2024, § 8, effective July 1. **L. 2002:** (1) and (4) amended, p. 61, § 8, effective July 1. **L. 2011:** (1) and (2) amended, (SB 11-094), ch. 129, p. 447, § 16, effective April 22.

12-40-109.5. Use of prescription and nonprescription drugs - limits on opioid prescriptions - repeal. (1) Notwithstanding section 12-42.5-118, a licensed optometrist may purchase, possess, and administer prescription or nonprescription drugs for examination purposes only if, after July 1, 1983, the optometrist has complied with the following minimum requirements: Successful completion, by attendance and examination, of at least fifty-five classroom hours of study in general, ocular, and clinical pharmacology which must have been completed within twenty-four months preceding the application for certification; except that, in the event that such classroom hours have been completed since 1976, only six of such classroom hours must have been completed within twenty-four months preceding the application for certification. The courses shall be offered by an institution that is accredited by a regional or professional accreditation organization recognized or approved by the council on postsecondary education or the United States department of education or their successors.

(1.5) Notwithstanding section 12-42.5-118, a licensed optometrist may purchase, possess, administer, and prescribe prescription or nonprescription drugs for treatment on and after July 1, 1988, only if the optometrist has complied with the following minimum requirements within twenty-four months preceding the application for certification: Successful

completion, by attendance and examination, of at least sixty classroom hours of study in ocular pharmacology, clinical pharmacology, therapeutics, and anterior segment disease; and successful completion by attendance and examination of at least sixty hours of approved supervised clinical training in the examination, diagnosis, and treatment of conditions of the human eye and its appendages. The courses shall be offered by an institution that is accredited by a regional or professional accreditation organization recognized or approved by the council of postsecondary education or the United States department of education or their successors.

(2) The optometrist shall successfully complete a course in cardiopulmonary resuscitation within twenty-four months before using prescription or nonprescription drugs and shall pass a written and clinical examination approved by the board.

(3) In addition to the requirements of section 12-40-108.5, each therapeutic optometrist shall meet all requirements prescribed by the board before commencing treatment of glaucoma or anterior uveitis.

(4) (a) An optometrist shall not prescribe more than a seven-day supply of an opioid to a patient who has not had an opioid prescription in the last twelve months by that optometrist, and may exercise discretion to include a second fill for a seven-day supply. The limits on initial prescribing do not apply if, in the judgment of the optometrist, the patient:

(I) Has chronic pain that typically lasts longer than ninety days or past the time of normal healing, as determined by the optometrist, or following transfer of care from another optometrist who prescribed an opioid to the patient;

(II) Has been diagnosed with cancer and is experiencing cancer-related pain; or

(III) Is experiencing post-surgical pain that, because of the nature of the procedure, is expected to last more than fourteen days.

(b) Prior to prescribing the second fill of any opioid prescription pursuant to this section, an optometrist must comply with the requirements of section 12-42.5-404 (3.6). Failure to comply with section 12-42.5-404 (3.6) constitutes unprofessional conduct under section 12-40-118 only if the optometrist repeatedly fails to comply.

(c) An optometrist licensed pursuant to this article 40 may prescribe opioids electronically.

(d) A violation of this subsection (4) does not create a private right of action or serve as the basis of a cause of action. A violation of this section does not constitute negligence per se or contributory negligence per se and does not alone establish a standard of care. Compliance with this section does not alone establish an absolute defense to any alleged breach of the standard of care.

(e) This subsection (4) is repealed, effective September 1, 2021.

Source: L. 83: Entire section added, p. 546, § 2, effective July 1. **L. 84:** (1) amended, p. 422, § 1, effective March 16. **L. 88:** (1) amended and (1.5) added, p. 530, § 5, effective July 1. **L. 96:** (3) added, p. 1887, § 5, effective July 1. **L. 2011:** Entire section amended, (SB 11-094), ch. 129, p. 447, § 17, effective April 22. **L. 2012:** (1) and (1.5) amended, (HB 12-1311), ch. 281, p. 1614, § 23, effective July 1. **L. 2018:** (4) added, (SB 18-022), ch. 221, p. 1405, § 5, effective May 21.

12-40-109.7. Prescriptions - requirement to advise patients. (1) An optometrist licensed under this article may advise the optometrist's patients of their option to have the symptom or purpose for which a prescription is being issued included on the prescription order.

(2) An optometrist's failure to advise a patient under subsection (1) of this section shall not be grounds for any disciplinary action against the optometrist's professional license issued under this article.

Source: L. 2003: Entire section added, p. 765, § 8, effective March 25.

12-40-110. Examination fees. (Repealed)

Source: L. 61: p. 584, § 1. **CRS 53:** § 102-2-14. **C.R.S. 1963:** § 102-1-14. **L. 73:** p. 1078, § 1. **L. 79:** Entire section repealed, p. 535, § 14, effective June 7.

12-40-111. Disposition of fees - reports - publications. (1) All fees prescribed in this article shall be determined and collected pursuant to section 24-34-105, C.R.S.

(2) and (3) Repealed.

Source: L. 61: p. 584, § 1. **CRS 53:** § 102-2-15. **C.R.S. 1963:** § 102-1-15. **L. 64:** p. 159, § 110. **L. 73:** p. 1376, § 38. **L. 79:** (1) R&RE, p. 531, § 7, effective June 7; (1) amended, p. 910, § 10, and (2) amended, p. 439, § 19, effective July 1. **L. 83:** (2) and (3) amended, p. 830, § 23, effective July 1. **L. 96:** (2) and (3) repealed, p. 1226, § 35, effective August 7. **L. 2011:** (1) amended, (SB 11-094), ch. 129, p. 448, § 18, effective April 22.

Cross references: For the legislative declaration contained in the 1996 act repealing subsections (2) and (3), see section 1 of chapter 237, Session Laws of Colorado 1996.

12-40-112. Retention of examination papers. (Repealed)

Source: L. 61: p. 582, § 1. **CRS 53:** § 102-2-10. **C.R.S. 1963:** § 102-1-10. **L. 85:** Entire section repealed, p. 539, § 15, effective July 1.

12-40-113. License renewal - requirements - fee - failure to pay. (1) (a) On or before a date designated pursuant to a schedule established by the director of the division of professions and occupations within the department of regulatory agencies, licenses shall be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director of the division of professions and occupations within the department of regulatory agencies may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license pursuant to the schedule established by the director of the division of professions and occupations, such license shall expire. Any person whose license has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

(b) The board shall establish a questionnaire to accompany the renewal form. Said questionnaire shall be designed to determine if the licensee has acted in violation of or has been disciplined for actions that might be considered as violations of this article or that might make the licensee unfit to practice optometry with reasonable care and safety. Failure of the applicant

to answer the questionnaire accurately shall be considered unprofessional conduct as specified in section 12-40-118.

(c) Repealed.

(d) and (e) (Deleted by amendment, L. 2004, p. 1841, § 89, effective August 4, 2004.)

(f) Effective April 1, 1993, in addition to all other requirements of this section for license renewal, the board shall require that each optometrist seeking to renew a license shall have completed twenty-four hours of board-approved continuing education. Any optometrist desiring to renew a license to practice optometry in this state shall submit to the board the information the board believes is necessary to show that the optometrist has fulfilled the continuing education requirements of this paragraph (f). Implementation of this paragraph (f) shall occur within existing appropriations.

(2) Repealed.

Source: L. 61: p. 583, § 1. **CRS 53:** § 102-2-12. **C.R.S. 1963:** § 102-1-12. **L. 73:** p. 1075, § 1. **L. 79:** (1) amended, p. 532, § 8, and (2) repealed, p. 535, § 14, effective June 7. **L. 85:** (1) amended, p. 535, § 5, effective July 1. **L. 92:** Entire section amended, p. 2024, § 9, effective July 1. **L. 2004:** (1)(a) and (1)(c) to (1)(e) amended, p. 1841, § 89, effective August 4. **L. 2011:** (1)(c) repealed, (SB 11-094), ch. 129, p. 448, § 19, effective April 22.

Editor's note: Subsection (2) was repealed, effective June 7, 1979, prior to the entire section being amended in 1992.

Cross references: For the authority of the executive director of the department of regulatory agencies to change the period of validity and renewal date of any license or certificate issued by any examining or licensing board or commission in the division of professions and occupations, see § 24-34-102 (7) and (8).

12-40-114. Change of address.

(1) and (2) Repealed.

(3) Every person licensed under this article shall notify the board in writing within thirty days of any change in mailing address.

Source: L. 61: p. 583, § 1. **CRS 53:** § 102-2-13. **C.R.S. 1963:** § 102-1-13. **L. 73:** p. 1077, § 1. **L. 79:** (2) amended, p. 532, § 9, effective June 7. **L. 85:** Entire section amended, p. 535, § 6, effective July 1. **L. 2011:** (1) and (2) repealed, (SB 11-094), ch. 129, p. 449, § 20, effective April 22.

12-40-115. Licenses to be displayed. Every practitioner of optometry shall post and keep conspicuously displayed his or her license in the office wherein he or she practices. If an optometrist practices at several locations in the state, the optometrist shall display his or her license number and name in a manner that can be easily recognized by his or her patients. Each association of persons who engage in the practice of optometry under the name of a partnership, association, or any other title shall cause to be displayed and kept in a conspicuous place at the entrance of its place of business the name of each person engaged or employed in said partnership or association in the practice of optometry.

Source: L. 61: p. 583, § 1. **CRS 53:** § 102-2-11. **C.R.S. 1963:** § 102-1-11. **L. 85:** Entire section amended, p. 536, § 7, effective July 1. **L. 2011:** Entire section amended, (SB 11-094), ch. 129, p. 449, § 21, effective April 22.

12-40-116. Records to be kept by the board. The board shall keep a record of all persons to whom licenses have been granted under this article. A copy of said records, certified by the board, shall be admitted in any of the courts of this state, in lieu of the originals, as prima facie evidence of the facts contained in said records. A copy of said records certified by the board of a person charged with a violation of any of the provisions of this article shall be evidence that such person has not been licensed to practice optometry.

Source: L. 61: p. 586, § 1. **CRS 53:** § 102-2-18. **C.R.S. 1963:** § 102-1-18. **L. 85:** Entire section amended, p. 536, § 8, effective July 1. **L. 92:** Entire section amended, p. 2026, § 10, effective July 1.

12-40-117. Patient's exercise of free choice - release of patient records. (1) No person shall interfere with any patient's exercise of free choice in the selection of practitioners licensed to perform examinations for refractions and visual training or corrections within the field for which their respective licenses entitle them to practice.

(2) An optometrist shall release to a patient all medical records pursuant to section 25-1-802, C.R.S.

(3) The optometrist shall release to the patient, upon written request, a valid, written contact lens prescription at the time the optometrist would otherwise replace a contact lens without any additional preliminary examination or fitting. The board shall promulgate rules and regulations defining the components of a valid written contact lens prescription.

Source: L. 61: p. 587, § 1. **CRS 53:** § 102-2-23. **C.R.S. 1963:** § 102-1-23. **L. 92:** Entire section amended, p. 2026, § 11, effective July 1.

12-40-118. Unprofessional conduct defined. (1) The term "unprofessional conduct", as used in this article 40, means:

(a) Deceiving or attempting to deceive the board or its agents with reference to any proper matter under investigation by the board;

(b) Publishing or circulating, directly or indirectly, any fraudulent, false, deceitful, or misleading claims or statements relating to optometry services or ophthalmic materials or devices;

(c) Employing or offering compensation or merchandise of value to any salesman, runner, patient, or other person as an inducement to secure his or her services or assistance in the solicitation of patronage for the performing, rendering, supplying, or selling of optometry services or ophthalmic materials or devices;

(d) Resorting to fraud, misrepresentation, or deception in applying for, securing, renewing, or seeking reinstatement of a license or in taking any examination provided for in this article;

(e) The habitual or excessive use or abuse of alcohol, a habit-forming drug, or any controlled substance as defined in section 18-18-102 (5), C.R.S.;

(f) (Deleted by amendment, L. 2002, p. 62, § 11, effective July 1, 2002.)

(g) Repealed.

(h) Disobeying the lawful rule or order of the board or its officers;

(i) Practicing optometry while license is suspended;

(j) Practicing optometry as the partner, agent, or employee of or in joint venture or arrangement with any proprietor or with any person who does not hold a license to practice optometry within this state, except as permitted in section 12-40-122. Any licensee holding a license to practice optometry in this state may accept employment from any person, partnership, association, or corporation to examine and prescribe for the employees of such person, partnership, association, or corporation.

(k) An act or omission constituting grossly negligent optometry practice or two or more acts or omissions that fail to meet generally accepted standards of optometry practice;

(l) Sharing any professional fees with any person, partnership, or corporation which sends or refers patients to him, except with licensed optometrists with whom he may be associated in practice;

(m) Failing to:

(I) Notify the board, in a manner and within a period determined by the board, of a physical illness; a physical condition; or a behavioral, mental health, or substance use disorder that renders an optometrist unable to treat with reasonable skill and safety or that may endanger the health and safety of persons under his or her care;

(II) Act within the limitations created by a physical illness; a physical condition; or a behavioral, mental health, or substance use disorder that renders an optometrist unable to treat with reasonable skill and safety or that may endanger the health and safety of persons under his or her care; or

(III) Practice within the limitations created by the physical illness; the physical condition; or the behavioral, mental health, or substance use disorder as specified in a confidential agreement between the optometrist and the board entered into pursuant to section 12-40-118.5 (5).

(n) Failing to refer a patient to the appropriate health care practitioner when the services required by the patient are beyond the scope of competency of the optometrist or the scope of practice of optometry;

(o) Aiding or abetting, in the practice of optometry, any person not licensed to practice optometry as defined under this article or any person whose license to practice is suspended;

(p) Interfering with the free choice of any person selecting a physician or other health care practitioner;

(q) Any disciplinary action against a licensee to practice optometry in another state or country, which action shall be deemed to be prima facie evidence of unprofessional conduct if the grounds for the disciplinary action would be unprofessional conduct or otherwise constitute a violation of any provision of this article;

(r) Failing to notify the board of a malpractice final judgment or settlement within thirty days;

(s) Any act or omission which fails to meet generally accepted standards of care whether or not actual injury to a patient is established;

(t) Conviction of a felony or the acceptance of a plea of guilty or nolo contendere, or a plea resulting in a deferred sentence to a felony;

(u) Representing that a noncorrectable condition can be permanently corrected;

(v) Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of optometry, including falsifying or making incorrect essential entries or failing to make essential entries on patient records;

(w) Conduct which is likely to deceive or defraud the public;

(x) Repealed.

(y) Negligent malpractice;

(z) (Deleted by amendment, L. 92, p. 2026, § 12, effective July 1, 1992.)

(aa) (I) Violation of abuse of health insurance pursuant to section 18-13-119, C.R.S.; or

(II) Advertising through newspapers, magazines, circulars, direct mail, directories, radio, television, or otherwise that the licensee will perform any act prohibited by section 18-13-119 (3), C.R.S.;

(bb) Administering, dispensing, or prescribing any prescription drug, as defined in section 12-42.5-102 (34), or any controlled substance, as defined in section 18-18-102 (5), C.R.S., other than in the course of legitimate professional practice;

(cc) Repealed.

(dd) Engaging in any of the following activities and practices:

(I) Repeatedly ordering or performing demonstrably unnecessary laboratory tests or studies that lack clinical justification;

(II) Administering treatment that is demonstrably unnecessary and lacks clinical justification; or

(III) Ordering or performing any service, X ray, or treatment that is contrary to recognized standards of the practice of optometry, as interpreted by the board, and lacks clinical justification;

(ee) Committing a fraudulent insurance act, as defined in section 10-1-128, C.R.S.;

(ff) Failing to report to the board any optometrist known to have violated or, upon information or belief, believed to have violated any of the provisions of this article;

(gg) Failing to report to the board any surrender of a license to, or any adverse action taken against a licensee by another licensing agency in another state, territory, or country, any governmental agency, any law enforcement agency, or any court for acts of conduct that would constitute grounds for discipline under the provisions of this article;

(hh) Engaging in a sexual act with a patient while a patient-optometrist relationship exists. For the purposes of this paragraph (hh), "patient-optometrist relationship" means that period of time beginning with the initial evaluation through the termination of treatment. For the purposes of this paragraph (hh), "sexual act" means sexual contact, sexual intrusion, or sexual penetration as defined in section 18-3-401, C.R.S.

(ii) Failing to provide a patient with copies of patient medical records as required by section 25-1-802, C.R.S.;

(jj) Failing to provide a patient with a valid written contact lens prescription as required by section 12-40-117 (3);

(kk) A violation of any provision of this article;

(ll) Practicing beyond the scope of education and training prescribed by rules adopted by the board;

(mm) Failing to respond in an honest, materially responsive, and timely manner to a complaint pursuant to section 12-40-119 (1)(b).

Source: L. 61: p. 585, § 1. **CRS 53:** § 102-2-17. **C.R.S. 1963:** § 102-1-17. **L. 79:** Entire section R&RE, p. 532, § 10, effective June 7. **L. 81:** (1)(e) amended, p. 736, § 15, effective July 1. **L. 83:** (1)(g) amended and (1)(s) to (1)(y) added, p. 548, § 1 and, (1)(z) added, p. 546, § 3, effective July 1. **L. 85:** (1)(g) and (1)(x) repealed, (1)(k) and (1)(t) R&RE, and (1)(aa) added, pp. 539, 536, 683, §§ 15, 9, effective July 1. **L. 88:** (1)(bb) and (1)(cc) added, p. 531, § 6, effective July 1. **L. 89:** (1)(n) and (1)(v) amended and (1)(dd) and (1)(ee) added, p. 673, § 17, effective July 1. **L. 92:** (1)(d), (1)(m), (1)(n), (1)(q), (1)(s), (1)(v), (1)(z), (1)(bb), and (1)(cc) amended and (1)(ff) to (1)(kk) added, p. 2026, § 12, effective July 1. **L. 96:** (1)(ll) added, p. 1888, § 6, effective July 1. **L. 2002:** (1)(e), (1)(f), and (1)(t) amended, p. 62, § 11, effective July 1. **L. 2003:** (1)(ee) amended, p. 622, § 33, effective July 1. **L. 2004:** (1)(e) amended, p. 1195, § 41, effective August 4. **L. 2009:** (1)(cc) amended, (SB 09-251), ch. 249, p. 1122, § 3, effective July 1. **L. 2011:** (1)(a) to (1)(c), (1)(e), (1)(k), (1)(m), and (1)(dd) amended and (1)(mm) added, (SB 11-094), ch. 129, p. 438, § 5, effective April 22. **L. 2012:** (1)(e) and (1)(bb) amended and (1)(cc) repealed, (HB 12-1311), ch. 281, p. 1614, § 24, effective July 1. **L. 2017:** IP(1) and (1)(m) amended, (SB 17-242), ch. 263, p. 1278, § 68, effective May 25.

Cross references: (1) For the legislative declaration contained in the 1989 act amending subsection (1)(n) and (1)(v) and enacting subsection (1)(dd) and (1)(ee), see section 1 of chapter 111, Session Laws of Colorado 1989.

(2) For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

(3) For an exception to the provisions of subsection (1)(j), see § 6-18-303.

12-40-118.5. Mental and physical examination of licensees. (1) If the board has reasonable cause to believe that a licensee is unable to practice with reasonable skill and safety, the board may require the licensee to submit to a mental or physical examination by a physician or qualified health care provider designated by the board. If the licensee refuses to undergo a mental or physical examination, unless due to circumstances beyond the licensee's control, the board may suspend the licensee's license until an examination has occurred, the results of the examination are known, and the board has made a determination of the licensee's fitness to practice. The board shall proceed with the order for examination and the determination in a timely manner.

(2) An order to a licensee pursuant to subsection (1) of this section to undergo a mental or physical examination shall contain the basis of the board's reasonable cause to believe that the licensee is unable to practice with reasonable skill and safety. For the purposes of any disciplinary proceeding authorized under this article, the licensee shall be 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 licensee may submit to the board testimony or examination reports from a physician chosen by such licensee and pertaining to any condition which the board has alleged may preclude the licensee from practicing with reasonable skill and safety. These may be considered by the board in conjunction with, but not in lieu of, testimony and examination reports of the physician designated by the board.

(4) The results of any mental or physical examination ordered by the board shall not be used as evidence in any proceeding other than one before the board and shall not be deemed public records nor made available to the public.

(5) (a) The board may enter into an agreement with an optometrist whose practice is or may be affected by a physical illness, a physical condition, or a behavioral or mental health disorder that renders the optometrist unable to treat with reasonable skill and safety or that may endanger the health and safety of persons under the care of any optometrist if:

(I) The board believes that one or more limitations of the optometrist's practice would both enable the optometrist to treat with reasonable skill and safety and would protect the health and safety of persons under the care of the optometrist; and

(II) The optometrist enters into an enforceable agreement with the board to so limit the optometrist's practice.

(b) An agreement entered into pursuant to this subsection (5):

(I) Is confidential and not subject to disclosure pursuant to the "Colorado Open Records Act", part 2 of article 72 of title 24, C.R.S.; and

(II) May include provisions for monitoring and reevaluation of the optometrist. The parties may modify or dissolve the agreement as necessary based on the results of the monitoring or reevaluation.

(c) The board may require the licensee to submit to an examination pursuant to this section to evaluate the extent of the physical illness, the physical condition, or the behavioral or mental health disorder and its impact on the licensee's ability to practice with reasonable skill and with safety to patients.

(d) By entering into an agreement with the board pursuant to this section to limit his or her practice, the licensee is not engaging in unprofessional conduct. The agreement is an administrative action and does not constitute a restriction or discipline by the board. However, if the licensee fails to comply with an agreement entered into pursuant to this section, the failure constitutes unprofessional conduct pursuant to section 12-40-118 and the licensee becomes subject to discipline in accordance with section 12-40-119.

(e) For purposes of this subsection (5), "physical illness, physical condition, or behavioral or mental health disorder" does not include the habitual or excessive use or abuse of alcohol, a habit-forming drug, or any controlled substance as defined in section 18-18-102 (5).

Source: L. 92: Entire section added, p. 2028, § 13, effective July 1. **L. 2011:** (1) amended and (5) added, (SB 11-094), ch. 129, pp. 449, 439, §§ 22, 6, effective April 22. **L. 2012:** (5)(e) amended, (HB 12-1311), ch. 281, p. 1615, § 25, effective July 1. **L. 2017:** IP(5)(a), (5)(c), and (5)(e) amended, (SB 17-242), ch. 263, p. 1279, § 69, effective May 25.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-40-119. Revocation, suspension, supervision, probation procedure - professional review - reconsideration and review of action by board - rules. (1) (a) With respect to licenses issued pursuant to this article, the board may:

(I) Impose probation, with or without supervision, on a licensee, issue a letter of admonition to a licensee, or suspend, revoke, or refuse to renew any license provided for by this

article for any reason stated in section 12-40-118 or for violating any term of probation of the board;

(II) Summarily suspend a license upon the failure of the licensee to comply with any condition of a stipulation or order imposed by the board until the licensee complies with the condition, unless compliance is beyond the control of the licensee; and

(III) Impose a fine not to exceed five thousand dollars on a licensee for a violation of this article or a rule promulgated pursuant to this article other than a violation related to a standard of practice. The board shall, by rule, promulgate a fining schedule with lesser amounts for first violations and increasing amounts for subsequent violations of this subparagraph (III).

(b) Upon its own motion or upon a signed complaint, an investigation may be made if there is reasonable cause to believe that an optometrist licensed by the board has committed an act of unprofessional conduct pursuant to section 12-40-118 or, while under probation, has violated the terms of the probation.

(c) If a licensee requests a hearing to dispute formal board action or if the board finds such probability great and a hearing is conducted, such hearing shall be conducted in accordance with the provisions of section 24-4-105, C.R.S.

(d) The board may revoke, suspend, deny, issue, reissue, or reinstate licenses granted pursuant to this article or under the previous laws of this state, and the board may take such other intermediate action as may be deemed necessary under the circumstances of each case pursuant to this section.

(2) (a) to (c) Repealed.

(d) The hearing shall be conducted in accordance with the provisions of section 24-4-105, C.R.S.; except that the board may use an administrative law judge, who shall perform all of those functions indicated in section 24-4-105 (4), C.R.S.

(e) The action of the board in refusing to grant or renew, revoking, or suspending a license, issuing a letter of admonition, or placing a licensee on probation or under supervision pursuant to subsection (1) of this section may be reviewed by the court of appeals by appropriate proceedings under section 24-4-106 (11), C.R.S.

(f) (I) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the board, does not warrant formal action by the board but that should not be dismissed as being without merit, a letter of admonition may be issued and sent, by certified mail, to the licensee.

(II) When a letter of admonition is sent by the board, by certified mail, to a licensee, such licensee shall be advised that he or she has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(III) If the request for adjudication is timely made, the letter of admonition shall be deemed vacated and the matter shall be processed by means of formal disciplinary proceedings.

(2.1) When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the board and, in the opinion of the board, the complaint should be dismissed, but the board has noticed indications of possible errant conduct by the licensee that could lead to serious consequences if not corrected, a confidential letter of concern may be issued and sent to the licensee.

(2.3) No person whose license is revoked by the board may reapply for a new license under the provisions of this article for at least two years after any such revocation.

(2.5) Any person participating in good faith in the making of a complaint or report or participating in any investigative or administrative proceeding pursuant to this section shall be immune from any liability, civil or criminal, that otherwise might result by reason of such action.

(3) (a) Repealed.

(b) Any member of the board or of a professional review committee authorized by the board, any member of the board's or committee's staff, any person acting as a witness or consultant to the board or committee, 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 liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as board or committee member, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this article shall be immune from any civil or criminal liability that may result from such participation.

(4) (a) The board, on its own motion or upon application, at any time after the refusal to grant a license, the imposition of any discipline, or the ordering of probation, as provided in this section, may reconsider its prior action and grant, reinstate, or restore such license, terminate probation, or reduce the severity of its prior disciplinary action. The taking of any such further action, or the holding of a hearing with respect thereto, rests in the sole discretion of the board.

(b) Upon the receipt of such application, it may be forwarded to the attorney general for such investigation as may be deemed necessary. The proceedings shall be governed by the applicable provisions governing formal hearings in disciplinary proceedings. The attorney general may present evidence bearing upon the matters in issue, and the burden shall be upon the applicant seeking reinstatement to establish the averments of the application as specified in section 24-4-105 (7), C.R.S. No application for reinstatement or for modification of a prior order shall be accepted unless the applicant deposits with the board all amounts unpaid under any prior order of the board.

(5) Upon dismissal of a complaint, which has gone to hearing, the board shall notify the complainant that he or she may receive a copy of the investigation report and the response of the optometrist or other person alleged to have violated the act upon payment of costs of copying and mailing such information.

(6) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(7) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a 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 license, the board may issue an order to cease and desist such activity. 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 unlicensed practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (7), the respondent may request a hearing on the question of whether acts

or practices in violation of this article have occurred. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(8) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this article, then, in addition to any specific powers granted pursuant to this article, the board may issue to such person an order to show cause as to why the board should not issue a final order directing such person to cease and desist from the unlawful act or unlicensed practice.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (8) shall be promptly notified by the board of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the board for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order is issued. Personal service or mailing of an order or document pursuant to this subsection (8) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the board as provided in paragraph (b) of this subsection (8). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (8) does not appear at the hearing, the board may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (8) and such other evidence related to the matter as the board deems appropriate. The board shall issue such order within ten days after the board's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

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

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

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

(10) If any person fails to comply with a final cease-and-desist order or a stipulation, the board may request the attorney general or the district attorney for the judicial district in which

the alleged violation exists to bring, and if so requested such attorney shall bring, suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

(11) A person aggrieved by the final cease-and-desist order may seek judicial review of the board's determination or of the board's final order in a court of competent jurisdiction.

Source: L. 61: p. 584, § 1. **CRS 53:** § 102-2-16. **C.R.S. 1963:** § 102-1-16. **L. 73:** p. 529, § 68. **L. 77:** (3) added, p. 665, § 9, effective July 1. **L. 79:** (1) and (2) R&RE, p. 533, § 11 and, (3)(b) amended, p. 535, § 12, effective June 7. **L. 81:** (1)(b), (2)(a), and (2)(d) amended and (2)(b) and (2)(c) repealed, pp. 782, 783, §§ 1, 2, effective July 1. **L. 85:** (1)(a), (2)(d), and (3)(b) amended, (1)(b), (1)(c), and (2)(e) R&RE, (1)(d) and (2)(f) added, and (2)(a) and (3)(a) repealed, pp. 536-539, §§ 10-12, 15, effective July 1. **L. 87:** (2)(d) amended, p. 949, § 42, effective March 13. **L. 89:** (2.5) added and (3)(b) amended, p. 674, § 18, effective July 1. **L. 92:** Entire section amended, p. 2029, § 14, effective July 1. **L. 2002:** (1)(c) amended, p. 61, § 9, effective July 1. **L. 2004:** (2)(f) and (3)(b) amended and (6) added, p. 1842, § 90, effective August 4. **L. 2006:** (2.1) and (7) to (11) added, p. 806, § 35, effective July 1. **L. 2011:** (1)(a), (1)(b), (1)(d), (2)(e), (2.1), (2.3), (4)(a), (7)(a), (8)(a), (8)(c)(III), and (9) amended, (SB 11-094), ch. 129, p. 440, § 7, effective April 22.

Editor's note: Subsections (2)(b) and (2)(c) were repealed, effective July 1, 1981, and subsections (2)(a) and (3)(a) were repealed, effective July 1, 1985, prior to the entire section being amended in 1992.

Cross references: For an alternative disciplinary action for persons licensed pursuant to this article, see § 24-34-106.

12-40-120. Use of forged or invalid certificate. It is unlawful for any person to use or attempt to use as his or her own a diploma of an optometry school or college, or a license of another person, or a forged diploma or license, or any forged or false identification.

Source: L. 61: p. 586, § 1. **CRS 53:** § 102-2-19. **C.R.S. 1963:** § 102-1-19. **L. 2011:** Entire section amended, (SB 11-094), ch. 129, p. 449, § 23, effective April 22.

12-40-121. Sale or forgery of degree or license. (1) It is unlawful:

(a) To sell or offer to sell a diploma conferring an optometry degree or a license granted pursuant to this article or prior optometry practice laws;

(b) To procure a diploma or license with intent that it be used as evidence of the right to practice optometry by a person other than the one upon whom it was conferred or to whom such license was granted;

(c) With fraudulent intent to alter such diploma or license or to use or attempt to use it when it is so altered.

Source: L. 61: p. 586, § 1. **CRS 53:** § 102-2-20. **C.R.S. 1963:** § 102-1-20. **L. 2011:** Entire section amended, (SB 11-094), ch. 129, p. 449, § 24, effective April 22.

12-40-122. Corporate practice prohibited - exceptions. The practice of optometry in a corporate capacity is prohibited, but this prohibition does not apply to a professional corporation formed pursuant to this article or to an optometry practice carried on by a nonprofit organization operating to assist indigent persons.

Source: L. 61: p. 587, § 1. **CRS 53:** § 102-2-22. **C.R.S. 1963:** § 102-1-22. **L. 73:** p. 1079, § 1. **L. 2011:** Entire section amended, (SB 11-094), ch. 129, p. 450, § 25, effective April 22.

12-40-123. Enforcement - injunction - defense. (1) When the board has reasonable cause to believe that any person is violating any provision of this article or any lawful rule or regulation issued under this article, it may, in addition to all actions provided for in this article and without prejudice thereto, enter an order requiring such person to desist or refrain from such violation. An action may be brought on the relation of the people of the state of Colorado by the attorney general and the board to enjoin such person from engaging in or continuing such violation or from doing any act in furtherance thereof. In any such action an order or judgment may be entered awarding such preliminary or final injunction as may be deemed proper.

(2) When legal actions are instituted against a board member or authorized personnel for acts occurring while acting in their official capacities and such actions are free of malice, fraud, or willful neglect of duty, the member or employee served shall forthwith transmit any process served upon him to the attorney general who shall furnish counsel and defend against such action without cost to the board member or employee.

Source: L. 61: p. 586, § 1. **CRS 53:** § 102-2-21. **C.R.S. 1963:** § 102-1-21.

12-40-124. Unauthorized practice - penalties. Any person who practices or offers or attempts to practice optometry 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 any person who commits a second or any subsequent offense commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: L. 61: p. 587, § 1. **CRS 53:** § 102-2-24. **C.R.S. 1963:** § 102-1-24. **L. 85:** Entire section amended, p. 409, § 15, effective July 1. **L. 92:** Entire section amended, p. 2031, § 15, effective July 1. **L. 2002:** Entire section amended, p. 1480, § 83, effective October 1. **L. 2006:** Entire section amended, p. 90, § 39, effective August 7.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

12-40-125. Professional service corporations, limited liability companies, and registered limited liability partnerships for the practice of optometry - definitions. (1) Persons licensed to practice optometry by the board may form professional service corporations for the practice of optometry under the "Colorado Corporation Code", if such corporations are organized and operated in accordance with the provisions of this section. The articles of

incorporation of such corporations shall contain provisions complying with the following requirements:

(a) The name of the corporation shall contain the words "professional company" or "professional corporation" or abbreviations thereof.

(b) The corporation shall be organized solely for the purposes of conducting the practice of optometry only through persons licensed by the board to practice optometry in the state of Colorado.

(c) The corporation may exercise the powers and privileges conferred upon corporations by the laws of Colorado only in furtherance of and subject to its corporate purpose.

(d) All shareholders of the corporation shall be persons who are licensed by the board to practice optometry in the state of Colorado and who at all times own their shares in their own right. They shall be individuals who, except for illness, accident, and time spent in the armed services, on vacations, and on leaves of absence not to exceed one year, are actively engaged in the practice of optometry in the offices of the corporation.

(e) Provisions shall be made requiring any shareholder who ceases to be or for any reason is ineligible to be a shareholder to dispose of all his shares forthwith, either to the corporation or to any person having the qualifications described in paragraph (d) of this subsection (1).

(f) The president shall be a shareholder and a director, and, to the extent possible, all other directors and officers shall be persons having the qualifications described in paragraph (d) of this subsection (1). Lay directors and officers shall not exercise any authority whatsoever over professional matters as defined in this article or in the rules and regulations as promulgated by the board.

(g) The articles of incorporation shall provide, and all shareholders of the corporation shall agree, that all shareholders of the corporation shall be jointly and severally liable for all acts, errors, and omissions of the employees of the corporation or that all shareholders of the corporation shall be jointly and severally liable for all acts, errors, and omissions of the employees of the corporation except during periods of time when the corporation shall maintain in good standing professional liability insurance which shall meet the following minimum standards:

(I) The insurance shall insure the corporation against liability imposed upon the corporation by law in the performance of professional services for others by those officers and employees of the corporation who are licensed by the board to practice optometry.

(II) Such policies shall insure the corporation against liability imposed upon it by law for damages arising out of the acts, errors, and omissions of all nonprofessional employees.

(III) The insurance shall be in an amount for each claim of at least fifty thousand dollars multiplied by the number of persons licensed to practice optometry employed by the corporation; the policy may provide for an aggregate maximum limit of liability per year for all claims of one hundred fifty thousand dollars also multiplied by the number of persons licensed to practice optometry employed by the corporation; but no firm shall be required to carry insurance in excess of three hundred thousand dollars for each claim with an aggregate maximum limit of liability for all claims during the year of nine hundred thousand dollars.

(IV) The policy may provide that it does not apply to: Any dishonest, fraudulent, criminal, or malicious act or omission of the insured corporation or any stockholder or employee thereof; the conduct of any business enterprise, as distinguished from the practice of optometry,

in which the insured corporation under this section is not permitted to engage but which nevertheless may be owned by the insured corporation or in which the insured corporation may be a partner or which may be controlled, operated, or managed by the insured corporation in its own or in a fiduciary capacity including the ownership, maintenance, or use of any property in connection therewith, when not resulting from breach of professional duty, bodily injury to, or sickness, disease, or death of any person, or to injury to or destruction of any tangible property, including the loss of use thereof; and the policy may contain reasonable provisions with respect to policy periods, territory, claims, conditions, and other usual matters.

(2) Repealed.

(3) The corporation shall do nothing which, if done by a person employed by it and licensed to practice optometry in the state of Colorado, would violate the standards of professional conduct, as provided for in this article. Any violation by the corporation of this section shall be grounds for the board to terminate or suspend its right to practice optometry.

(4) Nothing in this section shall be deemed to diminish or change the obligation of each person employed by the corporation and licensed to practice optometry in this state to conduct his practice in accordance with the standards of professional conduct provided for in this article; any person licensed by the board to practice optometry who by act or omission causes the corporation to act or fail to act in a way which violates such standards of professional conduct, including any provision of this section, shall be deemed personally responsible for such act or omission and shall be subject to discipline therefor.

(5) A professional service corporation may adopt a pension, profit-sharing (whether cash or deferred), health and accident insurance, or welfare plan for all or part of its employees including lay employees, if such plan does not require or result in the sharing of specific or identifiable fees with lay employees and if any payments made to lay employees, or into any such plan in behalf of lay employees, are based upon their compensation or length of service, or both, rather than the amount of fees or income received.

(6) Except as provided in this section, corporations shall not practice optometry.

(7) As used in this section, unless the context otherwise requires:

(a) "Articles of incorporation" includes operating agreements of limited liability companies and partnership agreements of registered limited liability partnerships.

(b) "Corporation" includes a limited liability company organized under the "Colorado Limited Liability Company Act", article 80 of title 7, C.R.S., and a limited liability partnership registered under section 7-60-144 or 7-64-1002, C.R.S.

(c) "Director" and "officer" of a corporation includes a member and a manager of a limited liability company and a partner in a registered limited liability partnership.

(d) "Employees" includes employees, members, and managers of a limited liability company and employees and partners of a registered limited liability partnership.

(e) "Share" includes a member's rights in a limited liability company and a partner's rights in a registered limited liability partnership.

(f) "Shareholder" includes a member of a limited liability company and a partner in a registered limited liability partnership.

Source: L. 73: p. 1079, § 2. **C.R.S. 1963:** § 102-1-25. **L. 85:** (2) repealed, p. 539, § 15, effective July 1. **L. 95:** (7) added, p. 813, § 34, effective May 24. **L. 97:** (7)(b) amended, p. 918, § 14, effective January 1, 1998.

Editor's note: The "Colorado Corporation Code", articles 1 to 10 of title 7, referred to in the introductory portion to subsection (1), was repealed, effective July 1, 1994, and was replaced on that date by the "Colorado Business Corporation Act", articles 101 to 117 of title 7.

12-40-126. Financial responsibility - rules. (1) Every optometrist who provides health care services within the state of Colorado shall establish financial responsibility as follows:

(a) By maintaining commercial professional liability insurance coverage with an insurance company authorized to do business in this state in a minimum indemnity amount of one million dollars per incident and three million dollars annual aggregate per year; or

(b) By maintaining a surety bond in a form acceptable to the commissioner of insurance in the amounts set forth in paragraph (a) of this subsection (1); or

(c) By depositing cash or cash equivalents as security with the commissioner of insurance in the amounts set forth in paragraph (a) of this subsection (1); or

(d) By providing any other security acceptable to the commissioner of insurance, which may include approved plans of self-insurance.

(2) (a) The board may, by rule, establish lesser financial responsibility standards than those required in subsection (1) of this section for classes of license holders who have an inactive license or who render limited or occasional optometry services because of administrative or other nonclinical duties, partial or complete retirement, or for other reasons that render the limits provided in paragraph (a) of subsection (1) of this section unreasonable or unattainable.

(b) Nothing in this section precludes or otherwise prohibits a licensed optometrist from rendering appropriate patient care on an occasional basis when the circumstances surrounding the need for such care so warrant.

(3) Each optometrist, as a condition of receiving and maintaining an active license to provide optometry services in this state, shall furnish the board evidence of compliance with subsection (1) of this section. No license shall be issued or renewed unless such evidence of compliance has been furnished.

(4) Notwithstanding the amounts specified in subsection (1) of this section, if the board receives two or more reports concerning any optometrist pursuant to section 12-40-127 during any one-year period, the minimum financial responsibility requirement shall be two times the amount specified in subsection (1) of this section. However, upon motion filed by the optometrist and the presentation of sufficient evidence to the board that one or more such reports involved an action or claim which did not represent any substantial failure to adhere to accepted professional standards of care, the board may reduce such additional amount to that which would be fair and conscionable.

(5) Repealed.

Source: L. 88: Entire section added, p. 531, § 8, effective January 1, 1989; (1)(a) amended, p. 1434, § 27, effective January 1, 1989. **L. 2011:** (1)(a), (2), and (3) amended and (5) repealed, (SB 11-094), ch. 129, pp. 442, 450, §§ 8, 26, 27, effective April 22.

Editor's note: Amendments to subsection (2) in sections 8 and 26 of Senate Bill 11-094 were harmonized.

12-40-127. Judgments and settlements - reporting. Any final judgment, settlement, or arbitration award against an optometrist for malpractice shall be reported within fourteen days by such optometrist's malpractice insurance carrier in accordance with section 10-1-125, C.R.S., or by such optometrist if no commercial malpractice insurance coverage is involved to the board for review, investigation, and, where appropriate, disciplinary or other action. Any optometrist who knowingly fails to report as required by this section shall be subject to a civil penalty of not more than two thousand five hundred dollars. Such penalty shall be determined and collected in an action brought by the board in the district court in the city and county of Denver, which court shall have exclusive jurisdiction in such matters. All penalties collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the general fund.

Source: L. 88: Entire section added, p. 532, § 8, effective January 1, 1989. **L. 2003:** Entire section amended, p. 622, § 34, effective July 1.

12-40-128. Repeal of article - subject to sunset law. (1) This article is repealed, effective September 1, 2022.

(2) The provisions of section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the functions performed pursuant to this article.

Source: L. 92: Entire section added, p. 2031, § 16, effective July 1. **L. 2002:** (1) amended, p. 59, § 3, effective July 1. **L. 2011:** (1) amended, (SB 11-094), ch. 129, p. 436, § 1, effective April 22.

ARTICLE 40.5

Occupational Therapy Practice Act

12-40.5-101. Short title. This article shall be known and may be cited as the "Occupational Therapy Practice Act".

Source: L. 2008: Entire article added, p. 816, § 1, effective July 1.

12-40.5-102. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that:

(a) Occupational therapy services are provided for the purpose of promoting health and wellness to those who have or are at risk for developing an illness, injury, disease, disorder, condition, impairment, disability, activity limitation, or participation restriction;

(b) Occupational therapy addresses the physical, cognitive, psychosocial, sensory, and other aspects of performance in a variety of contexts to support engagement in everyday life activities that affect health, well-being, and quality of life;

(c) This act is necessary to:

(I) Safeguard the public health, safety, and welfare; and

(II) Protect the public from incompetent, unethical, or unauthorized persons.

(2) The general assembly further determines that it is the purpose of this act to regulate persons who are representing themselves as occupational therapists and who are performing services that constitute occupational therapy.

Source: L. 2008: Entire article added, p. 816, § 1, effective July 1.

12-40.5-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Activities of daily living" means activities that are oriented toward taking care of one's own body, such as bathing, showering, bowel and bladder management, dressing, eating, feeding, functional mobility, personal device care, personal hygiene and grooming, sexual activity, sleep, rest, and toilet hygiene.

(2) "Aide" means a person who is not licensed by the director and who provides supportive services to occupational therapists and occupational therapy assistants.

(3) "Department" means the department of regulatory agencies.

(4) "Director" means the director of the division of professions and occupations.

(5) "Division" means the division of professions and occupations in the department of regulatory agencies created in section 24-34-102, C.R.S.

(6) "Instrumental activities of daily living" means activities that are oriented toward interacting with the environment and that may be complex. These activities are generally optional in nature and may be delegated to another person. "Instrumental activities of daily living" include care of others, care of pets, child-rearing, communication device use, community mobility, financial management, health management and maintenance, home establishment and management, meal preparation and cleanup, safety procedures and emergency responses, and shopping.

(6.5) "Licensee" means a person licensed under this article as an occupational therapist or occupational therapy assistant.

(7) "Low vision rehabilitation services" means the evaluation, diagnosis, management, and care of the low vision patient in visual acuity and visual field as it affects the patient's occupational performance, including low vision rehabilitation therapy, education, and interdisciplinary consultation.

(8) "Occupational therapist" means a person licensed to practice occupational therapy under this article.

(9) "Occupational therapy" means the therapeutic use of everyday life activities with individuals or groups for the purpose of participation in roles and situations in home, school, workplace, community, and other settings. The practice of occupational therapy includes:

(a) Methods or strategies selected to direct the process of interventions such as:

(I) Establishment, remediation, or restoration of a skill or ability that has not yet developed or is impaired;

(II) Compensation, modification, or adaptation of an activity or environment to enhance performance;

(III) Maintenance and enhancement of capabilities without which performance of everyday life activities would decline;

(IV) Promotion of health and wellness to enable or enhance performance in everyday life activities; and

(V) Prevention of barriers to performance, including disability prevention;

(b) Evaluation of factors affecting activities of daily living, instrumental activities of daily living, education, work, play, leisure, and social participation, including:

(I) Client factors, including body functions such as neuromuscular, sensory, visual, perceptual, and cognitive functions, and body structures such as cardiovascular, digestive, integumentary, and genitourinary systems;

(II) Habits, routines, roles, and behavior patterns;

(III) Cultural, physical, environmental, social, and spiritual contexts and activity demands that affect performance; and

(IV) Performance skills, including motor, process, and communication and interaction skills;

(c) Interventions and procedures to promote or enhance safety and performance in activities of daily living, instrumental activities of daily living, education, work, play, leisure, and social participation, including:

(I) Therapeutic use of occupations, exercises, and activities;

(II) Training in self-care, self-management, home management, and community and work reintegration;

(III) Identification, development, remediation, or compensation of physical, cognitive, neuromuscular, sensory functions, sensory processing, and behavioral skills;

(IV) Therapeutic use of self, including a person's personality, insights, perceptions, and judgments, as part of the therapeutic process;

(V) Education and training of individuals, including family members, caregivers, and others;

(VI) Care coordination, case management, and transition services;

(VII) Consultative services to groups, programs, organizations, or communities;

(VIII) Modification of environments such as home, work, school, or community and adaptation of processes, including the application of ergonomic principles;

(IX) Assessment, design, fabrication, application, fitting, and training in assistive technology and adaptive and orthotic devices and training in the use of prosthetic devices, excluding glasses, contact lenses, or other prescriptive devices to correct vision unless prescribed by an optometrist;

(X) Assessment, recommendation, and training in techniques to enhance functional mobility, including wheelchair management;

(XI) Driver rehabilitation and community mobility;

(XII) Management of feeding, eating, and swallowing to enable eating and feeding performance;

(XIII) Application of physical agent modalities and therapeutic procedures such as wound management; techniques to enhance sensory, perceptual, and cognitive processing; and manual techniques to enhance performance skills; and

(XIV) The use of telehealth pursuant to rules as may be adopted by the director.

(10) "Occupational therapy assistant" means a person licensed under this article to practice occupational therapy under the supervision of and in partnership with an occupational therapist.

(11) Repealed.

(12) "Supervision" means the giving of aid, directions, and instructions that are adequate to ensure the safety and welfare of clients during the provision of occupational therapy by the

occupational therapist designated as the supervisor. Responsible direction and supervision by the occupational therapist shall include consideration of factors such as level of skill, the establishment of service competency, experience, work setting demands, the complexity and stability of the client population, and other factors. Supervision is a collaborative process for responsible, periodic review and inspection of all aspects of occupational therapy services and the occupational therapist is legally accountable for occupational therapy services provided by the occupational therapy assistant and the aide.

(13) "Vision therapy services" means the assessment, diagnosis, treatment, and management of a patient with vision therapy, visual training, visual rehabilitation, orthoptics, or eye exercises.

Source: L. 2008: Entire article added, p. 817, § 1, effective July 1. **L. 2013:** (2), (7), (8), (9)(c)(III), (9)(c)(IX), (9)(c)(XII), (9)(c)(XIII), and (10) amended, (6.5) and (9)(c)(XIV) added, and (11) repealed, (SB 13-180), ch. 411, p. 2431, § 3, effective June 30.

12-40.5-104. Use of titles restricted. (1) Only a person licensed as an occupational therapist may use the title "occupational therapist licensed", "licensed occupational therapist", "occupational therapist", or "doctor of occupational therapy" or use the abbreviation "O.T.", "O.T.D.", "O.T.R.", "O.T./L.", "O.T.D./L.", or "O.T.R./L.", or any other generally accepted terms, letters, or figures that indicate that the person is an occupational therapist.

(2) Only a person licensed as an occupational therapy assistant may use the title "occupational therapy assistant licensed" or "licensed occupational therapy assistant", use the abbreviation "O.T.A./L." or "C.O.T.A./L.", or use any other generally accepted terms, letters, or figures indicating that the person is an occupational therapy assistant.

Source: L. 2008: Entire article added, p. 820, § 1, effective July 1. **L. 2013:** Entire section amended, (SB 13-180), ch. 411, p. 2432, § 4, effective June 30.

12-40.5-105. License required - occupational therapists - occupational therapy assistants.

(1) Repealed.

(2) (a) On and after June 1, 2014, except as otherwise provided in this article, a person shall not practice occupational therapy or represent himself or herself as being able to practice occupational therapy in this state without possessing a valid license issued by the director in accordance with this article and rules adopted pursuant to this article.

(b) On June 1, 2014, each active occupational therapy registration becomes an active occupational therapy license by operation of law. The conversion from registration to licensure does not:

(I) Affect any prior discipline, limitation, or condition imposed by the director on an occupational therapist's registration;

(II) Limit the director's authority over any registrant; or

(III) Affect any pending investigation or administrative proceeding.

(c) The director shall treat any application for an occupational therapy registration pending on June 1, 2014, as an application for licensure, which application is subject to the requirements established by the director.

(3) On and after June 1, 2014, except as otherwise provided in this article, a person shall not practice as an occupational therapy assistant or represent himself or herself as being able to practice as an occupational therapy assistant in this state without possessing a valid license issued by the director in accordance with this article and any rules adopted under this article.

Source: L. 2008: Entire article added, p. 820, § 1, effective July 1. **L. 2013:** Entire section amended, (SB 13-180), ch. 411, p. 2432, § 5, effective June 30.

Editor's note: Subsection (1)(b) provided for the repeal of subsection (1), effective June 1, 2014. (See L. 2013, p. 2432.)

12-40.5-106. Licensure of occupational therapists - application - qualifications - rules. (1) **Educational and experiential requirements.** Every applicant for a license as an occupational therapist must have:

(a) Successfully completed the academic requirements of an educational program for occupational therapists that is offered by an institution of higher education and accredited by a national, regional, or state agency recognized by the United States secretary of education, or another such program accredited thereby and approved by the director.

(b) Successfully completed a minimum period of supervised fieldwork experience required by the recognized educational institution where the applicant met the academic requirements described in paragraph (a) of this subsection (1). The minimum period of fieldwork experience for an occupational therapist is twenty-four weeks of supervised fieldwork experience or satisfaction of any generally recognized past standards that identified minimum fieldwork requirements at the time of graduation.

(2) **Application.** (a) When an applicant has fulfilled the requirements of subsection (1) of this section, the applicant may apply for examination and licensure upon payment of a fee in an amount determined by the director. A person who fails an examination may apply for reexamination upon payment of a fee in an amount determined by the director.

(b) The application shall be in the form and manner designated by the director.

(3) **Examination.** Each applicant shall pass a nationally recognized examination approved by the director that measures the minimum level of competence necessary for public health, safety, and welfare.

(4) **Licensure.** When an applicant has fulfilled the requirements of subsections (1) to (3) of this section, the director shall issue a license to the applicant; except that the director may deny a license if the applicant has committed any act that would be grounds for disciplinary action under section 12-40.5-110.

(5) **Licensure by endorsement.** (a) An applicant for licensure by endorsement must file an application and pay a fee as prescribed by the director and must hold a current, valid license or registration in a jurisdiction that requires qualifications substantially equivalent to those required by subsection (1) of this section for licensure.

(b) An applicant for licensure by endorsement must submit with the application verification that the applicant has actively practiced for a period of time determined by rules of the director or otherwise maintained competency as determined by the director.

(c) Upon receipt of all documents required by paragraphs (a) and (b) of this subsection (5), the director shall review the application and make a determination of the applicant's qualification to be licensed by endorsement.

(d) The director may deny the application for licensure by endorsement if the applicant has committed an act that would be grounds for disciplinary action under section 12-40.5-110.

(6) **License renewal.** (a) An occupational therapist must renew his or her license issued under this article according to a schedule of renewal dates established by the director. The occupational therapist must submit an application in the form and manner designated by the director and shall pay a renewal fee in an amount determined by the director.

(b) Licenses are renewed or reinstated in accordance with the schedule established by the director, and the director shall grant a renewal or reinstatement pursuant to section 24-34-102 (8), C.R.S. The director may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If an occupational therapist fails to renew his or her license pursuant to the schedule established by the director, the license expires. Any person whose license expires is subject to the penalties provided in this article or section 24-34-102 (8), C.R.S., for reinstatement.

(7) **Fees.** All fees collected under this article shall be determined, collected, and appropriated in the same manner as set forth in section 24-34-105, C.R.S., and periodically adjusted in accordance with section 24-75-402, C.R.S.

Source: L. 2008: Entire article added, p. 820, § 1, effective July 1. **L. 2013:** IP(1), (2)(a), and (3) to (6) amended, (SB 13-180), ch. 411, p. 2433, § 6, effective June 30.

12-40.5-106.5. Occupational therapy assistants - licensure - application - qualifications - rules. (1) **Educational and experiential requirements.** Every applicant for a license as an occupational therapy assistant must have:

(a) Successfully completed the academic requirements of an educational program for occupational therapy assistants that is offered by an institution of higher education and accredited by a national, regional, or state agency recognized by the United States secretary of education, or another such program accredited thereby and approved by the director.

(b) Successfully completed a minimum period of supervised fieldwork experience required by the recognized educational institution where the applicant met the academic requirements described in paragraph (a) of this subsection (1). The minimum period of fieldwork experience for an occupational therapy assistant is sixteen weeks of supervised fieldwork experience or satisfaction of any generally recognized past standards that identified minimum fieldwork requirements at the time of graduation.

(2) **Application.** (a) When an applicant has fulfilled the requirements of subsection (1) of this section, the applicant may apply for licensure upon payment of a fee in an amount determined by the director.

(b) The applicant must submit an application in the form and manner designated by the director.

(3) **Examination.** Each applicant must pass a nationally recognized examination, approved by the director, that measures the minimum level of competence necessary for public health, safety, and welfare.

(4) **Licensure.** When an applicant has fulfilled the requirements of subsections (1) to (3) of this section, the director shall issue a license to the applicant; except that the director may deny a license if the applicant has committed any act that would be grounds for disciplinary action under section 12-40.5-110.

(5) **Licensure by endorsement.** (a) An applicant for licensure by endorsement must file an application and pay a fee as prescribed by the director and must hold a current, valid license or registration in a jurisdiction that requires qualifications substantially equivalent to those required for licensure by subsection (1) of this section.

(b) An applicant for licensure by endorsement must submit with the application verification that the applicant has actively practiced as an occupational therapy assistant for a period of time determined by rules of the director or otherwise maintained competency as an occupational therapy assistant as determined by the director.

(c) Upon receipt of all documents required by paragraphs (a) and (b) of this subsection (5), the director shall review the application and make a determination of the applicant's qualification to be licensed by endorsement as an occupational therapy assistant.

(d) The director may deny the license if the applicant has committed an act that would be grounds for disciplinary action under section 12-40.5-110.

(6) **License renewal.** (a) An occupational therapy assistant must renew his or her license issued under this article according to a schedule of renewal dates established by the director. The occupational therapy assistant must submit an application in the form and manner designated by the director and shall pay a renewal fee in an amount determined by the director.

(b) Licenses are renewed or reinstated in accordance with the schedule established by the director, and the director shall grant a renewal or reinstatement pursuant to section 24-34-102 (8), C.R.S. The director may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If an occupational therapy assistant fails to renew his or her license pursuant to the schedule established by the director, the license expires. Any person whose license expires is subject to the penalties provided in this article or section 24-34-102 (8), C.R.S., for reinstatement.

Source: L. 2013: Entire section added, (SB 13-180), ch. 411, p. 2439, § 12, effective June 30.

12-40.5-107. Supervision of occupational therapy assistants and aides. (1) An occupational therapy assistant may practice only under the supervision of an occupational therapist who is licensed to practice occupational therapy in this state. The occupational therapist is responsible for occupational therapy evaluation, appropriate reassessment, treatment planning, interventions, and discharge from occupational therapy services based on standard professional guidelines. Supervision of an occupational therapy assistant by an occupational therapist is a shared responsibility. The supervising occupational therapist and the supervised occupational therapy assistant have legal and ethical responsibility for ongoing management of supervision, including providing, requesting, giving, or obtaining supervision. The supervising occupational therapist shall determine the frequency, level, and nature of supervision with input from the occupational therapy assistant and shall base the supervision determination on a variety of factors, including the clients' required level of care, the treatment plan, and the experience and pertinent skills of the occupational therapy assistant.

(2) The supervising occupational therapist shall supervise the occupational therapy assistant in a manner that ensures that the occupational therapy assistant:

(a) Does not initiate or alter a treatment program without prior evaluation by and approval of the supervising occupational therapist;

(b) Obtains prior approval of the supervising occupational therapist before making adjustments to a specific treatment procedure; and

(c) Does not interpret data beyond the scope of the occupational therapy assistant's education and training.

(3) An aide shall function only under the guidance, responsibility, and supervision of an occupational therapist or occupational therapy assistant. The aide shall perform only specifically selected tasks for which the aide has been trained and has demonstrated competence to the occupational therapist or occupational therapy assistant. The supervising occupational therapist or occupational therapy assistant shall supervise the aide in a manner that ensures compliance with this subsection (3) and is subject to discipline under section 12-40.5-110 for failure to properly supervise an aide.

Source: L. 2008: Entire article added, p. 822, § 1, effective July 1. **L. 2013:** Entire section amended, (SB 13-180), ch. 411, p. 2434, § 7, effective June 30.

12-40.5-108. Scope of article - exclusions. (1) This article does not prevent or restrict the practice, services, or activities of:

(a) A person licensed or otherwise regulated in this state by any other law from engaging in his or her profession or occupation as defined in the article under which he or she is licensed;

(b) A person pursuing a course of study leading to a degree in occupational therapy at an educational institution with an accredited occupational therapy program if that person is designated by a title that clearly indicates his or her status as a student and if he or she acts under appropriate instruction and supervision;

(c) A person fulfilling the supervised fieldwork experience requirements of section 12-40.5-106 (1) if the experience constitutes a part of the experience necessary to meet the requirement of section 12-40.5-106 (1) and the person acts under appropriate supervision; or

(d) Occupational therapy in this state by any legally qualified occupational therapist from another state or country when providing services on behalf of a temporarily absent occupational therapist licensed in this state, so long as the unlicensed occupational therapist is acting in accordance with rules established by the director. The unlicensed practice must not be of more than four weeks' duration, and a person shall not undertake unlicensed practice more than once in any twelve-month period.

Source: L. 2008: Entire article added, p. 822, § 1, effective July 1. **L. 2013:** IP(1) and (1)(d) amended, (SB 13-180), ch. 411, p. 2435, § 8, effective June 30.

12-40.5-109. Limitations on authority. Nothing in this article shall be construed to authorize an occupational therapist to engage in the practice of medicine, as defined in section 12-36-106; physical therapy, as defined in article 41 of this title; vision therapy services or low vision rehabilitation services, except under the referral, prescription, supervision, or

comanagement of an ophthalmologist or optometrist; or any other form of healing except as authorized by this article.

Source: L. 2008: Entire article added, p. 822, § 1, effective July 1.

12-40.5-109.3. Continuing professional competency - definition. (1) (a) Each occupational therapist and occupational therapy assistant shall maintain continuing professional competency to practice occupational therapy.

(b) The director shall establish a continuing professional competency program that includes, at a minimum, the following elements:

(I) A self-assessment of the knowledge and skills of a licensee seeking to renew or reinstate a license;

(II) Development, execution, and documentation of a learning plan based on the self-assessment described in subparagraph (I) of this paragraph (b); and

(III) Periodic demonstration of knowledge and skills through documentation of activities necessary to ensure at least minimal ability to safely practice the profession; except that an occupational therapist or occupational therapy assistant licensed pursuant to this article need not retake the examination required by section 12-40.5-106 (3) or 12-40.5-106.5 (3), respectively, for initial licensure.

(2) A licensee satisfies the continuing competency requirements of this section if the licensee meets the continuing professional competency requirements of one of the following entities:

(a) An accrediting body approved by the director; or

(b) An entity approved by the director.

(3) (a) After the program is established, a licensee must satisfy the requirements of the program in order to renew or reinstate a license to practice occupational therapy.

(b) The requirements of this section apply to individual occupational therapists and occupational therapy assistants, and nothing in this section requires a person who employs or contracts with an occupational therapist or occupational therapy assistant to comply with this section.

(4) Records of assessments or other documentation developed or submitted in connection with the continuing professional competency program:

(a) Are confidential and not subject to inspection by the public or discovery in connection with a civil action against an occupational therapist, occupational therapy assistant, or other professional regulated under this title; and

(b) May be used only by the director and only for the purpose of determining whether a licensee is maintaining continuing professional competency to engage in the profession.

(5) As used in this section, "continuing professional competency" means the ongoing ability of a licensee to learn, integrate, and apply the knowledge, skill, and judgment to practice occupational therapy according to generally accepted standards and professional ethical standards.

Source: L. 2013: Entire section added, (SB 13-180), ch. 411, p. 2441, § 12, effective June 30.

12-40.5-109.5. Protection of medical records - licensee's obligations - verification of compliance - noncompliance grounds for discipline - rules. (1) Each occupational therapist and occupational therapy assistant responsible for patient records shall develop a written plan to ensure the security of patient medical records. The plan must address at least the following:

(a) The storage and proper disposal of patient medical records;

(b) The disposition of patient medical records if the licensee dies, retires, or otherwise ceases to practice or provide occupational therapy services to patients; and

(c) The method by which patients may access or obtain their medical records promptly if any of the events described in paragraph (b) of this subsection (1) occurs.

(2) A licensee shall inform each patient in writing of the method by which the patient may access or obtain his or her medical records if an event described in paragraph (b) of subsection (1) of this section occurs.

(3) Upon initial licensure under this article and upon renewal of a license, the applicant or licensee shall attest to the director that he or she has developed a plan in compliance with this section.

(4) A licensee who fails to comply with this section is subject to discipline in accordance with section 12-40.5-110.

(5) The director may adopt rules reasonably necessary to implement this section.

Source: L. 2013: Entire section added, (SB 13-180), ch. 411, p. 2442, § 12, effective June 30.

12-40.5-110. Grounds for discipline - disciplinary proceedings - judicial review. (1) The director may take disciplinary action against a licensee if the director finds that the licensee has represented himself or herself as a licensed occupational therapist or occupational therapy assistant after the expiration, suspension, or revocation of his or her license.

(2) The director may revoke, suspend, deny, or refuse to renew a license; place a licensee on probation; issue a letter of admonition to a licensee; or issue a cease-and-desist order to a licensee in accordance with this section upon proof that the licensee:

(a) Has engaged in a sexual act with a person receiving services while a therapeutic relationship existed or within six months immediately following termination of the therapeutic relationship. For the purposes of this paragraph (a):

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

(II) "Therapeutic relationship" means the period beginning with the initial evaluation and ending upon the written termination of treatment.

(b) Has falsified information in an application or has attempted to obtain or has obtained a license by fraud, deception, or misrepresentation;

(c) Is an excessive or habitual user or abuser of alcohol or habit-forming drugs or is a habitual user of a controlled substance, as defined in section 18-18-102, C.R.S., or other drugs having similar effects; except that the director has the discretion not to discipline the licensee if he or she is participating in good faith in a program to end such use or abuse that the director has approved;

(d) (I) Has failed to notify the director, as required by section 12-40.5-114.5, of a physical condition; a physical illness; or a behavioral, mental health, or substance use disorder

that impacts the licensee's ability to provide occupational therapy services with reasonable skill and safety or that may endanger the health or safety of individuals receiving services;

(II) Has failed to act within the limitations created by a physical illness; a physical condition; or a behavioral, mental health, or substance use disorder that renders the person unable to practice occupational therapy with reasonable skill and safety or that may endanger the health or safety of persons under his or her care; or

(III) Has failed to comply with the limitations agreed to under a confidential agreement entered pursuant to section 12-40.5-114.5;

(e) Has violated this article or aided or abetted or knowingly permitted any person to violate this article, a rule adopted under this article, or any lawful order of the director;

(f) Had a license or registration suspended or revoked for actions that are a violation of this article;

(g) Has been convicted of or pled guilty or nolo contendere to a felony or committed an act specified in section 12-40.5-111. A certified copy of the judgment of a court of competent jurisdiction of the conviction or plea shall be conclusive evidence of the conviction or plea. In considering the disciplinary action, the director shall be governed by section 24-5-101, C.R.S.

(h) Has fraudulently obtained, furnished, or sold any occupational therapy diploma, certificate, license, or renewal of a license or record, or aided or abetted such act;

(i) Has failed to notify the director of the suspension or revocation of the person's past or currently held license, certificate, or registration required to practice occupational therapy in this or any other jurisdiction;

(j) Has refused to submit to a physical or mental examination when ordered by the director pursuant to section 12-40.5-114;

(k) Has engaged in any of the following activities and practices:

(I) Ordering or performing, without clinical justification, demonstrably unnecessary laboratory tests or studies;

(II) Administering treatment, without clinical justification, that is demonstrably unnecessary; or

(III) An act or omission that is contrary to generally accepted standards of the practice of occupational therapy;

(l) Has failed to provide adequate or proper supervision of a licensed occupational therapy assistant, of an aide, or of any unlicensed person in the occupational therapy practice; or

(m) Has otherwise violated this article or any lawful order or rule of the director.

(3) Except as otherwise provided in subsection (2) of this section, the director need not find that the actions that are grounds for discipline were willful but may consider whether such actions were willful when determining the nature of disciplinary sanctions to be imposed.

(4) (a) The director may commence a proceeding to discipline a licensee when the director has reasonable grounds to believe that the licensee has committed an act enumerated in this section or has violated a lawful order or rule of the director.

(b) In any proceeding under this section, the director may accept as evidence of grounds for disciplinary action any disciplinary action taken against a licensee or registrant in another jurisdiction if the violation that prompted the disciplinary action in the other jurisdiction would be grounds for disciplinary action under this article.

(5) Disciplinary proceedings shall be conducted in accordance with article 4 of title 24, C.R.S., and the hearing and opportunity for review shall be conducted pursuant to that article by

the director or by an administrative law judge, at the director's discretion. The director has the authority to exercise all powers and duties conferred by this article during the disciplinary proceedings.

(6) (a) No later than thirty days following the date of the director's action, an occupational therapist disciplined under this section shall be notified by the director, by a certified letter to the most recent address provided to the director by the occupational therapist, of the action taken, the specific charges giving rise to the action, and the occupational therapist's right to request a hearing on the action taken.

(b) Within thirty days after notification is sent by the director, the occupational therapist may file a written request with the director for a hearing on the action taken. Upon receipt of the request the director shall grant a hearing to the occupational therapist. If the occupational therapist fails to file a written request for a hearing within thirty days, the action of the director shall be final on that date.

(c) Failure of the occupational therapist to appear at the hearing without good cause shall be deemed a withdrawal of his or her request for a hearing, and the director's action shall be final on that date. Failure, without good cause, of the director to appear at the hearing shall be deemed cause to dismiss the proceeding.

(7) (a) The director may request the attorney general to seek an injunction, in any court of competent jurisdiction, to enjoin a person from committing an act prohibited by this article. When seeking an injunction under this paragraph (a), the attorney general shall 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.

(b) (I) In accordance with article 4 of title 24, C.R.S., and this article, the director is authorized to investigate, hold hearings, and gather evidence in all matters related to the exercise and performance of the powers and duties of the director.

(II) In order to aid the director in any hearing or investigation instituted pursuant to this section, the director or an administrative law judge appointed pursuant to paragraph (c) of this subsection (7) is authorized to administer oaths, take affirmations of witnesses, and issue subpoenas compelling the attendance of witnesses and the production of all relevant records, papers, books, documentary evidence, and materials in any hearing, investigation, accusation, or other matter before the director or an administrative law judge.

(III) Upon failure of any witness or licensee to comply with a subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or 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. If the person or licensee fails to obey the order of the court, the court may hold the person or licensee in contempt of court.

(c) The director may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to conduct hearings, take evidence, make findings, and report such findings to the director.

(8) (a) The director, the director's staff, any person acting as a witness or 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 liability in any civil action

brought against him or her for acts occurring while acting in his or her capacity as director, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts.

(b) A person participating in good faith in making a complaint or report or in an investigative or administrative proceeding pursuant to this section shall be immune from any civil or criminal liability that otherwise might result by reason of the participation.

(9) A final action of the director is subject to judicial review by the court of appeals pursuant to section 24-4-106 (11), C.R.S.

(10) An employer of an occupational therapist shall report to the director any disciplinary action taken against the occupational therapist or the resignation of the occupational therapist in lieu of disciplinary action for conduct that violates this article.

(11) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the director, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(12) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a 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 license, the director may issue an order to cease and desist the activity. The director shall set forth in the order 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 unlicensed practices immediately cease.

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

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

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (13) shall be notified promptly by the director of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the director for a hearing on the order. The notice may be served on the person against whom the order has been issued by personal service, by first-class, postage prepaid United States mail, or in another manner as may be practicable. Personal service or mailing of an order or document pursuant to this paragraph (b) shall constitute notice of the order to the person.

(c) (I) The hearing on an order to show cause shall be held no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the director as provided in paragraph (b) of this subsection (13). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing be held later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (13) does not appear at the hearing, the director may present evidence that notification was properly sent or served on the person pursuant to paragraph (b) of this subsection (13) and such other evidence related to the matter as the director deems appropriate. The director shall issue the order within ten days after the director's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(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 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 directing the person to cease and desist from further unlawful acts or unlicensed practices.

(IV) The director shall provide notice, in the manner set forth in paragraph (b) of this subsection (13), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

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

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

(16) A person aggrieved by the final cease-and-desist order may seek judicial review of the director's determination or of the director's final order as provided in subsection (9) of this section.

(17) (a) When a complaint or 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 the licensee's right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct described in the letter of admonition.

(c) If the licensee timely requests adjudication, the director shall vacate the letter of admonition and process the matter by means of formal disciplinary proceedings.

(18) When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the director and, in the opinion of the director, should be dismissed, but the director has noticed conduct by the licensee that could lead to serious consequences if not corrected, the director may send a confidential letter of concern to the licensee.

(19) Any person whose license is revoked or who surrenders his or her license to avoid discipline under this section is ineligible to apply for a license under this article for at least two years after the date the license is revoked or surrendered.

Source: L. 2008: Entire article added, p. 823, § 1, effective July 1. **L. 2013:** (1), IP(2), (2)(b), (2)(c), (2)(d), (2)(h), (2)(j), (2)(k), (4)(a), (7)(b)(III), (12)(a), (13)(a), (13)(c)(III), and (14) amended and (2)(l), (2)(m), (17), (18), and (19) added, (SB 13-180), ch. 411, p. 2435, § 9, effective June 30. **L. 2015:** (2)(f) amended, (SB 15-264), ch. 259, p. 946, § 18, effective August 5. **L. 2017:** (2)(d)(I) and (2)(d)(II) amended, (SB 17-242), ch. 263, p. 1279, § 70, effective May 25.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-40.5-111. Unauthorized practice - penalties. A person who practices or offers or attempts to practice occupational therapy without an active license as required by and issued under this article for occupational therapists or occupational therapy assistants commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first offense. 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.

Source: L. 2008: Entire article added, p. 828, § 1, effective July 1. **L. 2013:** Entire section amended, (SB 13-180), ch. 411, p. 2438, § 10, effective June 30.

12-40.5-112. Rule-making authority. The director shall promulgate rules as necessary for the administration of this article.

Source: L. 2008: Entire article added, p. 828, § 1, effective July 1.

12-40.5-113. Severability. If any provision of this article is held to be invalid, such invalidity shall not affect other provisions of this article that can be given effect without the invalid provision.

Source: L. 2008: Entire article added, p. 828, § 1, effective July 1.

12-40.5-114. Mental and physical examination of licensees. (1) If the director has reasonable cause to believe that a licensee is unable to practice with reasonable skill and safety, the director may order the licensee to take a mental or physical examination administered by a physician or other licensed health care professional designated by the director. Except where due to circumstances beyond the licensee's control, if the licensee fails or refuses to undergo a mental or physical examination, the director may suspend the licensee's license until the director has made a determination of the licensee's fitness to practice. The director shall proceed with an order for examination and shall make his or her determination in a timely manner.

(2) In an order requiring a licensee to undergo a mental or physical examination, the director shall state the basis of the director's reasonable cause to believe that the licensee is

unable to practice with reasonable skill and safety. For purposes of a disciplinary proceeding authorized under this article, the licensee is deemed to have waived all objections to the admissibility of the examining physician's or licensed health care professional's testimony or examination reports on the grounds that they are privileged communication.

(3) The licensee may submit to the director testimony or examination reports from a physician chosen by the licensee and pertaining to any condition that the director has alleged may preclude the licensee from practicing with reasonable skill and safety. The director may consider the testimony and reports submitted by the licensee in conjunction with, but not in lieu of, testimony and examination reports of the physician designated by the director.

(4) The results of a mental or physical examination ordered by the director shall not be used as evidence in any proceeding other than one before the director and shall not be deemed a public record or made available to the public.

Source: L. 2008: Entire article added, p. 828, § 1, effective July 1. **L. 2013:** (1) to (3) amended, (SB 13-180), ch. 411, p. 2438, § 11, effective June 30.

12-40.5-114.5. Confidential agreement to limit practice - violation - grounds for discipline. (1) If an occupational therapist or occupational therapy assistant has a physical illness; a physical condition; or a behavioral or mental health disorder that renders the person unable to practice occupational therapy with reasonable skill and safety to clients, the occupational therapist or occupational therapy assistant shall notify the director of the physical illness; the physical condition; or the behavioral or mental health disorder in a manner and within a period determined by the director. The director may require the occupational therapist or occupational therapy assistant to submit to an examination to evaluate the extent of the physical illness; the physical condition; or the behavioral or mental health disorder and its impact on the occupational therapist's or occupational therapy assistant's ability to practice occupational therapy with reasonable skill and safety to clients.

(2) (a) Upon determining that an occupational therapist or occupational therapy assistant with a physical illness; a physical condition; or a behavioral or mental health disorder is able to render limited services with reasonable skill and safety to clients, the director may enter into a confidential agreement with the occupational therapist or occupational therapy assistant in which the occupational therapist or occupational therapy assistant agrees to limit his or her practice based on the restrictions imposed by the physical illness; the physical condition; or the behavioral or mental health disorder, as determined by the director.

(b) As part of the agreement, the occupational therapist or occupational therapy assistant is subject to periodic reevaluation 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, an occupational therapist or occupational therapy assistant is not engaging in activities that are grounds for discipline pursuant to section 12-40.5-110. The agreement does not constitute a restriction or discipline by the director. However, if the occupational therapist or occupational therapy assistant fails to comply with the terms of the agreement, the failure constitutes a prohibited activity pursuant to section 12-40.5-110 (2)(d), and the occupational

therapist or occupational therapy assistant is subject to discipline in accordance with section 12-40.5-110.

(4) This section does not apply to an occupational therapist or occupational therapy assistant subject to discipline for prohibited activities as described in section 12-40.5-110 (2)(c).

Source: L. 2013: Entire section added, (SB 13-180), ch. 411, p. 2442, § 12, effective June 30. **L. 2015:** (3) and (4) amended, (SB 15-264), ch. 259, p. 946, § 19, effective August 5. **L. 2017:** (1) and (2)(a) amended, (SB 17-242), ch. 263, p. 1280, § 71, effective May 25.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-40.5-114.7. Professional liability insurance required - rules. (1) A person shall not practice occupational therapy unless the person purchases and maintains, or is covered by, professional liability insurance in an amount determined by the director by rule that covers all acts within the scope of practice of the occupational therapist or occupational therapy assistant.

(2) This section does not apply to an occupational therapist or occupational therapy assistant who is a public employee acting within the course and scope of the public employee's duties and who is granted immunity under the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S.

Source: L. 2013: Entire section added, (SB 13-180), ch. 411, p. 2443, § 12, effective June 30.

12-40.5-115. Repeal of article - review of functions. This article is repealed, effective September 1, 2020. Prior to the repeal, the department of regulatory agencies shall review the director's powers, duties, and functions under this article as provided in section 24-34-104, C.R.S.

Source: L. 2008: Entire article added, p. 829, § 1, effective July 1. **L. 2013:** Entire section amended, (SB 13-180), ch. 411, p. 2430, § 1, effective June 30.

ARTICLE 41

Physical Therapists

Editor's note: This article was numbered as article 6 of chapter 91, C.R.S. 1963. This article was repealed and reenacted in 1979 and was subsequently repealed and reenacted in 1991, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1991, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers prior to 1991 are shown in editor's notes following those sections that were relocated.

PART 1

PHYSICAL THERAPISTS

12-41-101. Short title. This article shall be known and may be cited as the "Physical Therapy Practice Act".

Source: L. 91: Entire article R&RE, p. 1644, § 1, effective July 1.

12-41-102. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) The practice of physical therapy by any person who does not possess a valid license issued under this article 41 is inimical to the general public welfare. It is not, however, the intent of this article 41 to restrict the practice of any person duly licensed under other laws of this state from practicing within such person's scope of competency and authority under such laws.

(b) Physical therapy practice consists of patient and client management, which includes physical therapy diagnosis and prognosis to optimize physical function, movement, performance, health, quality of life, and well-being across the life-span and also includes contributions to public health services aimed at improving the health of the population; and

(c) The professional scope of physical therapy practice evolves in response to innovation, research, collaboration, and change in societal needs.

(2) Repealed.

Source: L. 91: Entire article R&RE, p. 1644, § 1, effective July 1. **L. 2001:** (2) repealed, p. 1251, § 1, effective July 1. **L. 2018:** (1) amended, (HB 18-1155), ch. 315, p. 1898, § 4, effective September 1.

12-41-103. Definitions. As used in this article 41, unless the context otherwise requires:

(1) "Accredited physical therapy program" means a program of instruction in physical therapy which is accredited as set forth in section 12-41-107 (1)(a)(II).

(1.3) "Adverse action" means disciplinary action taken by the board based upon misconduct, unacceptable performance, or a combination of both, and includes any action taken pursuant to the following:

(a) Section 12-41-116, except for any action taken pursuant to subsection (3.5) of that section;

(b) Section 12-41-122;

(c) Section 12-41-123;

(d) Section 12-41-211, except for any action taken pursuant to subsection (4) of that section;

(e) Section 12-41-217; and

(f) Section 12-41-218.

(1.5) "Board" means the physical therapy board created in section 12-41-103.3.

(2) "Director" means the director of the division of professions and occupations in the department of regulatory agencies.

(3) "Executive director" means the executive director of the department of regulatory agencies.

(4) Repealed.

(5) "Physical therapist" means a person who is licensed to practice physical therapy. The terms "physiotherapist" and "physical therapy technician" are synonymous with the term "physical therapist".

(5.5) "Physical therapist assistant" means a person who is required to be certified under part 2 of this article and who assists a physical therapist in selected components of physical therapy.

(6) (a) (I) "Physical therapy" means the examination, physical therapy diagnosis, treatment, or instruction of patients and clients to detect, assess, prevent, correct, alleviate, or limit physical disability, movement dysfunction, bodily malfunction, or pain from injury, disease, and other bodily conditions.

(II) For purposes of this article "physical therapy" includes:

(A) The administration, evaluation, and interpretation of tests and measurements of bodily functions and structures;

(B) The planning, administration, evaluation, and modification of treatment and instruction;

(C) The use of physical agents, measures, activities, and devices for preventive and therapeutic purposes, subject to the requirements of section 12-41-113;

(D) The administration of topical and aerosol medications consistent with the scope of physical therapy practice subject to the requirements of section 12-41-113;

(E) The provision of consultative, educational, and other advisory services for the purpose of reducing the incidence and severity of physical disability, movement dysfunction, bodily malfunction, and pain; and

(F) General wound care, including the assessment and management of skin lesions, surgical incisions, open wounds, and areas of potential skin breakdown in order to maintain or restore the integumentary system.

(b) For the purposes of subsection (6)(a)(II) of this section:

(I) "Physical agents" includes, but is not limited to, heat, cold, water, air, sound, light, compression, electricity, and electromagnetic energy.

(II) (A) "Physical measures, activities, and devices" includes resistive, active, and passive exercise, with or without devices; joint mobilization; mechanical stimulation; biofeedback; dry needling; postural drainage; traction; positioning; massage; splinting; training in locomotion; other functional activities, with or without assistive devices; and correction of posture, body mechanics, and gait.

(B) "Biofeedback", as used in this subparagraph (II), means the use of monitoring instruments by a physical therapist to detect and amplify internal physiological processes for the purpose of neuromuscular rehabilitation.

(III) "Tests and measurements" includes, but is not limited to, tests of muscle strength, force, endurance, and tone; reflexes and automatic reactions; movement skill and accuracy; joint motion, mobility, and stability; sensation and perception; peripheral nerve integrity; locomotor skill, stability, and endurance; activities of daily living; cardiac, pulmonary, and vascular functions; fit, function, and comfort of prosthetic, orthotic, and other assistive devices; posture and body mechanics; limb length, circumference, and volume; thoracic excursion and breathing patterns; vital signs; nature and locus of pain and conditions under which pain varies; photosensitivity; and physical home and work environments.

(7) "Physical therapy compact commission" means the national administrative body whose membership consists of all states that have enacted the "Interstate Physical Therapy Licensure Compact Act", and as enacted in this state in part 37 of article 60 of title 24.

Source: L. 91: Entire article R&RE, p. 1644, § 1, effective July 1. **L. 94:** (4) repealed, p. 28, § 1, effective March 9. **L. 2007:** (6)(a)(I) amended, p. 561, § 1, effective July 1. **L. 2011:** (1.5), (5.5), and (6)(a)(II)(F) added, (SB 11-169), ch. 172, p. 610, §§ 4, 5, effective July 1. **L. 2017:** IP amended and (1.3) and (7) added, (HB 17-1057), ch. 200, p. 742, § 2, effective May 10. **L. 2018:** (6)(a)(I), IP(6)(b), and (6)(b)(II)(A) amended, (HB 18-1155), ch. 315, p. 1898, § 5, effective September 1.

Editor's note: This section is similar to former § 12-41-102 as it existed prior to 1991.

12-41-103.3. Physical therapy board - created. (1) (a) The state physical therapy board is hereby created as the agency for regulation of the practice of physical therapy in this state and to carry out the purposes of this article 41. The board consists of: Four physical therapist members; one physical therapist assistant, unless a physical therapist assistant cannot be found, in which case the governor may appoint an additional physical therapist to the board; and two members from the public at large. Each member of the board is to be appointed by the governor for terms of four years. A member shall not serve more than two consecutive terms of four years. The governor shall give due consideration to having a geographic, political, urban, and rural balance among the board members.

(b) Each member of the board receives the compensation provided for in section 24-34-102 (13), C.R.S.

(c) The board exercises its powers and performs its duties and functions under the division of professions and occupations as if the powers, duties, and functions were transferred to the division by a **type 1** transfer, as defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S. The division shall provide necessary management support to the board under section 24-34-102, C.R.S.

(d) Repealed.

(2) A person is qualified to be appointed to the board if the person:

(a) Is a legal resident of Colorado; and

(b) Is currently licensed in good standing, with no restrictions, as a physical therapist and actively engaged in the practice of physical therapy in this state for at least five years preceding his or her appointment, if fulfilling the position of physical therapist on the board.

(3) Should a vacancy occur in any board membership before the expiration of the member's term, the governor shall fill such vacancy by appointment for the remainder of the term in the same manner as in the case of original appointments. A member of the board shall remain on the board until his or her successor has been appointed. A member may be removed by the governor for misconduct, incompetence, or neglect of duty.

Source: L. 2011: Entire section added, (SB 11-169), ch. 172, p. 610, § 6, effective July 1. **L. 2018:** (1)(a) amended, (HB 18-1155), ch. 315, p. 1899, § 6, effective September 1.

Editor's note: Subsection (1)(d)(III) provided for the repeal of subsection (1)(d), effective September 1, 2016. (See L. 2011, p. 172.)

12-41-103.6. Powers and duties of board - reports - publications - rules - interstate compact. (1) (a) The board shall administer and enforce this article and rules adopted under this article.

(b) Repealed.

(2) In addition to any other powers and duties given the board by this article 41, the board has the following powers and duties:

(a) To evaluate the qualifications of applicants for licensure, administer examinations, issue and renew licenses and permits authorized under this article, and to take disciplinary actions authorized under this article;

(b) To adopt all reasonable and necessary rules for the administration and enforcement of this article, including rules regarding:

(I) The supervision of unlicensed persons by physical therapists, taking into account the education and training of the unlicensed individuals; and

(II) Physical therapy of animals, including, without limitation, educational and clinical requirements for the performance of physical therapy of animals and the procedure for handling complaints to the department of regulatory agencies regarding physical therapy of animals. In adopting such rules, the board shall consult with the state board of veterinary medicine established by section 12-64-105.

(c) (I) To conduct hearings upon charges for discipline of a licensee and cause the prosecution and enjoinder of all persons violating this article;

(II) (A) To administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board. The board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the board.

(B) Upon failure of a witness to comply with a subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the board; 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. The court may punish a failure to obey its order as a contempt of court.

(d) To maintain a register listing the name of every physical therapist, including the contact address, last-known place of residence, and the license number of each licensee;

(e) To promote consumer protection and consumer education by such means as the board finds appropriate.

(f) To facilitate Colorado's participation in the "Interstate Physical Therapy Licensure Compact Act", part 37 of article 60 of title 24, as follows:

(I) Appoint a qualified delegate to serve on the physical therapy compact commission;

(II) Participate fully in the physical therapy compact commission data system;

(III) Obtain a set of fingerprints from an applicant for initial licensure or certification and forward the fingerprints to the Colorado bureau of investigation for the purpose of obtaining a fingerprint-based criminal history record check. Upon receipt of fingerprints and payment for the costs, the Colorado bureau of investigation shall conduct a state and national fingerprint-based criminal history record check using records of the Colorado bureau of investigation, the federal bureau of investigation, or other appropriate federal agency. The board is the authorized agency to receive information regarding the result of a national criminal history record check. The applicant whose fingerprints are checked shall pay the actual costs of the state and national fingerprint-based criminal history record check.

(IV) Notify the physical therapy compact commission of any adverse action taken by the board; and

(V) Approve payment of assessments levied by the physical therapy compact commission to cover the cost of the operations and activities of the commission and its staff.

Source: L. 2011: Entire section added, (SB 11-169), ch. 172, p. 611, § 7, effective July 1. **L. 2017:** IP(2) and (2)(d) amended and (2)(f) added, (HB 17-1057), ch. 200, p. 743, § 3, effective May 10.

Editor's note: (1) This section is similar to former § 12-41-125 as it existed prior to 2011.

(2) Subsection (1)(b) provided for the repeal of subsection (1)(b), effective July 1, 2013. (See L. 2011, p. 611.)

12-41-104. Use of titles restricted. A person licensed as a physical therapist may use the title "physical therapist" or the letters "P.T." or any other generally accepted terms, letters, or figures which indicate that the person is a physical therapist. No other person shall be so designated or shall use the terms "physical therapist", "licensed physical therapist", "physiotherapist", or "physical therapy technician", or the letters "P.T." or "L.P.T.".

Source: L. 91: Entire article R&RE, p. 1646, § 1, effective July 1.

Editor's note: This section is similar to former § 12-41-103 as it existed prior to 1991.

12-41-105. Limitations on authority. (1) Nothing in this article authorizes a physical therapist to perform any of the following acts:

(a) Practice of medicine, surgery, or any other form of healing except as authorized by the provisions of this article; or

(b) Use of roentgen rays and radioactive materials for therapeutic purposes; the use of electricity for surgical purposes; or the diagnosis of disease.

(2) Nothing in this section prevents a physical therapist from making a physical therapy diagnosis within the physical therapist's scope of practice.

Source: L. 91: Entire article R&RE, p. 1646, § 1, effective July 1. **L. 2011:** IP(1) and (1)(b) amended, (SB 11-169), ch. 172, p. 613, § 8, effective July 1. **L. 2018:** (2) added, (HB 18-1155), ch. 315, p. 1899, § 7, effective September 1.

Editor's note: This section is similar to former § 12-41-104 as it existed prior to 1991.

12-41-106. License required. Except as otherwise provided by this article, any person who practices physical therapy or who represents oneself as being able to practice physical therapy in this state must possess a valid license under this article.

Source: L. 91: Entire article R&RE, p. 1646, § 1, effective July 1. **L. 2011:** Entire section amended, (SB 11-169), ch. 172, p. 613, § 9, effective July 1.

Editor's note: This section is similar to former § 12-41-109 as it existed prior to 1991.

12-41-107. Licensure by examination. (1) Every applicant for a license by examination shall:

(a) Successfully complete a physical therapy program:

(I) That is accredited by a nationally recognized accrediting agency; or

(II) That the board has determined to be substantially equivalent. The general assembly intends that this determination be liberally construed to ensure qualified applicants seeking licensure under this article the right to take the qualifying examination. The general assembly does not intend for technical barriers to be used to deny such applicants the right to take the examination.

(b) Pass a written examination that is:

(I) Approved by the board; and

(II) A national examination accredited by a nationally recognized accrediting agency;

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

(d) Pay a fee in an amount determined by the director.

(2) The board may refuse to permit an applicant to take the examination if the application is incomplete, if the applicant is not qualified to sit for the examination, or if the applicant has committed any act which would be grounds for disciplinary action under section 12-41-115.

(3) When the applicant has fulfilled all the requirements of subsection (1) of this section, the board shall issue a license to the applicant; except that the board may deny the license if the applicant has committed an act which would be grounds for disciplinary action under section 12-41-115.

Source: L. 91: Entire article R&RE, p. 1647, § 1, effective July 1. **L. 2001:** (2)(b) amended, p. 1251, § 2, effective July 1. **L. 2011:** Entire section amended, (SB 11-169), ch. 172, p. 613, § 10, effective July 1. **L. 2013:** IP(1)(b) amended, (HB 13-1300), ch. 316, p. 1669, § 22, effective August 7.

Editor's note: This section is similar to former § 12-41-112 as it existed prior to 1991.

12-41-107.5. Provisional license - fee. (1) The board may issue a provisional license to practice as a physical therapist to a person who:

(a) Submits an application and pays a fee as determined by the director; and

(b) Successfully completes a physical therapy program that meets the educational requirements in section 12-41-107 (1)(a).

(2) A person who holds a provisional license may only practice under the supervision of a physical therapist actively licensed in this state.

(3) A provisional license issued pursuant to this section expires no later than one hundred twenty days after the date it was issued. A provisional license may only be issued one time and is not subject to section 12-41-112.

Source: L. 2014: Entire section added, (SB 14-099), ch. 310, p. 1311, § 1, effective May 31.

12-41-108. Temporary permit. (Repealed)

Source: L. 91: Entire article R&RE, p. 1648, § 1, effective July 1. **L. 2001:** Entire section repealed, p. 1251, § 3, effective July 1.

Editor's note: This section was similar to former § 12-41-115 as it existed prior to 1991.

12-41-109. Licensure by endorsement. (1) An applicant for licensure by endorsement shall:

(a) Possess a valid license in good standing from another state or territory of the United States;

(b) Submit an application in the form and manner designated by the director; and

(c) Pay a fee in an amount determined by the director.

(2) Upon receipt of all documents required by subsection (1) of this section, the director shall review the application and determine if the applicant is qualified to be licensed by endorsement.

(3) The board shall issue a license if the applicant fulfills the requirements of subsection (1) of this section and meets any one of the following qualifying standards enumerated in paragraphs (a) to (c) of this subsection (3):

(a) The applicant graduated from an accredited program within the past two years and passed an examination substantially equivalent to that specified in section 12-41-107 (1)(b);

(b) The applicant has practiced as a licensed physical therapist for at least two of the five years immediately preceding the date of the application;

(c) The applicant has not practiced as a licensed physical therapist at least two of the last five years immediately preceding the date of the receipt of the application, and:

(I) The applicant passed an examination in another jurisdiction that is substantially equivalent to the examination specified in section 12-41-107 (1)(b), and has demonstrated competency through successful completion of an internship or demonstrated competency as a physical therapist by fulfilling the requirements established by rules of the board.

(II) (Deleted by amendment, L. 2010, (HB 10-1175), ch. 46, p. 175, § 6, effective July 1, 2011.)

(4) (Deleted by amendment, L. 2011, (SB 11-169), ch. 172, p. 614, § 11, effective July 1, 2011.)

(5) The board may deny a license if the applicant has committed an act which would be grounds for disciplinary action under section 12-41-115.

Source: L. 91: Entire article R&RE, p. 1648, § 1, effective July 1. **L. 2001:** (3)(b) and IP(3)(c) amended, p. 1252, § 4, effective July 1. **L. 2010:** (3)(c) amended, (HB 10-1175), ch. 46, p. 175, § 6, effective July 1, 2011. **L. 2011:** (1)(a), (2), IP(3), (3)(c)(I), (4), and (5) amended, (SB 11-169), ch. 172, pp. 614, 615, §§ 11, 12, effective July 1. **L. 2013:** (3)(a) amended, (HB 13-1300), ch. 316, p. 1669, § 23, effective August 7.

Editor's note: This section is similar to former § 12-41-114 as it existed prior to 1991.

12-41-110. Temporary license. (Repealed)

Source: L. 91: Entire article R&RE, p. 1649, § 1, effective July 1. **L. 2001:** Entire section repealed, p. 1252, § 5, effective July 1.

12-41-111. Licensing of foreign-trained applicants. (1) Every foreign-trained applicant for licensing shall:

(a) Have received education and training in physical therapy substantially equivalent to the education and training required at accredited physical therapy programs in the United States;

(b) Possess an active, valid license in good standing or other authorization to practice physical therapy from an appropriate authority in the country where the foreign-trained applicant is practicing or has practiced;

(c) Pass a written examination approved by the board in accordance with section 12-41-107 (1)(b);

(d) Submit an application in the form and manner designated by the director; and

(e) Pay an application fee in an amount determined by the director.

(2) Upon receipt of all documents required by subsection (1) of this section, the director shall review the application and determine if the applicant is qualified to be licensed.

(3) When the applicant has fulfilled all requirements of subsection (1) of this section, the board shall issue a license to the applicant; except that the board may deny the application if the applicant has committed an act which would be grounds for disciplinary action under section 12-41-115.

Source: L. 91: Entire article R&RE, p. 1650, § 1, effective July 1. **L. 2001:** (1)(a) amended, p. 1252, § 6, effective July 1. **L. 2011:** IP(1), (1)(c), (2), and (3) amended, (SB 11-169), ch. 172, p. 615, § 13, effective July 1.

12-41-112. Expiration and renewal of licenses. An applicant for licensure shall pay license, renewal, and reinstatement fees established by the director in the same manner as is authorized in section 24-34-105, C.R.S. A licensee shall renew a license in accordance with a schedule established by the director pursuant to section 24-34-102 (8), C.R.S. The director may establish renewal fees and delinquency fees for reinstatement under section 24-34-105, C.R.S. If a person fails to renew a license pursuant to the schedule established by the director, the license

expires. A person whose license has expired is subject to the penalties provided in this article and section 24-34-102 (8), C.R.S.

Source: L. 91: Entire article R&RE, p. 1650, § 1, effective July 1. **L. 2001:** (2), (4), and (5) amended, p. 1253, § 7, effective July 1. **L. 2004:** (4) and (5) amended, p. 1843, § 91, effective August 4. **L. 2011:** Entire section R&RE, (SB 11-169), ch. 172, p. 616, § 14, effective July 1.

Editor's note: This section is similar to former § 12-41-116 as it existed prior to 1991.

12-41-112.5. Inactive license - rules. A physical therapist may request that the board inactivate or activate the physical therapist's license. The board shall promulgate rules governing the activation and inactivation of licenses. Notwithstanding any law to the contrary, the board's rules may limit the applicability of statutory requirements for maintaining professional liability insurance and continuing professional competence for a licensee whose license is currently inactive. The board need not reactivate an inactive license if the physical therapist has committed any act that would be grounds for disciplinary action under section 12-41-115. A physical therapist whose license is currently inactive shall not practice physical therapy.

Source: L. 2011: Entire section added, (SB 11-169), ch. 172, p. 616, § 15, effective July 1.

12-41-113. Special practice authorities and requirements - rules. (1) **Supervising persons not licensed as a physical therapist.** A physical therapist may supervise up to four individuals at one time who are not physical therapists, including certified nurse aides, to assist in the therapist's clinical practice; except that this limit does not include student physical therapists and student physical therapist assistants supervised by a physical therapist for educational purposes. The board shall promulgate rules governing the required supervision. This subsection (1) does not affect or limit the independent practice or judgment of other professions regulated under this title. For purposes of this subsection (1), a "physical therapist assistant" means a person certified under part 2 of this article.

(2) **Administration of medications.** Physical therapists or physical therapist assistants under the direct supervision of a physical therapist may administer topical and aerosol medications when they are consistent with the scope of physical therapy practice and when any such medication is prescribed by a licensed health care practitioner who is authorized to prescribe such medication. A prescription or order shall be required for each such administration.

(3) **Wound debridement.** A physical therapist is authorized to perform wound debridement under a physician's order or the order of a physician assistant authorized under section 12-36-106 (5) when debridement is consistent with the scope of physical therapy practice. The performance of wound debridement does not violate the prohibition against performing surgery pursuant to section 12-41-105 (1)(a).

(4) **Physical therapy of animals.** (a) A physical therapist is authorized to perform physical therapy of animals when such physical therapy of animals is consistent with the scope of physical therapy practice. In recognition of the special authority granted by this subsection (4), the performance of physical therapy of animals in accordance with this subsection (4) shall

not constitute the practice of veterinary medicine, as defined in section 12-64-103, nor shall it be deemed a violation of section 12-64-104.

(b) In recognition of the emerging field of physical therapy of animals, before commencing physical therapy of an animal, a physical therapist shall obtain veterinary medical clearance of the animal by a veterinarian licensed under article 64 of this title.

(5) **Dry needling.** (a) A physical therapist is authorized to perform dry needling if the physical therapist:

(I) Has the knowledge, skill, ability, and documented competency to perform the act;

(II) Has successfully completed a dry needling course of study that meets the supervision, educational, and clinical prerequisites; and

(III) Obtains one written informed consent from each patient for dry needling, including information concerning potential benefits and risks of dry needling.

(b) The board shall promulgate rules to update the requirements for a physical therapist to perform dry needling in order to ensure adequate protection of the public. Prior to promulgating the initial update of the rules, the board shall seek input from the Colorado medical board created in section 12-36-103 (1) and from the director.

(c) The performance of dry needling in accordance with this section is not the performance of acupuncture as defined in section 12-29.5-102 and is not a violation of section 12-29.5-105.

Source: L. 91: Entire article R&RE, p. 1651, § 1, effective July 1. **L. 94:** (3) amended, p. 28, § 2, effective March 9. **L. 2001:** Entire section amended, p. 1253, § 8, effective July 1. **L. 2007:** (4) added, p. 561, § 2, effective July 1. **L. 2011:** (1) amended, (SB 11-169), ch. 172, p. 616, § 16, effective July 1. **L. 2016:** (3) amended, (SB 16-158), ch. 204, p. 724, § 9, effective August 10. **L. 2018:** (5) added, (HB 18-1155), ch. 315, p. 1899, § 8, effective September 1.

Cross references: For the legislative declaration in SB 16-158, see section 1 of chapter 204, Session Laws of Colorado 2016.

12-41-114. Scope of article - exclusions. (1) Nothing contained in this article 41 prohibits:

(a) The practice of physical therapy by students enrolled in an accredited physical therapy or physical therapist assistant program and performing under the direct supervision of a physical therapist currently licensed in this state;

(b) (Deleted by amendment, L. 2001, p. 1254, § 9, effective July 1, 2001.)

(c) The practice of physical therapy in this state by any legally qualified physical therapist from another state or country whose employment requires such physical therapist to accompany and care for a patient temporarily residing in this state, but such physical therapist shall not provide physical therapy services for any other individuals nor shall such person represent or hold himself out as a physical therapist licensed to practice in this state;

(d) The administration of massage, external baths, or exercise that is not a part of a physical therapy regimen;

(e) Any person registered, certified, or licensed in this state under any other law from engaging in the practice for which such person is registered, certified, or licensed;

(f) The practice of physical therapy in this state by a legally qualified physical therapist from another state or country when providing services in the absence of a physical therapist licensed in this state, so long as the unlicensed physical therapist is acting in accordance with rules established by the board. A person shall not practice without a license under this paragraph (f) for more than four weeks' duration or more than once in any twelve-month period.

(g) The practice of physical therapy in this state by a legally qualified physical therapist from another state or country for the purpose of participating in an educational program of not more than sixteen weeks' duration;

(h) The provision of physical therapy services in this state by an individual from another country who is engaged in a physical therapy related educational program if the program is sponsored by an institution, agency, or individual approved by the board, the program is under the direction and supervision of a physical therapist licensed in this state, and the program does not exceed twelve consecutive months' duration without the specific approval of the board;

(i) The practice of any physical therapist licensed in this state or any other state or territory of the United States who is employed by the United States government or any bureau, division, or agency thereof while within the course and scope of the physical therapist's official duties.

Source: L. 91: Entire article R&RE, p. 1652, § 1, effective July 1. **L. 2001:** (1)(a) and (1)(b) amended and (1)(i) added, p. 1254, § 9, effective July 1. **L. 2011:** IP(1), (1)(f), (1)(g), and (1)(h) amended, (SB 11-169), ch. 172, p. 617, § 17, effective July 1. **L. 2018:** IP(1) and (1)(a) amended, (HB 18-1155), ch. 315, p. 1900, § 9, effective September 1.

Editor's note: This section is similar to former § 12-41-123 as it existed prior to 1991.

12-41-114.5. Professional liability insurance required - rules. (1) Except as provided in subsection (2) of this section, a person shall not practice physical therapy unless the person purchases and maintains professional liability insurance of at least one million dollars per claim and at least three million dollars per year for all claims unless the corporation that employs the physical therapist maintains the insurance required by section 12-41-124 if the insurance covers at least one million dollars per claim and at least three million dollars per year.

(2) The board may by rule establish lesser financial responsibility standards for a class of physical therapists whose practice does not require the level of public protection established by subsection (1) of this section. The board shall not establish greater financial responsibility standards than those established in subsection (1) of this section.

(3) This section does not apply to a physical therapist who is a public employee acting within the course and scope of the public employee's duties and who is granted immunity under the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S.

Source: L. 2011: Entire section added, (SB 11-169), ch. 172, p. 617, § 18, effective July 1.

12-41-114.6. Continuing professional competency - rules. (1) (a) A licensed physical therapist shall maintain continuing professional competency to practice.

(b) The board shall adopt rules establishing a continuing professional competency program. The rules shall set forth the following elements:

(I) A self-assessment of the knowledge and skills of a physical therapist seeking to renew or reinstate a license;

(II) Development, execution, and documentation of a learning plan based on the assessment; and

(III) Periodic demonstration of knowledge and skills through documentation of professional development activities necessary to ensure at least minimal ability to safely practice the profession; except that a licensed physical therapist need not retake any examination required by section 12-41-107 for initial licensure.

(c) The board shall establish that a licensed physical therapist satisfies the continuing competency requirements of this section if the physical therapist meets the continuing professional competency requirements of one of the following entities:

(I) A state department, including continuing professional competency requirements imposed through a contractual arrangement with a provider;

(II) An accrediting body recognized by the board; or

(III) An entity approved by the board.

(d) (I) After the program is established, a licensed physical therapist shall satisfy the requirements of the program in order to renew or reinstate a license to practice physical therapy.

(II) The requirements of this section apply to individual licensed physical therapists, and nothing in this section requires a person who employs or contracts with a physical therapist to comply with the requirements of this section.

(e) Professional development activities must be measured by a contact-hour-to-credit-hour ratio.

(2) Records of assessments or other documentation developed or submitted in connection with the continuing professional competency program are confidential and not subject to inspection by the public or discovery in connection with a civil action against a licensed physical therapist. A person or the board shall not use the records or documents unless used by the board to determine whether a licensed physical therapist is maintaining continuing professional competency to engage in the profession.

(3) As used in this section, "continuing professional competency" means the ongoing ability of a physical therapist to learn, integrate, and apply the knowledge, skill, and judgment to practice as a physical therapist according to generally accepted standards and professional ethical standards.

Source: L. 2011: Entire section added, (SB 11-169), ch. 172, p. 617, § 18, effective July 1. **L. 2018:** IP(1)(b) and (1)(b)(III) amended and (1)(e) added, (HB 18-1155), ch. 315, p. 1900, § 10, effective September 1.

12-41-115. Grounds for disciplinary action. (1) The board may take disciplinary action in accordance with section 12-41-116 against a person who has:

(a) Committed any act which does not meet generally accepted standards of physical therapy practice or failed to perform an act necessary to meet generally accepted standards of physical therapy practice;

(b) Engaged in a sexual act with a patient while a patient-physical therapist relationship exists. For the purposes of this paragraph (b), "patient-physical therapist relationship" means that period of time beginning with the initial evaluation through the termination of treatment. For the purposes of this paragraph (b), "sexual act" means sexual contact, sexual intrusion, or sexual penetration as defined in section 18-3-401, C.R.S.

(c) Failed to refer a patient to the appropriate licensed health care professional when the services required by the patient are beyond the level of competence of the physical therapist or beyond the scope of physical therapy practice;

(d) Abandoned a patient by any means, including failure to provide a referral to another physical therapist or to another appropriate health care professional when the referral was necessary to meet generally accepted standards of physical therapy care;

(e) Failed to provide adequate or proper supervision when utilizing certified physical therapist assistants, unlicensed persons, or persons with a provisional license in a physical therapy practice;

(f) Failed to make essential entries on patient records or falsified or made incorrect entries of an essential nature on patient records;

(g) Engaged in any of the following activities and practices: Ordering or performance, without clinical justification, of demonstrably unnecessary laboratory tests or studies; the administration, without clinical justification, of treatment that is demonstrably unnecessary; or ordering or performing, without clinical justification, any service, X ray, or treatment that is contrary to recognized standards of the practice of physical therapy as interpreted by the board;

(h) (I) Committed abuse of health insurance as set forth in section 18-13-119 (3), C.R.S.; or

(II) Advertised through newspapers, magazines, circulars, direct mail, directories, radio, television, or otherwise that the licensee will perform any act prohibited by section 18-13-119 (3), C.R.S.;

(i) Committed a fraudulent insurance act, as defined in section 10-1-128, C.R.S.;

(j) Offered, given, or received commissions, rebates, or other forms of remuneration for the referral of clients; except that a licensee may pay an independent advertising or marketing agent compensation for advertising or marketing services rendered by an agent on the licensee's behalf, including compensation for referrals of clients identified through such services on a per-client basis;

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

(l) Engaged in the habitual or excessive use or abuse of alcohol, a habit-forming drug, or a controlled substance as defined in section 18-18-102 (5), C.R.S.;

(m) (I) Failed to notify the board, as required by section 12-41-118.5, of a physical illness; a physical condition; or a behavioral, mental health, or substance use disorder that impacts the licensee's ability to perform physical therapy with reasonable skill and safety to patients;

(II) Failed to act within the limitations created by a physical illness; a physical condition; or a behavioral, mental health, or substance use disorder that renders the licensee unable to perform physical therapy with reasonable skill and safety to the patient; or

(III) Failed to comply with the limitations agreed to under a confidential agreement entered pursuant to section 12-41-118.5;

(n) Refused to submit to a physical or mental examination when so ordered by the board pursuant to section 12-41-118;

(o) Failed to notify the board in writing of the entry of a final judgment by a court of competent jurisdiction against the licensee for malpractice of physical therapy or a settlement by the licensee in response to charges or allegations of malpractice of physical therapy, which notice must be given within ninety days after the entry of judgment or settlement and, in the case of a judgment, must contain the name of the court, the case number, and the names of all parties to the action;

(p) Violated or aided or abetted a violation of this article, a rule adopted under this article, or a lawful order of the board;

(q) Been convicted of, pled guilty, or pled nolo contendere to any crime related to the licensee's practice of physical therapy or a felony or committed an act specified in section 12-41-121. A certified copy of the judgment of a court of competent jurisdiction of such conviction or plea is conclusive evidence of such conviction or plea. In considering the disciplinary action, the board is governed by section 24-5-101, C.R.S.

(r) Fraudulently obtained, furnished, or sold any physical therapy diploma, certificate, license, renewal of license, or record, or aided or abetted any such act;

(s) Advertised, represented, or held himself or herself out, in any manner, as a physical therapist or practiced physical therapy without a license or unless otherwise authorized under this article;

(t) Used in connection with the person's name any designation tending to imply that the person is a physical therapist without being licensed under this article;

(u) Practiced physical therapy during the time the person's license was inactive, expired, suspended, or revoked;

(v) Failed to maintain the insurance required by section 12-41-114.5 or a rule promulgated thereunder;

(w) Failed to respond in an honest, materially responsive, and timely manner to a complaint issued under this article;

(x) Failed to know the contents of this part 1 and any rules promulgated under this part 1; or

(y) Failed to either:

(I) Confirm that a patient is under the care of a physician or other health care professional for the underlying medical condition when providing general wound care within the scope of the physical therapist's practice; or

(II) Refer the patient to a physician or other appropriate health care professional for the treatment of the underlying medical condition when providing general wound care within the scope of the physical therapist's practice.

(z) Failed to report an adverse action, the surrender of a license, or other discipline taken in another jurisdiction.

Source: L. 91: Entire article R&RE, p. 1653, § 1, effective July 1. **L. 2001:** (1)(k) amended, p. 1254, § 10, effective July 1. **L. 2003:** (1)(i) amended, p. 622, § 35, effective July 1. **L. 2004:** (1)(l) amended, p. 1195, § 42, effective August 4. **L. 2006:** IP(1) amended and (1)(r) to (1)(u) added with relocated provisions, p. 91, § 40, effective August 7. **L. 2011:** IP(1), (1)(c), (1)(d), (1)(g), (1)(j), (1)(l) to (1)(q), and (1)(u) amended and (1)(v) to (1)(y) added, (SB 11-169),

ch. 172, p. 619, § 19, effective July 1. **L. 2012:** (1)(l) and (1)(m)(III) amended, (HB 12-1311), ch. 281, p. 1615, § 26, effective July 1. **L. 2014:** (1)(e) amended, (SB 14-099), ch. 310, p. 1311, § 2, effective May 31. **L. 2017:** (1)(m)(I) and (1)(m)(II) amended, (SB 17-242), ch. 263, p. 1280, § 72, effective May 25. **L. 2018:** (1)(e) amended and (1)(z) added, (HB 18-1155), ch. 315, p. 1900, § 11, effective September 1.

Editor's note: (1) This section is similar to former § 12-41-118 as it existed prior to 1991.

(2) Subsections (1)(r), (1)(s), (1)(t), and (1)(u) are similar to former § 12-41-121 (1)(a), (1)(b), (1)(c), and (1)(d) as they existed prior to 2006.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-41-115.5. Protection of medical records - licensee's obligations - verification of compliance - noncompliance grounds for discipline - rules. (1) Each licensed physical therapist responsible for patient records shall develop a written plan to ensure the security of patient medical records. The plan must address at least the following:

(a) The storage and proper disposal of patient medical records;

(b) The disposition of patient medical records in the event the licensee dies, retires, or otherwise ceases to practice or provide physical therapy care to patients; and

(c) The method by which patients may access or obtain their medical records promptly if any of the events described in paragraph (b) of this subsection (1) occurs.

(2) Upon initial licensure under this part 1 and upon renewal of a license, the applicant or licensee shall attest to the board that he or she has developed a plan in compliance with this section.

(3) A licensee shall inform each patient in writing of the method by which the patient may access or obtain his or her medical records if an event described in paragraph (b) of subsection (1) of this section occurs.

(4) The board may adopt rules reasonably necessary to implement this section.

Source: L. 2011: Entire section added, (SB 11-169), ch. 172, p. 621, § 20, effective July 1.

12-41-116. Disciplinary actions. (1) (a) The board, in accordance with article 4 of title 24, C.R.S., may issue letters of admonition; deny, refuse to renew, suspend, or revoke any license; place a licensee on probation; or impose public censure or a fine, if the board or the board's designee determines after notice and the opportunity for a hearing that the licensee has committed an act specified in section 12-41-115.

(b) (Deleted by amendment, L. 2011, (SB 11-169), ch. 172, p. 621, § 21, effective July 1, 2011.)

(c) In the case of a deliberate and willful violation of this article or if the public health, safety, and welfare require emergency action, the board may take disciplinary action on an emergency basis under sections 24-4-104 and 24-4-105, C.R.S.

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

(b) When the board sends a letter of admonition to a licensee, the board shall notify the licensee of the licensee's right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct described in the letter of admonition.

(c) If the request for adjudication is timely made, the letter of admonition shall be deemed vacated and the matter shall be processed by means of formal disciplinary proceedings.

(3) In any disciplinary order that allows a physical therapist to continue to practice, the board may impose upon the licensee such conditions as the board deems appropriate to ensure that the physical therapist is physically, mentally, and professionally qualified to practice physical therapy in accordance with generally accepted professional standards. Such conditions may include any or all of the following:

(a) Examination of the physical therapist to determine his or her mental or physical condition, as provided in section 12-41-118, or to determine professional qualifications;

(b) Any therapy, training, or education that the board believes necessary to correct deficiencies found either in a proceeding in compliance with section 24-34-106, C.R.S., or through an examination under paragraph (a) of this subsection (3);

(c) A review or supervision of a licensee's practice that the board finds necessary to identify and correct deficiencies therein;

(d) Restrictions upon the nature and scope of practice to ensure that the licensee does not practice beyond the limits of the licensee's capabilities.

(3.5) When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the board and, in the opinion of the board, the complaint should be dismissed, but the board has noticed indications of possible errant conduct by the licensee that could lead to serious consequences if not corrected, the board may send a confidential letter of concern to the licensee.

(4) The board may take disciplinary action against a physical therapist for failure to comply with any of the conditions imposed by the board under subsection (3) of this section.

(5) A person whose license has expired is subject to the penalties provided in this article and section 24-34-102 (8), C.R.S.

(6) A person whose license to practice physical therapy is revoked or who surrenders his or her license to avoid discipline is not eligible to apply for a license for two years after the license is revoked or surrendered. The two-year waiting period applies to a person whose license to practice physical therapy, or to practice any other health care occupation, is revoked by any other legally qualified board or regulatory entity.

Source: L. 91: Entire article R&RE, p. 1655, § 1, effective July 1. **L. 2001:** (1)(a) amended, p. 1254, § 11, effective July 1. **L. 2004:** (2) amended, p. 1844, § 92, effective August 4. **L. 2006:** (3.5) added, p. 808, § 36, effective July 1. **L. 2011:** (1), (2)(a), (2)(b), (3), (3.5), and (4) amended and (5) and (6) added, (SB 11-169), ch. 172, p. 621, § 21, effective July 1.

Editor's note: This section is similar to former §§ 12-41-118 and 12-41-120 as they existed prior to 1991.

12-41-117. Disciplinary proceedings - investigations - judicial review. (1) The board may commence a proceeding for the discipline of a licensee when the board has reasonable grounds to believe that a licensee has committed an act enumerated in section 12-41-115.

(2) In any proceeding held under this section, the board may accept as prima facie evidence of grounds for disciplinary action any disciplinary action taken against a licensee from another jurisdiction if the violation that prompted the disciplinary action in that jurisdiction would be grounds for disciplinary action under this article.

(3) (a) The board may investigate potential grounds for disciplinary action upon its own motion or when the board is informed of dismissal of a person licensed under this article if the dismissal was for a matter constituting a violation of this article.

(b) A person who supervises a physical therapist shall report to the board when the physical therapist has been dismissed because of incompetence in physical therapy or failure to comply with this article. A physical therapist who is aware that another physical therapist is violating this article shall report such violation to the board.

(4) (Deleted by amendment, L. 2004, p. 1844, § 93, effective August 4, 2004.)

(5) (a) The board or an administrative law judge may administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board pursuant to this article. The board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the board.

(b) Upon failure of a witness to comply with a subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the board; 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 to obey the order of the court may be punished by the court as a contempt of court.

(6) The board may keep any investigation authorized under this article closed until the results of such investigation are known and either the complaint is dismissed or notice of hearing and charges are served upon the licensee.

(7) (a) The board, the director's staff, a witness or consultant to the board, a witness testifying in a proceeding authorized under this article, and a person who lodges a complaint under this article is immune from liability in a civil action brought against him or her for acts occurring while acting in his or her capacity as board member, staff, consultant, witness, or complainant, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts.

(b) Any person participating in good faith in the making of a complaint or report or participating in any investigative or administrative proceeding pursuant to this section shall be immune from any liability, civil or criminal, that otherwise might result by reason of such participation.

(8) The board, through the department of regulatory agencies, may employ administrative law judges appointed pursuant to part 10 of article 30 of title 24, C.R.S., on a full-

time or part-time basis, to conduct hearings under this article or on any matter within the board's jurisdiction upon such conditions and terms as the board may determine.

(9) Final action of the board may be judicially reviewed by the court of appeals by appropriate proceedings under section 24-4-106 (11), C.R.S., and judicial proceedings for the enforcement of an order of the board may be instituted in accordance with section 24-4-106, C.R.S.

(10) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(11) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a 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 license, the board may issue an order to cease and desist such activity. The order must 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 unlicensed practices immediately cease.

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

(12) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a person has violated this article, then, in addition to any specific powers granted pursuant to this article, the board may issue to such person an order to show cause as to why the board should not issue a final order directing such person to cease and desist from the unlawful act or unlicensed practice.

(b) The board shall promptly notify a person against whom an order to show cause has been issued under paragraph (a) of this subsection (12) of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the board for a hearing on the order. The board may serve the notice by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order is issued. Personal service or mailing of an order or document pursuant to this subsection (12) constitutes notice thereof to the person.

(c) (I) The board shall commence a hearing on an order to show cause no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the board as provided in paragraph (b) of this subsection (12). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event is the hearing to commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (12) does not appear at the hearing, the board may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (12) and such other evidence related to the matter as the board deems appropriate. The board shall issue the order within ten days after the board's determination related to reasonable attempts to notify the respondent, and the order becomes final as to that

person by operation of law. The board shall conduct the hearing in accordance with sections 24-4-104 and 24-4-105, C.R.S.

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

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

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

(14) If a person fails to comply with a final cease-and-desist order or a stipulation, the board may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order. Upon receiving the request, the attorney general or district attorney shall bring the suit as requested.

(15) A person aggrieved by the final cease-and-desist order may seek judicial review of the board's determination or of the board's final order as provided in subsection (9) of this section.

Source: L. 91: Entire article R&RE, p. 1656, § 1, effective July 1. **L. 2004:** (4), (5), and (7) amended and (10) added, p. 1844, § 93, effective August 4. **L. 2006:** (11) to (15) added, p. 808, § 37, effective July 1. **L. 2011:** (1) to (3), (5), (6), (7)(a), (8) to (10), (11)(a), and (12) to (14) amended, (SB 11-169), ch. 172, p. 623, § 22, effective July 1.

Editor's note: This section is similar to former § 12-41-120 as it existed prior to 1991.

12-41-118. Mental and physical examination of licensees. (1) If the board has reasonable cause to believe that a licensee is unable to practice with reasonable skill and safety, the board may require the licensee to take a mental or physical examination by a health care provider designated by the board. If the licensee refuses to undergo such a mental or physical examination, unless due to circumstances beyond the licensee's control, the board may suspend such licensee's license until the results of the examination are known and the board has made a determination of the licensee's fitness to practice. The board shall proceed with an order for examination and determination in a timely manner.

(2) An order issued to a licensee under subsection (1) of this section to undergo a mental or physical examination must contain the basis of the board's reasonable cause to believe that the licensee is unable to practice with reasonable skill and safety. For the purposes of a disciplinary proceeding authorized by this article, the licensee is deemed to have waived all objections to the

admissibility of the examining health care provider's testimony or examination reports on the ground that they are privileged communications.

(3) The licensee may submit to the board testimony or examination reports from a health care provider chosen by such licensee pertaining to the condition that the board has alleged may preclude the licensee from practicing with reasonable skill and safety. These may be considered by the board in conjunction with, but not in lieu of, testimony and examination reports of the health care provider designated by the board.

(4) A person shall not use the results of any mental or physical examination ordered by the board as evidence in any proceeding other than one before the board. The examination results are not public records and are not available to the public.

Source: L. 91: Entire article R&RE, p. 1658, § 1, effective July 1. **L. 2011:** Entire section amended, (SB 11-169), ch. 172, p. 626, § 23, effective July 1.

Editor's note: This section is similar to former § 12-41-118.5 as it existed prior to 1991.

12-41-118.5. Examinations - notice - confidential agreements. (1) If a physical therapist suffers from a physical illness; a physical condition; or a behavioral or mental health disorder rendering the licensee unable to practice physical therapy or practice as a physical therapist with reasonable skill and patient safety, the physical therapist shall notify the board of the physical illness; the physical condition; or the behavioral or mental health disorder in a manner and within a period of time determined by the board. The board may require the licensee to submit to an examination or to evaluate the extent of the physical illness; the physical condition; or the behavioral or mental health disorder and its impact on the licensee's ability to practice with reasonable skill and safety to patients.

(2) (a) Upon determining that a physical therapist with a physical illness; a physical condition; or a behavioral or mental health disorder is able to render limited physical therapy with reasonable skill and patient safety, the board may enter into a confidential agreement with the physical therapist in which the physical therapist agrees to limit his or her practice based on the restrictions imposed by the physical illness; the physical condition; or the behavioral or mental health disorder, as determined by the board.

(b) The agreement must specify that the licensee is subject to periodic reevaluations or monitoring as determined appropriate by the board.

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

(d) By entering into an agreement with the board under this subsection (2) to limit his or her practice, the licensee is not engaging in unprofessional conduct. The agreement is an administrative action and does not constitute a restriction or discipline by the board. However, if the licensee fails to comply with the terms of an agreement entered into pursuant to this subsection (2), the failure constitutes grounds for disciplinary action under section 12-41-115 (1)(m) and the licensee is subject to discipline in accordance with section 12-41-116.

(3) This section does not apply to a licensee subject to discipline under section 12-41-115 (1)(l).

Source: L. 2011: Entire section added, (SB 11-169), ch. 172, p. 627, § 24, effective July 1. **L. 2017:** (1) and (2)(a) amended, (SB 17-242), ch. 263, p. 1280, § 73, effective May 25.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-41-119. Professional review committees - immunity. (1) A professional review committee may be established pursuant to this section to investigate the quality of care being given by a person licensed under this article. It shall include in its membership at least three persons licensed under this article, but such committee may be authorized to act only by:

(a) The board;

(b) A society or an association of physical therapists whose membership includes not less than one-third of the persons licensed pursuant to this article and residing in this state if the licensee whose services are the subject of review is a member of such society or association; or

(c) A hospital licensed pursuant to part 1 of article 3 of title 25, C.R.S., or certified pursuant to section 25-1.5-103 (1)(a)(II), C.R.S.; except that the professional review committee shall include in its membership at least a two-thirds majority of persons licensed under this article. Such review committee may function under the quality management provisions of section 25-3-109, C.R.S.

(2) Any professional review committee established pursuant to subsection (1) of this section shall report to the board any adverse findings that would constitute a possible violation of this article.

(3) The board, a member of a professional review committee authorized by the board, a member of the board's or committee's staff, a person acting as a witness or consultant to the board or committee, a witness testifying in a proceeding authorized under this article, and a person who lodges a complaint pursuant to this article is immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as board or committee member, staff, consultant, or witness if the individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this article is immune from any civil or criminal liability that may result from such participation.

Source: L. 91: Entire article R&RE, p. 1659, § 1, effective July 1. **L. 2003:** (1)(c) amended, p. 703, § 19, effective July 1. **L. 2004:** (3) amended, p. 1845, § 94, effective August 4. **L. 2011:** (1)(a), (2), and (3) amended, (SB 11-169), ch. 172, p. 627, § 25, effective July 1.

Editor's note: This section is similar to former § 12-41-121 as it existed prior to 1991.

12-41-120. Reports by insurance companies. (1) (a) Each insurance company licensed to do business in this state and engaged in the writing of malpractice insurance for physical therapists shall send to the board information about any malpractice claim that involves a physical therapist and is settled or in which judgment is rendered against the insured.

(b) In addition, the insurance company shall submit supplementary reports containing the disposition of the claim to the board within ninety days after settlement or judgment.

(2) Regardless of the disposition of any claim, the insurance company shall provide such information as the board finds reasonably necessary to conduct its own investigation and hearing.

Source: L. 91: Entire article R&RE, p. 1659, § 1, effective July 1. **L. 2011:** Entire section amended, (SB 11-169), ch. 172, p. 628, § 26, effective July 1.

Editor's note: This section is similar to former § 12-41-125 as it existed prior to 1991.

12-41-121. Unauthorized practice - penalties.

(1) Repealed.

(2) Any person who practices or offers or attempts to practice physical 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 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(3) and (4) (Deleted by amendment, L. 2006, p. 91, § 41, effective August 7, 2006.)

Source: L. 91: Entire article R&RE, p. 1660, § 1, effective July 1. **L. 2002:** (2) amended, p. 1480, § 84, effective October 1. **L. 2006:** (1) repealed and (2) to (4) amended, p. 91, §§ 42, 41, effective August 7.

Editor's note: (1) This section is similar to former § 12-41-124 as it existed prior to 1991.

(2) Subsections (1)(a), (1)(b), (1)(c), and (1)(d) were relocated to § 12-41-115 (1)(r), (1)(s), (1)(t), and (1)(u) in 2006.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-41-122. Violation - fines. (1) Notwithstanding section 12-41-121, the board may assess a fine for a violation of this article or any rule adopted under this article.

(2) Such fine shall not be greater than one thousand dollars and shall be transmitted to the state treasurer, who shall credit the same to the general fund.

(3) All fines shall be imposed in accordance with the provisions of section 24-4-105, C.R.S., but shall not be considered a substitute or waiver of the criminal penalties.

Source: L. 91: Entire article R&RE, p. 1661, § 1, effective July 1. **L. 2011:** (1) amended, (SB 11-169), ch. 172, p. 628, § 27, effective July 1.

12-41-123. Injunctive proceedings. The board may, in the name of the people of Colorado, through the attorney general of Colorado, apply for an injunction to a court to enjoin a person from committing an act declared to be a misdemeanor by this article. If it is established

that the defendant has been or is committing an act declared to be a misdemeanor by this article, the court shall enter a decree perpetually enjoining the defendant from further committing the act. If a person violates an injunction issued under this section, the court may try and punish the offender for contempt of court. An injunction proceeding is in addition to, and not in lieu of, all penalties and other remedies provided in this article.

Source: L. 91: Entire article R&RE, p. 1661, § 1, effective July 1. **L. 2011:** Entire section amended, (SB 11-169), ch. 172, p. 628, § 28, effective July 1.

Editor's note: This section is similar to former § 12-41-126 as it existed prior to 1991.

12-41-124. Professional service corporations, limited liability companies, and registered limited liability partnerships for the practice of physical therapy - definitions. (1) Physical therapists may form professional service corporations for the practice of physical therapy under the "Colorado Business Corporation Act", articles 101 to 117 of title 7, C.R.S., if such corporations are organized and operated in accordance with this section. The articles of incorporation of such corporations must contain provisions complying with the following requirements:

(a) The name of the corporation shall contain the words "professional company" or "professional corporation" or abbreviations thereof.

(b) The corporation must be organized solely for the purposes of conducting the practice of physical therapy only through persons licensed by the board to practice physical therapy.

(c) The corporation may exercise the powers and privileges conferred upon corporations by the laws of Colorado only in furtherance of and subject to its corporate purpose.

(d) (I) Except as provided in subparagraph (II) of this paragraph (d), all shareholders of the corporation must be persons licensed by the board to practice physical therapy and who at all times own their shares in their own right. With the exception of illness, accident, or time spent in the armed services, on vacations, or on leaves of absence not to exceed one year, the individuals must be actively engaged in the practice of physical therapy in the offices of the corporation.

(II) If a person licensed to practice physical therapy who was a shareholder of the corporation dies, an unlicensed heir to the deceased shareholder may become a shareholder of the corporation for up to two years. Unless the heir is the only shareholder of the corporation, the heir who becomes a shareholder is a nonvoting shareholder. If the heir of the deceased shareholder ceases to be a shareholder, the owner who received the stocks from the shareholder shall dispose of the shares in accordance with the provisions required by paragraph (e) of this subsection (1). An heir who is not licensed under this article shall not exercise any authority over professional or clinical matters.

(e) Provisions shall be made requiring any shareholder who ceases to be or for any reason is ineligible to be a shareholder to dispose of all such shares forthwith, either to the corporation or to any person having the qualifications described in paragraph (d) of this subsection (1).

(f) The president shall be a shareholder and a director, and, to the extent possible, all other directors and officers shall be persons having the qualifications described in paragraph (d) of this subsection (1). Lay directors and officers shall not exercise any authority whatsoever over professional matters.

(g) The articles of incorporation must provide, and all shareholders of the corporation shall agree, that all shareholders of the corporation are jointly and severally liable for all acts, errors, and omissions of the employees of the corporation or that all shareholders of the corporation are jointly and severally liable for all acts, errors, and omissions of the employees of the corporation except when the shareholders maintain professional liability insurance that meets the standards of section 12-14-114.5 or when the corporation maintains professional liability insurance that meets the following minimum standards:

(I) The insurer shall insure the corporation against liability imposed upon the corporation by law for damages resulting from any claim made against the corporation arising out of the performance of professional services for others by those officers and employees of the corporation who are licensed by the board to practice physical therapy.

(II) The policies must insure the corporation against liability imposed upon it by law for damages arising out of the acts, errors, and omissions of all nonprofessional employees.

(III) The insurance policy must provide for an amount for each claim of at least one hundred thousand dollars multiplied by the number of persons licensed to practice physical therapy employed by the corporation. The policy must provide for an aggregate top limit of liability per year for all claims of three hundred thousand dollars also multiplied by the number of persons licensed to practice physical therapy employed by the corporation, but no firm is required to carry insurance in excess of three hundred thousand dollars for each claim with an aggregate top limit of liability for all claims during the year of nine hundred thousand dollars.

(IV) The policy may provide that it does not apply to:

(A) A dishonest, fraudulent, criminal, or malicious act or omission of the insured corporation or any stockholder or employee thereof;

(B) The conduct of any business enterprise, not including the practice of physical therapy, in which the insured corporation under this section is not permitted to engage but that nevertheless may be owned by the insured corporation, in which the insured corporation may be a partner, or that may be controlled, operated, or managed by the insured corporation in its own or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith, when not resulting from breach of professional duty, bodily injury to, or sickness, disease, or death of any person, or to injury to or destruction of any tangible property, including the loss of use thereof; and

(V) The policy may contain reasonable provisions with respect to policy periods, territory, claims, conditions, and other usual matters.

(2) The corporation shall do nothing that, if done by a person licensed to practice physical therapy and employed by the corporation, would constitute any ground for disciplinary action, as set forth in section 12-41-115. Any violation by the corporation of this section is grounds for the board to terminate or suspend its right to practice physical therapy.

(3) Nothing in this section diminishes or changes the obligation of each person licensed to practice physical therapy employed by the corporation to practice in accordance with the standards of professional conduct under this article and rules adopted under this article. Physical therapists who by act or omission cause the corporation to act or fail to act in a way that violates the standards of professional conduct, including any provision of this section, are personally responsible for the violation and subject to discipline for the violation.

(4) A professional service corporation may adopt a pension, profit sharing (whether cash or deferred), health and accident insurance, or welfare plan for all or part of its employees,

including lay employees, if such plan does not require or result in the sharing of specific or identifiable fees with lay employees and if any payments made to lay employees or into any such plan on behalf of lay employees are based upon their compensation or length of service, or both, rather than the amount of fees or income received.

(5) (a) Except as provided in this section, corporations shall not practice physical therapy.

(b) The corporate practice of physical therapy does not include physical therapists employed by a certified or licensed hospital, licensed skilled nursing facility, certified home health agency, licensed hospice, certified comprehensive outpatient rehabilitation facility, certified rehabilitation agency, authorized health maintenance organization, accredited educational entity, organization providing care for the elderly under section 25.5-5-412, C.R.S., or other entity wholly owned and operated by a governmental unit or agency if:

(I) The relationship created by the employment does not affect the ability of the physical therapist to exercise his or her independent judgment in the practice of the profession;

(II) The physical therapist's independent judgment in the practice of the profession is in fact unaffected by the relationship;

(III) The policies of the entity employing the physical therapist contain a procedure by which complaints by a physical therapist alleging a violation of this paragraph (b) may be heard and resolved;

(IV) The physical therapist is not required to exclusively refer any patient to a particular provider or supplier; except that nothing in this subparagraph (IV) shall invalidate the policy provisions of a contract between a physical therapist and his or her intermediary or the managed care provisions of a health coverage plan; and

(V) The physical therapist is not required to take any other action he or she determines not to be in the patient's best interest.

(c) The provisions of paragraph (b) of this subsection (5) shall apply to professional service corporations, limited liability companies, and registered limited liability partnerships formed for the practice of physical therapy in accordance with this section regardless of the date of formation of the entity.

(d) A physical therapist employed by an entity described in paragraph (b) of this subsection (5) shall be an employee of the entity for purposes of liability for all acts, errors, and omissions of the employee.

(6) As used in this section, unless the context otherwise requires:

(a) "Articles of incorporation" includes operating agreements of limited liability companies and partnership agreements of registered limited liability partnerships.

(a.5) "Carrier" has the same meaning as set forth in section 10-16-102 (8), C.R.S.

(b) "Corporation" includes a limited liability company organized under the "Colorado Limited Liability Company Act", article 80 of title 7, C.R.S., and a limited liability partnership registered under section 7-60-144 or 7-64-1002, C.R.S.

(c) "Director" and "officer" of a corporation includes a member and a manager of a limited liability company and a partner in a registered limited liability partnership.

(d) "Employees" includes employees, members, and managers of a limited liability company and employees and partners of a registered limited liability partnership.

(d.3) "Health benefit plan" has the same meaning as set forth in section 10-16-102 (32), C.R.S.

(d.5) "President" includes all managers, if any, of a limited liability company and all partners in a registered limited liability partnership.

(e) "Share" includes a member's rights in a limited liability company and a partner's rights in a registered limited liability partnership.

(f) "Shareholder" includes a member of a limited liability company and a partner in a registered limited liability partnership.

Source: L. 91: Entire article R&RE, p. 1661, § 1, effective July 1. **L. 93:** IP(1) amended, p. 863, § 35, effective July 1, 1994. **L. 95:** (6) added, p. 814, § 35, effective May 24. **L. 97:** (6)(b) amended, p. 919, § 15, effective January 1, 1998. **L. 2001:** (1)(g)(II) amended and (6)(d.5) added, p. 1255, §§ 12, 13, effective July 1. **L. 2005:** (5) amended and (6)(a.5) and (6)(d.3) added, pp. 336, 337, §§ 1, 2, effective April 22. **L. 2011:** IP(1), (1)(b), (1)(d), (1)(g), (2), (3), and IP(5)(b) amended, (SB 11-169), ch. 172, p. 629, § 29, effective July 1. **L. 2013:** (6)(a.5) and (6)(d.3) amended, (HB 13-1266), ch. 217, p. 991, § 58, effective May 13.

Editor's note: This section is similar to former § 12-41-130 as it existed prior to 1991.

12-41-125. Powers and duties of director - reports - publications - rules. (Repealed)

Source: L. 91: Entire article R&RE, p. 1664, § 1, effective July 1. **L. 97:** (2)(g) repealed, p. 1480, § 29, effective June 3. **L. 2001:** (2)(e) repealed, p. 1255, § 14, effective July 1. **L. 2004:** (2)(c) amended, p. 1846, § 95, effective August 4. **L. 2007:** (2)(b) amended, p. 562, § 3, effective July 1. **L. 2011:** Entire section repealed, (SB 11-169), ch. 172, p. 631, § 30, effective July 1.

Editor's note: This section was similar to former § 12-41-108 as it existed prior to 1991.

12-41-126. Advisory committee. (Repealed)

Source: L. 91: Entire article R&RE, p. 1665, § 1, effective July 1. **L. 2001:** Entire section amended, p. 1256, § 15, effective July 1. **L. 2011:** Entire section repealed, (SB 11-169), ch. 172, p. 631, § 31, effective July 1.

12-41-127. Limitation on authority. The authority granted the board by this article does not authorize the board to arbitrate or adjudicate fee disputes between licensees or between a licensee and any other party.

Source: L. 91: Entire article R&RE, p. 1665, § 1, effective July 1. **L. 2011:** Entire section amended, (SB 11-169), ch. 172, p. 631, § 32, effective July 1.

Editor's note: This section is similar to former § 12-41-108.5 as it existed prior to 1991.

12-41-128. Fees and expenses. All fees collected under this article shall be determined, collected, and appropriated in the same manner as set forth in section 24-34-105, C.R.S.

Source: L. 91: Entire article R&RE, p. 1665, § 1, effective July 1.

12-41-129. Physical therapists - registered prior to July 1, 1991. (Repealed)

Source: L. 91: Entire article R&RE, p. 1666, § 1, effective July 1. **L. 2001:** Entire section repealed, p. 1256, § 16, effective July 1.

Editor's note: This section was similar to former § 12-41-131 as it existed prior to 1991.

12-41-130. Repeal of part. (1) Repealed.

(2) (a) This part 1 and the licensing functions of the board as set forth in this part 1 are repealed, effective September 1, 2024.

(b) Before the repeal, the licensing functions of the board are scheduled for review in accordance with section 24-34-104.

Source: L. 91: Entire article R&RE, p. 1666, § 1, effective July 1. **L. 2001:** (1) and (2)(a) amended, p. 1256, § 17, effective July 1. **L. 2011:** (1) and (2)(a) amended, (SB 11-169), ch. 172, p. 610, § 3, effective July 1. **L. 2018:** (1) repealed and (2) amended, (HB 18-1155), ch. 315, p. 1897, § 1, effective September 1.

Editor's note: This section is similar to former § 12-41-132 as it existed prior to 1991.

PART 2

PHYSICAL THERAPIST ASSISTANTS

12-41-201. Additional board authority - rules. (1) In addition to all other powers and duties given to the board by law, the board may:

(a) Certify physical therapist assistants to practice;

(b) Evaluate the qualifications of applicants for certification, issue and renew the certifications authorized under this part 2, and take the disciplinary actions authorized under this part 2;

(c) Conduct hearings upon charges for discipline of a certified physical therapist assistant and cause the prosecution and enjoinder of all persons violating this part 2;

(d) Administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board;

(e) Appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the board; and

(f) Establish fines under section 12-41-122.

(2) Upon failure of a witness to comply with a subpoena or process, the district court of the county in which the subpoenaed person resides or conducts business, upon application by the board with notice to the subpoenaed person, may issue to the person an order requiring that person to appear before the board; 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. The court may punish a failure to obey its order as a contempt of court.

(3) The board may promulgate rules necessary to implement, administer, and enforce this part 2.

Source: L. 2011: Entire part added, (SB 11-169), ch. 172, p. 631, § 34, effective July 1.

12-41-202. Use of titles restricted. A person certified as a physical therapist assistant may use the title "physical therapist assistant" or the letters "P.T.A." or any other generally accepted terms, letters, or figures that indicate that the person is a physical therapist assistant. No other person shall use the terms "physical therapist assistant", "certified physical therapist assistant", or any letters or words that indicate that the person is a physical therapist assistant.

Source: L. 2011: Entire part added, (SB 11-169), ch. 172, p. 631, § 34, effective July 1.

12-41-203. Limitations on authority. (1) Nothing in this part 2 authorizes a physical therapist assistant to perform any of the following acts:

(a) Practice of medicine, surgery, or any other form of healing except as authorized by this part 2; or

(b) Use of roentgen rays and radioactive materials for therapeutic purposes, use of electricity for surgical purposes, or diagnosis of disease.

(2) A physical therapist assistant shall not practice physical therapy unless the assistant works under the supervision of a licensed physical therapist.

Source: L. 2011: Entire part added, (SB 11-169), ch. 172, p. 631, § 34, effective July 1.

12-41-204. Certification required. Effective June 1, 2012, except as otherwise provided by this part 2, a person who practices as a physical therapist assistant or who represents oneself as being able to practice as a physical therapist assistant in this state must possess a valid certification issued by the board under this part 2 and rules adopted under this part 2.

Source: L. 2011: Entire part added, (SB 11-169), ch. 172, p. 633, § 34, effective July 1.

12-41-205. Certification by examination. (1) Every applicant for a certification by examination shall:

(a) (I) Have successfully completed a physical therapist assistant program accredited by the commission on accreditation in physical therapy education or any comparable organization as determined by the board; or

(II) Qualify to take the physical therapy examination established under section 12-41-107;

(b) Pass a written examination that is:

(I) Approved by the board; and

(II) A national examination accredited by a nationally recognized accrediting agency;

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

(d) Pay a fee in an amount determined by the director.

(2) The board may refuse to permit an applicant to take the examination if the application is incomplete or indicates that the applicant is not qualified to sit for the examination, or if the applicant has committed any act that would be grounds for disciplinary action under section 12-41-210.

(3) When the applicant has fulfilled all the requirements of subsection (1) of this section, the board shall issue a certification to the applicant; except that the board may deny certification if the applicant has committed an act that would be grounds for disciplinary action under section 12-41-210.

(4) Repealed.

Source: L. 2011: Entire part added, (SB 11-169), ch. 172, p. 633, § 34, effective July 1.

Editor's note: Subsection (4)(b) provided for the repeal of subsection (4), effective June 1, 2013. (See L. 2011, p. 633.)

12-41-206. Certification by endorsement. (1) An applicant for certification by endorsement shall:

(a) Possess a valid license, certification, or registration in good standing from another state or territory of the United States;

(b) Submit an application in the form and manner designated by the director; and

(c) Pay a fee in an amount determined by the director.

(2) Upon receipt of all documents required by subsection (1) of this section, the director shall review the application and make a determination of the applicant's qualification to be certified by endorsement.

(3) The board shall issue a certification if the applicant fulfills the requirements of subsection (1) of this section and meets any one of the following qualifying standards:

(a) The applicant graduated from an accredited program within the past two years and passed an examination substantially equivalent to the examination specified in section 12-41-205 (1)(b);

(b) The applicant has practiced as a licensed, certified, or registered physical therapist assistant for at least two of the five years immediately preceding the date of the application; or

(c) The applicant has passed an examination in another jurisdiction that is substantially equivalent to the examination specified in section 12-41-205 (1)(b), and has demonstrated competency through successful completion of an internship or demonstrated competency as a physical therapist assistant by fulfilling the requirements established by rules of the board.

(4) The board may deny certification if the applicant has committed an act that would be grounds for disciplinary action under section 12-41-210.

Source: L. 2011: Entire part added, (SB 11-169), ch. 172, p. 634, § 34, effective July 1.

12-41-207. Certification of foreign-trained applicants. (1) Every foreign-trained applicant for certification shall:

(a) Have received education and training as a physical therapist assistant that is substantially equivalent to the education and training required by accredited physical therapist assistant programs in the United States;

(b) Possess an active, valid license, certification, or registration in good standing or other authorization to practice as a physical therapist assistant from an appropriate authority in the country where the foreign-trained applicant is practicing or has practiced;

(c) Pass a written examination approved by the board in accordance with section 12-41-205 (1)(b);

(d) Submit an application in the form and manner designated by the director; and

(e) Pay an application fee in an amount determined by the director.

(2) Upon receipt of all documents and the fee required by subsection (1) of this section, the director shall review the application and determine if the applicant is qualified to be certified.

(3) When the applicant has fulfilled all the requirements of subsection (1) of this section, the board shall issue a certification to the applicant; except that the board may deny the application if the applicant has committed an act that would be grounds for disciplinary action under section 12-41-210.

Source: L. 2011: Entire part added, (SB 11-169), ch. 172, p. 634, § 34, effective July 1.

12-41-208. Expiration and renewal of certification. An applicant for certification shall pay certification, renewal, and reinstatement fees established by the director in the same manner as is authorized in section 24-34-105, C.R.S. A certified physical therapist assistant shall renew a certification in accordance with a schedule established by the director pursuant to section 24-34-102 (8), C.R.S. The director may establish renewal fees and delinquency fees for reinstatement under section 24-34-105, C.R.S. If a person fails to renew a certification pursuant to the schedule established by the director, the certification expires. A person whose certification has expired is subject to the penalties provided in this part 2 and section 24-34-102 (8), C.R.S.

Source: L. 2011: Entire part added, (SB 11-169), ch. 172, p. 635, § 34, effective July 1.

12-41-208.5. Continuing professional competency - rules - definition. (1) (a) A certified physical therapist assistant shall maintain continuing professional competency to practice.

(b) The board shall adopt rules establishing a continuing professional competency program. The rules shall set forth the following elements:

(I) A self-assessment of the knowledge and skills of a physical therapist assistant seeking to renew or reinstate a certification;

(II) Development, execution, and documentation of a learning plan based on the assessment; and

(III) Periodic demonstration of knowledge and skills through documentation of professional development activities necessary to ensure at least minimal ability to safely practice the profession; except that a physical therapist assistant need not retake any examination required by section 12-41-205 for initial certification.

(c) The board shall establish that a certified physical therapist assistant satisfies the continuing competency requirements of this section if the certified physical therapist assistant meets the continuing professional competency requirements of one of the following entities:

(I) An accrediting body recognized by the board; or

(II) An entity approved by the board.

(d) (I) After the program is established, a physical therapist assistant shall satisfy the requirements of the program in order to renew or reinstate a certification to practice as a certified physical therapist assistant.

(II) The requirements of this section apply to individual certified physical therapist assistants, and nothing in this section requires a person who employs or contracts with a certified physical therapist assistant to comply with the requirements of this section.

(e) Professional development activities must be measured by a contact-hour-to-credit-hour ratio.

(2) Records of assessments or other documentation developed or submitted in connection with the continuing professional competency program are confidential and not subject to inspection by the public or discovery in connection with a civil action against a certified physical therapist assistant. A person or the board shall not use the records or documents unless used by the board to determine whether a certified physical therapist assistant is maintaining continuing professional competency to engage in the profession.

(3) As used in this section, "continuing professional competency" means the ongoing ability of a certified physical therapist assistant to learn, integrate, and apply the knowledge, skill, and judgment to practice as a certified physical therapist assistant according to generally accepted standards and professional ethical standards.

Source: L. 2018: Entire section added, (HB 18-1155), ch. 315, p. 1900, § 12, effective September 1.

12-41-209. Scope of part 2 - exclusions. (1) This part 2 does not prohibit:

(a) Practice as a physical therapist assistant in this state by a legally qualified physical therapist assistant from another state or country whose employment requires the physical therapist assistant to accompany and care for a patient temporarily residing in this state, but the physical therapist assistant shall not provide physical therapy services for another individual nor shall the person represent or hold himself or herself out as a physical therapist assistant certified to practice in this state;

(b) The administration of massage, external baths, or exercise that is not a part of a physical therapy regimen;

(c) A person registered, certified, or licensed in this state under any other law from engaging in the practice for which the person is registered, certified, or licensed;

(d) Practice as a physical therapist assistant in this state by a legally qualified physical therapist assistant from another state or country for the purpose of participating in an educational program of not more than sixteen weeks' duration;

(e) The practice of a physical therapist assistant licensed, certified, or registered in this or any other state or territory of the United States who is employed by the United States government or a bureau, division, or agency thereof while within the course and scope of the physical therapist assistant's duties; or

(f) The performance of noninvasive debridement, such as autolytic and enzymatic debridement treatment.

Source: L. 2011: Entire part added, (SB 11-169), ch. 172, p. 635, § 34, effective July 1. **L. 2018:** (1)(d) and (1)(e) amended and (1)(f) added, (HB 18-1155), ch. 315, p. 1902, § 13, effective September 1.

12-41-210. Grounds for disciplinary action. (1) The board may take disciplinary action in accordance with section 12-41-211 against a person who has:

(a) Committed an act that does not meet generally accepted standards of physical therapist assistant practice or failed to perform an act necessary to meet generally accepted standards of physical therapist assistant practice;

(b) Engaged in sexual contact, sexual intrusion, or sexual penetration as defined in section 18-3-401, C.R.S., with a patient during the period of time beginning with the initial evaluation through the termination of treatment;

(c) Abandoned a patient by any means;

(d) Failed to make essential entries on patient records or falsified or made incorrect entries of an essential nature on patient records;

(e) (I) Committed abuse of health insurance as set forth in section 18-13-119, C.R.S.; or

(II) Advertised through newspapers, magazines, circulars, direct mail, directories, radio, television, or otherwise that the certified physical therapist assistant will perform an act prohibited by section 18-13-119, C.R.S.;

(f) Committed a fraudulent insurance act, as defined in section 10-1-128, C.R.S.;

(g) Falsified information in any application or attempted to obtain or obtained a certification by fraud, deception, or misrepresentation;

(h) Engaged in the habitual or excessive use or abuse of alcohol, a habit-forming drug, or a controlled substance as defined in section 18-18-102 (5), C.R.S.;

(i) (I) Failed to notify the board, as required by section 12-41-214, of a physical illness; a physical condition; or a behavioral, mental health, or substance use disorder that impacts the certified physical therapist assistant's ability to perform physical therapy with reasonable skill and safety to patients;

(II) Failed to act within the limitations created by a physical illness; a physical condition; or a behavioral, mental health, or substance use disorder that renders the certified physical therapist assistant unable to perform physical therapy with reasonable skill and safety to the patient; or

(III) Failed to comply with the limitations agreed to under a confidential agreement entered into under section 12-41-214;

(j) Refused to submit to a physical or mental examination when so ordered by the board under section 12-41-213;

(k) Failed to notify the board in writing of the entry of a final judgment by a court of competent jurisdiction against the certified physical therapist assistant for malpractice or a settlement by the certified physical therapist assistant in response to charges or allegations of malpractice, which notice must be given within ninety days after the entry of judgment or settlement and, in the case of a judgment, must contain the name of the court, the case number, and the names of all parties to the action;

(l) Violated or aided or abetted a violation of this part 2, a rule adopted under this part 2, or a lawful order of the board;

(m) Been convicted of, pled guilty, or pled nolo contendere to a crime related to the certified physical therapist assistant's practice or a felony or committed an act specified in section 12-41-216. A certified copy of the judgment of a court of competent jurisdiction of the conviction or plea is conclusive evidence of the conviction or plea. In considering the disciplinary action, the board is governed by section 24-5-101, C.R.S.

(n) Fraudulently obtained, furnished, or sold a physical therapist assistant diploma, certificate, renewal of certificate, or record, or aided or abetted any such act;

(o) Represented, or held himself or herself out as, in any manner, a physical therapist assistant or practiced as a physical therapist assistant without a certification, unless otherwise authorized under this part 2;

(p) Used in connection with the person's name a designation implying that the person is a physical therapist assistant without being certified under this part 2;

(q) Practiced as a physical therapist assistant during the time the person's certification was expired, suspended, or revoked; or

(r) Failed to respond in an honest, materially responsive, and timely manner to a complaint issued under this part 2.

Source: L. 2011: Entire part added, (SB 11-169), ch. 172, p. 636, § 34, effective July 1. **L. 2012:** (1)(h) amended, (HB 12-1311), ch. 281, p. 1615, § 27, effective July 1. **L. 2017:** (1)(i)(I) and (1)(i)(II) amended, (SB 17-242), ch. 263, p. 1281, § 74, effective May 25.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-41-211. Disciplinary actions. (1) (a) The board, in accordance with article 4 of title 24, C.R.S., may issue letters of admonition; deny, refuse to renew, suspend, or revoke a certification; place a certified physical therapist assistant on probation; or impose public censure or a fine, if the board or the board's designee determines after notice and the opportunity for a hearing that the certified physical therapist assistant has committed an act specified in section 12-41-210.

(b) In the case of a deliberate and willful violation of this part 2 or if the public health, safety, and welfare require emergency action, the board may take disciplinary action on an emergency basis under sections 24-4-104 and 24-4-105, C.R.S.

(2) (a) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the board, does not warrant formal action but should not be dismissed as being without merit, the board may send a letter of admonition to the certified physical therapist assistant.

(b) When the board sends a letter of admonition to a certified physical therapist assistant, the board shall notify the certified physical therapist assistant of his or her right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct described in the letter of admonition.

(c) If the request for adjudication is timely made, the letter of admonition is vacated and the matter must be processed by means of formal disciplinary proceedings.

(3) In a disciplinary order that allows a certified physical therapist assistant to continue to practice, the board may impose upon the certified physical therapist assistant conditions that

the board deems appropriate to ensure that the certified physical therapist assistant is physically, mentally, and professionally qualified to practice in accordance with generally accepted professional standards. The conditions may include the following:

(a) Examination of the certified physical therapist assistant to determine his or her mental or physical condition, as provided in section 12-41-213, or to determine professional qualifications;

(b) Any therapy, training, or education that the board believes necessary to correct deficiencies found either in a proceeding in compliance with section 24-34-106, C.R.S., or through an examination under paragraph (a) of this subsection (3);

(c) A review or supervision of a certified physical therapist assistant's practice that the board finds necessary to identify and correct deficiencies therein; or

(d) Restrictions upon the nature and scope of practice to ensure that the certified physical therapist assistant does not practice beyond the limits of the certified physical therapist assistant's capabilities.

(4) When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the board and, in the opinion of the board, the complaint should be dismissed, but the board has noticed indications of possible errant conduct by the certified physical therapist assistant that could lead to serious consequences if not corrected, the board may send a confidential letter of concern to the certified physical therapist assistant.

(5) The board may take disciplinary action against a certified physical therapist assistant for failure to comply with any of the conditions imposed by the board under subsection (3) of this section.

(6) A person whose certification has expired is subject to the penalties provided in this part 2 and section 24-34-102 (8), C.R.S.

(7) A physical therapist assistant whose certification is revoked or who surrenders his or her certification to avoid discipline is not eligible to apply for a certification for two years after the certification is revoked or surrendered. The two-year waiting period applies to a person whose certification as a physical therapist assistant is revoked by any other legally qualified board or regulatory entity.

Source: L. 2011: Entire part added, (SB 11-169), ch. 172, p. 638, § 34, effective July 1.

12-41-212. Disciplinary proceedings - investigations - judicial review. (1) The board may commence a proceeding for the discipline of a physical therapist assistant when the board has reasonable grounds to believe that a physical therapist assistant has committed an act enumerated in section 12-41-210.

(2) In a proceeding held under this section, the board may accept as prima facie evidence of grounds for disciplinary action any disciplinary action taken against a physical therapist assistant from another jurisdiction if the violation that prompted the disciplinary action in that jurisdiction would be grounds for disciplinary action under this part 2.

(3) (a) The board may investigate potential grounds for disciplinary action upon its own motion or when the board is informed of dismissal of a person certified under this part 2 if the dismissal was for a matter constituting a violation of this part 2.

(b) A person who supervises a physical therapist assistant shall report to the board when the physical therapist assistant has been dismissed because of incompetence or failure to comply

with this part 2. A certified physical therapist assistant who is aware that another person is violating this part 2 shall report the violation to the board.

(4) (a) The board or an administrative law judge may administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board under this part 2. The board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the board.

(b) Upon failure of a witness to comply with a subpoena or process, the district court of the county in which the subpoenaed person or certified physical therapist assistant resides or conducts business, upon application by the board with notice to the subpoenaed person or certified physical therapist assistant, may issue an order requiring that person or certified physical therapist assistant to appear before the board; 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 to obey the order of the court may be punished by the court as a contempt of court.

(5) The board may keep any investigation authorized under this part 2 closed until the results of the investigation are known and either the complaint is dismissed or notice of hearing and charges are served upon the certified physical therapist assistant.

(6) (a) The board, the director's staff, a witness or consultant to the board, a witness testifying in a proceeding authorized under this part 2, or a person who lodges a complaint under this part 2 is immune from liability in a civil action brought against him or her for acts occurring while acting in his or her capacity as a board member, staff member, consultant, witness, or complainant if the individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted with the reasonable belief that the action taken was warranted by the facts.

(b) A person making a complaint or report in good faith or participating in any investigative or administrative proceeding pursuant to this section is immune from any liability, civil or criminal, that otherwise might result by reason of the participation.

(7) The board, through the department of regulatory agencies, may employ administrative law judges appointed pursuant to part 10 of article 30 of title 24, C.R.S., on a full-time or part-time basis, to conduct hearings under this part 2 or on any matter within the board's jurisdiction upon the conditions and terms as the board may determine.

(8) Final action of the board may be judicially reviewed by the court of appeals by appropriate proceedings under section 24-4-106 (11), C.R.S., and judicial proceedings for the enforcement of an order of the board may be instituted in accordance with section 24-4-106, C.R.S.

(9) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, warrants formal action, the board shall not resolve the complaint by a deferred settlement, action, judgment, or prosecution.

(10) (a) If it appears to the board, based upon credible evidence as presented in a written complaint, that a certified physical therapist assistant 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 certification, the board may issue an order to cease and desist the activity. The order must 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 uncertified practices immediately cease.

(b) Within ten days after service of the order to cease and desist under paragraph (a) of this subsection (10), the respondent may request a hearing on the question of whether acts or practices in violation of this part 2 have occurred. The hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(11) (a) If it appears to the board, based upon credible evidence as presented in a written complaint, that a person has violated this part 2, then, in addition to any specific powers granted under this part 2, the board may issue to the person an order to show cause as to why the board should not issue a final order directing the person to cease and desist from the unlawful act or uncertified practice.

(b) The board shall promptly notify a person against whom an order to show cause has been issued under paragraph (a) of this subsection (11) of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the board for a hearing on the order. The board may serve the notice by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon the person against whom the order is issued. Personal service or mailing of an order or document pursuant to this subsection (11) constitutes notice thereof to the person.

(c) (I) The board shall commence a hearing on an order to show cause no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the board as provided in paragraph (b) of this subsection (11). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event is the hearing to commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (11) does not appear at the hearing, the board may present evidence that notification was properly sent or served upon the person under paragraph (b) of this subsection (11) and such other evidence related to the matter as the board deems appropriate. The board shall issue the order within ten days after the board's determination related to reasonable attempts to notify the respondent, and the order becomes final as to that person by operation of law. The board shall conduct the hearing in accordance with sections 24-4-104 and 24-4-105, C.R.S.

(III) If the board reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required certification, or has or is about to engage in acts or practices constituting violations of this part 2, the board may issue a final cease-and-desist order, directing the person to cease and desist from further unlawful acts or uncertified practices.

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

(12) If it appears to the board, based upon credible evidence presented to the board, that a person has engaged in or is about to engage in any uncertified act or practice, any act or

practice constituting a violation of this part 2, a rule promulgated under this part 2, an order issued under this part 2, or an act or practice constituting grounds for administrative sanction under this part 2, the board may enter into a stipulation with the person.

(13) If a person fails to comply with a final cease-and-desist order or a stipulation, the board may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order. Upon receiving the request, the attorney general or district attorney shall bring the suit as requested.

Source: L. 2011: Entire part added, (SB 11-169), ch. 172, p. 639, § 34, effective July 1.

12-41-213. Mental and physical examination of certified physical therapist assistants. (1) If the board has reasonable cause to believe that a certified physical therapist assistant is unable to practice with reasonable skill and safety, the board may require the certified physical therapist assistant to take a mental or physical examination by a health care provider designated by the board. If the certified physical therapist assistant refuses to undergo the mental or physical examination, unless due to circumstances beyond the certified physical therapist assistant's control, the board may suspend the certified physical therapist assistant's certification until the results of the examination are known and the board has made a determination of the certified physical therapist assistant's fitness to practice. The board shall proceed with an order for examination and determination in a timely manner.

(2) An order issued to a certified physical therapist assistant under subsection (1) of this section to undergo a mental or physical examination must contain the basis of the board's reasonable cause to believe that the certified physical therapist assistant is unable to practice with reasonable skill and safety. For the purposes of a disciplinary proceeding authorized by this part 2, the certified physical therapist assistant is deemed to have waived all objections to the admissibility of the examining health care provider's testimony or examination reports on the ground that they are privileged communications.

(3) The certified physical therapist assistant may submit to the board testimony or examination reports from a health care provider chosen by the certified physical therapist assistant pertaining to the condition that the board has alleged may preclude the certified physical therapist assistant from practicing with reasonable skill and safety. The board may consider such testimony or examination reports in conjunction with, but not in lieu of, testimony and examination reports of the health care provider designated by the board.

(4) A person shall not use the results of any mental or physical examination ordered by the board as evidence in any proceeding other than one before the board. The examination results are not public records and are not available to the public.

Source: L. 2011: Entire part added, (SB 11-169), ch. 172, p. 642, § 34, effective July 1.

12-41-214. Examinations - notice - confidential agreements. (1) If a certified physical therapist assistant suffers from a physical illness; a physical condition; or a behavioral or mental health disorder rendering the certified physical therapist assistant unable to practice with reasonable skill and patient safety, the certified physical therapist assistant shall notify the board of the physical illness; the physical condition; or the behavioral or mental health disorder in a

manner and within a period of time determined by the board. The board may require the certified physical therapist assistant to submit to an examination, or the board may evaluate the extent of the physical illness; the physical condition; or the behavioral or mental health disorder and its impact on the certified physical therapist assistant's ability to practice with reasonable skill and safety to patients.

(2) (a) Upon determining that a certified physical therapist assistant with a physical illness; a physical condition; or a behavioral or mental health disorder is able to render limited physical therapy with reasonable skill and patient safety, the board may enter into a confidential agreement with the certified physical therapist assistant in which the certified physical therapist assistant agrees to limit his or her practice based on the restrictions imposed by the physical illness; the physical condition; or the behavioral or mental health disorder, as determined by the board.

(b) The agreement must specify that the certified physical therapist assistant is subject to periodic reevaluations or monitoring as determined appropriate by the board.

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

(d) By entering into an agreement with the board under this subsection (2) to limit his or her practice, the certified physical therapist assistant is not engaging in unprofessional conduct. The agreement is an administrative action and does not constitute a restriction or discipline by the board. However, if the certified physical therapist assistant fails to comply with the terms of an agreement entered into pursuant to this subsection (2), the failure constitutes grounds for disciplinary action under section 12-41-210 (1)(i) and the certified physical therapist assistant is subject to discipline in accordance with section 12-41-211.

(3) This section does not apply to a physical therapist assistant subject to discipline under section 12-41-210 (1)(h).

Source: L. 2011: Entire part added, (SB 11-169), ch. 172, p. 643, § 34, effective July 1. **L. 2017:** (1) and (2)(a) amended, (SB 17-242), ch. 263, p. 1281, § 75, effective May 25.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-41-215. Reports by insurance companies. (1) (a) Each insurance company licensed to do business in this state and engaged in the writing of malpractice insurance for physical therapist assistants shall send to the board information about any malpractice claim that involves a physical therapist assistant and is settled or in which judgment is rendered against the insured.

(b) In addition, the insurance company shall submit supplementary reports containing the disposition of the claim to the board within ninety days after settlement or judgment.

(2) Regardless of the disposition of any claim, the insurance company shall provide such information as the board finds reasonably necessary to conduct its own investigation and hearing.

Source: L. 2011: Entire part added, (SB 11-169), ch. 172, p. 644, § 34, effective July 1.

12-41-216. Unauthorized practice - penalties. Any person who violates section 12-41-202 or 12-41-203 without an active certification issued under this part 2 commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 2011: Entire part added, (SB 11-169), ch. 172, p. 644, § 34, effective July 1.

12-41-217. Violation - fines. (1) Notwithstanding section 12-41-216, the board may assess a fine for a violation of this part 2 or a rule adopted under this part 2.

(2) The fine shall not be greater than one thousand dollars and shall be transmitted to the state treasurer, who shall credit the same to the general fund.

(3) All fines must be imposed in accordance with section 24-4-105, C.R.S., but are not a substitute or waiver of a criminal penalty.

Source: L. 2011: Entire part added, (SB 11-169), ch. 172, p. 644, § 34, effective July 1.

12-41-218. Injunctive proceedings. The board may, in the name of the people of the state of Colorado, through the attorney general of Colorado, apply for an injunction to a court to enjoin a person from committing an act declared to be a misdemeanor by this part 2. If it is established that the defendant has been or is committing an act declared to be a misdemeanor by this part 2, the court shall enter a decree perpetually enjoining the defendant from further committing the act. If a person violates an injunction issued under this section, the court may try and punish the offender for contempt of court. An injunction proceeding is in addition to, and not in lieu of, all penalties and other remedies provided in this part 2.

Source: L. 2011: Entire part added, (SB 11-169), ch. 172, p. 644, § 34, effective July 1.

12-41-219. Limitation on authority. The authority granted to the board by this part 2 does not authorize the board to arbitrate or adjudicate fee disputes between physical therapist assistants or between a physical therapist assistant and another party.

Source: L. 2011: Entire part added, (SB 11-169), ch. 172, p. 645, § 34, effective July 1.

12-41-220. Fees and expenses. All fees collected under this part 2 shall be determined, collected, and appropriated in the same manner as set forth in section 24-34-105, C.R.S.

Source: L. 2011: Entire part added, (SB 11-169), ch. 172, p. 645, § 34, effective July 1.

12-41-221. Repeal of part. This part 2 is repealed, effective September 1, 2024. Before its repeal, the functions of the physical therapy board in regulating physical therapist assistants under this part 2 are scheduled for review in accordance with section 24-34-104.

Source: L. 2011: Entire part added, (SB 11-169), ch. 172, p. 645, § 34, effective July 1. **L. 2018:** Entire section amended, (HB 18-1155), ch. 315, p. 1897, § 2, effective September 1.

ARTICLE 41.5

Respiratory Therapy Practice Act

12-41.5-101. Short title. This article shall be known and may be cited as the "Respiratory Therapy Practice Act".

Source: L. 2000: Entire article added, p. 1306, § 1, effective July 1.

12-41.5-102. Legislative declaration. The general assembly hereby finds, determines, and declares that the practice of respiratory therapy in the state of Colorado affects the public health, safety, and welfare of its citizens and must be subject to regulation and control to protect the public from the unqualified practice of respiratory therapy and from unprofessional conduct. The general assembly further recognizes the practice of respiratory therapy to be a dynamic and changing art and science that is continually evolving to include new ideas and ever more sophisticated techniques in patient care.

Source: L. 2000: Entire article added, p. 1306, § 1, effective July 1.

12-41.5-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Director" means the director of the division of professions and occupations in the department of regulatory agencies.

(2) "Division" means the division of professions and occupations in the department of regulatory agencies created in section 24-34-102, C.R.S.

(3) "Licensee" means a respiratory therapist licensed pursuant to this article.

(4) "Medical director" means a licensed physician who holds such title in any inpatient or outpatient facility, department, or home care agency, and who is responsible for the quality, safety, and appropriateness of the respiratory therapy provided.

(5) "Respiratory therapist" means a person who is licensed to practice respiratory therapy pursuant to this article.

(6) "Respiratory therapy" means providing therapy, management, rehabilitation, support services for diagnostic evaluation, and care of patients with deficiencies and abnormalities which affect the pulmonary system under the overall direction of a medical director. Respiratory therapy includes the following:

(a) Direct and indirect pulmonary care services that are safe, aseptic, preventive, and restorative to the patient;

(b) The teaching or instruction of the techniques and skill of respiratory care whether or not in a formal educational setting;

(c) Direct and indirect respiratory care services including but not limited to the administration of pharmacological, diagnostic, and therapeutic agents related to respiratory care procedures necessary to implement a treatment, disease prevention, and pulmonary rehabilitative or diagnostic regimen prescribed by a physician or advanced practice nurse;

(d) Observation and monitoring of signs, symptoms, reactions, general behavior, and general physical response to respiratory care treatment and diagnostic testing for:

(I) The determination of whether such signs, symptoms, reactions, behavior, or general response exhibit abnormal characteristics; or

(II) The implementation based on observed abnormalities of appropriate reporting, referral, or respiratory care protocols or changes in treatment regimen pursuant to a prescription by a physician or advanced practice nurse or the initiation of emergency procedures;

(e) The diagnostic and therapeutic use of the following in accordance with the prescription of a physician or advanced practice nurse: Administration of medical gases, exclusive of general anesthesia; aerosols; humidification; environmental control systems and biomedical therapy; pharmacologic agents related to respiratory care procedures; mechanical or physiological ventilatory support; bronchopulmonary hygiene; respiratory protocol and evaluation; cardiopulmonary resuscitation; maintenance of the natural airways; insertion and maintenance of artificial airways; diagnostic and testing techniques required for implementation of respiratory care protocols; collection of specimens from the respiratory tract; or analysis of blood gases and respiratory secretions and participation in cardiopulmonary research; and

(f) The transcription and implementation of the written and verbal orders of a physician pertaining to the practice of respiratory care.

Source: L. 2000: Entire article added, p. 1306, § 1, effective July 1.

12-41.5-104. Use of titles restricted. A respiratory therapist, but no other person, may use the title "licensed respiratory therapist" or the letters "L.R.T."

Source: L. 2000: Entire article added, p. 1308, § 1, effective July 1.

12-41.5-105. Limitations on authority. Nothing in this article shall be construed as authorizing a respiratory therapist to perform the practice of medicine, surgery, or any other form of healing except as authorized by the provisions of this article.

Source: L. 2000: Entire article added, p. 1308, § 1, effective July 1.

12-41.5-106. License - reciprocity - effectiveness - fee. (1) An applicant for a license to practice respiratory therapy shall submit to the director evidence that he or she is credentialed by a national respiratory therapy credentialing body, as determined by the director, as a certified or registered respiratory therapist and shall pay a fee as determined by the director. The director shall maintain on file the standards of practice for examination and accreditation by the national respiratory therapy credentialing body determined by the director pursuant to this subsection (1) and make the standards available to the public.

(2) The director shall issue a license to practice respiratory therapy 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 is either:

(a) Currently in possession of an unrestricted license in good standing to practice respiratory therapy under the laws of another state or territory of the United States or foreign country, if the qualifications of the applicant are deemed by the director to be substantially equivalent to those required by this state, and whether the applicant has ever had a disciplinary action taken in regard to the applicant's license to practice respiratory therapy in another state;

(b) Holding credentials conferred by a national respiratory therapy credentialing body, as determined by the director, which credentials have not been suspended or revoked; or

(c) Functioning in the capacity of a respiratory therapist as of July 1, 2000, and has successfully passed, no later than July 1, 2001, the certification or registration examination of a national respiratory therapy credentialing body, as determined by the director.

Source: L. 2000: Entire article added, p. 1308, § 1, effective July 1. **L. 2015:** (1), (2)(b), and (2)(c) amended, (SB 15-105), ch. 112, p. 335, § 5, effective July 1.

12-41.5-107. Renewal of license. (1) At least sixty calendar days prior to the expiration of a license, the director shall notify the licensee of the pending expiration. The director shall make an expiration notice and a renewal form available to the licensee. Before the expiration date, the licensee shall complete the renewal form and return it to the division with the renewal fee.

(2) Upon receipt of the completed renewal form and the renewal fee, the director shall issue a license for the current renewal period pursuant to a schedule established by the director, and such renewal or reinstatement shall be granted pursuant to section 24-34-102 (8), C.R.S. The director may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license pursuant to the schedule established by the director of the division of professions and occupations, such license shall expire. Any person whose license has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

(3) (Deleted by amendment, L. 2004, p. 1846, § 96, effective August 4, 2004.)

Source: L. 2000: Entire article added, p. 1309, § 1, effective July 1. **L. 2004:** (2) and (3) amended, p. 1846, § 96, effective August 4.

12-41.5-108. Fees. All fees collected under this article shall be determined, collected, and appropriated in the same manner as set forth in section 24-34-105, C.R.S.

Source: L. 2000: Entire article added, p. 1309, § 1, effective July 1.

12-41.5-109. Grounds for action - disciplinary proceedings. (1) The director may take disciplinary action against a licensee if the director finds that such person has represented himself or herself to be a licensed respiratory therapist after the expiration or suspension of his or her license.

(2) The director has the power to revoke, suspend, deny, or refuse to renew a license, place on probation a licensee, or issue a letter of admonition to a licensee in accordance with subsections (3), (4), (5), and (6) of this section upon proof that the person:

(a) Has procured or attempted to procure a license by fraud, deceit, misrepresentation, misleading omission, or material misstatement of fact;

(b) (I) Has been convicted of or has entered and had accepted by a court a plea of guilty or nolo contendere to:

(A) A felony pursuant to section 18-1.3-401, C.R.S.; or

(B) Any crime as defined in title 18, C.R.S., that relates to such person's employment as a respiratory therapist.

(II) 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. In conjunction with any disciplinary proceeding pertaining to this paragraph (b), the director shall be governed by section 24-5-101, C.R.S.

(c) Has willfully or negligently acted in a manner inconsistent with the health or safety of persons under his or her care;

(d) Has had a license to practice respiratory therapy or any other health care occupation suspended, revoked, or otherwise subjected to discipline in any jurisdiction. A certified copy of the order of suspension, revocation, or discipline shall be prima facie evidence of such suspension, revocation, or discipline.

(e) Has violated this article or has aided or knowingly permitted any person to violate this article;

(f) Practiced respiratory therapy in a manner which failed to meet generally accepted standards for respiratory therapists;

(g) Has negligently or willfully violated any order or rule of the director pertaining to the practice or licensure of respiratory therapy;

(h) Has an alcohol use disorder, as defined in section 27-81-102, or a substance use disorder, as defined in section 27-82-102, or is an excessive or habitual user or abuser of alcohol or habit-forming drugs or is a habitual user of a controlled substance, as defined in section 18-18-102 (5), or other drugs having similar effects; except that the director has the discretion not to discipline the license holder if he or she is participating in good faith in an alcohol or substance use disorder treatment program approved by the director;

(i) (I) Has failed to notify the director, as required by section 12-41.5-109.7, of a physical condition; a physical illness; or a behavioral, mental health, or substance use disorder that affects the licensee's ability to practice respiratory therapy with reasonable skill and safety or that may endanger the health or safety of persons under his or her care;

(II) Has failed to act within the limitations created by a physical condition; a physical illness; or a behavioral, mental health, or substance use disorder that renders the person unable to practice respiratory therapy with reasonable skill and safety or that might endanger the health or safety of persons under his or her care; or

(III) Has failed to comply with the limitations agreed to under a confidential agreement entered pursuant to section 12-41.5-109.7;

(j) Has committed:

(I) A fraudulent insurance act as defined in section 10-1-128, C.R.S.;

(II) An abuse of health insurance, as set forth in section 18-13-119, C.R.S., or advertised through any medium that he or she will perform an act prohibited by section 18-13-119 (3), C.R.S.;

(k) Has engaged in any of the following activities or practices:

(I) Willful and repeated ordering and performance, without justification, of demonstrably unnecessary laboratory tests or studies;

(II) Administering treatment that is demonstrably unnecessary, without clinical justification;

(III) Failing to obtain consultations or perform referrals when failing to do so is inconsistent with the standard of care for the profession; or

(IV) Ordering or performing, without clinical justification, a service, procedure, or treatment that is contrary to recognized standards of the practice of respiratory therapy as interpreted by the director;

(l) Has practiced respiratory therapy without possessing a valid license issued by the director in accordance with this article and any rules adopted under this article;

(m) Has used in connection with his or her name any designation that implies that he or she is a certified, registered, or licensed respiratory therapist, unless the person is licensed pursuant to this article;

(n) Has practiced respiratory therapy as a licensed respiratory therapist during the time that his or her license was suspended, revoked, or expired;

(o) Has sold, fraudulently obtained, or furnished a license to practice as a licensed respiratory therapist, or has aided or abetted such activity;

(p) Has failed to notify the director of the suspension, probation, or revocation of any of the person's past or currently held licenses, certificates, or registrations required to practice respiratory therapy in this or any other jurisdiction;

(q) Has knowingly employed any person who is not licensed in the practice of respiratory therapy in the capacity of a respiratory therapist;

(r) Has failed to respond in a timely manner to a complaint issued under this article; or

(s) Has refused to submit to a physical or mental examination when ordered by the director pursuant to section 12-41.5-109.5.

(2.5) The director shall revoke, suspend, deny, or refuse to renew a license, place a licensee on probation, or issue a cease-and-desist order or letter of admonition to a licensee in accordance with subsections (3), (4), (5), and (6) of this section upon proof that the person:

(a) Has falsified or repeatedly made incorrect essential entries or repeatedly failed to make essential entries on patient records;

(b) Has practiced outside of or beyond the person's area of training, experience, or competence.

(3) Except as otherwise provided in subsection (2) of this section, the director need not find that the actions that are grounds for discipline were willful but may consider whether such actions were willful when determining the nature of disciplinary sanctions to be imposed.

(4) A disciplinary proceeding may be commenced when the director has reasonable grounds to believe that a licensee has committed acts that may violate this section.

(5) Disciplinary proceedings shall be conducted pursuant to article 4 of title 24, C.R.S., and the hearing and opportunity for review shall be conducted pursuant to such article by the director or by an administrative law judge, at the director's discretion. The director has the authority to exercise all powers and duties conferred by this article during such disciplinary proceedings.

(5.5) (a) The director may request the attorney general to seek an injunction, in any court of competent jurisdiction, to enjoin any person from committing any act prohibited by this article. When seeking an injunction under this paragraph (a), the attorney general shall 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.

(b) (I) In accordance with the provisions of article 4 of title 24, C.R.S., and this article, the director is authorized to investigate, hold hearings, and gather evidence in all matters related to the exercise and performance of the powers and duties of the director.

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

(III) Upon failure of any witness to comply with a subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or 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. If the person or licensee fails to obey the order of the court, the court may hold the person or licensee in contempt of court.

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

(7) A final action of the director may be judicially reviewed by the court of appeals in accordance with section 24-4-106 (11), C.R.S., and judicial proceedings for the enforcement of an order of the director may be instituted in accordance with section 24-4-106, C.R.S.

(8) (a) The director, the director's staff, any person acting as a witness or 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 liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as director, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts.

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

(9) An employer of a respiratory therapist shall report to the director any disciplinary action taken against such therapist or the resignation of such therapist in lieu of disciplinary action for conduct that violates this article.

(10) (a) Investigations, examinations, hearings, meetings, and other proceedings of the director conducted pursuant to this section shall be exempt from any law that requires:

(I) Such proceedings to be conducted publicly; or

(II) The minutes or records of the director, with respect to action taken pursuant to this section, to be open to the public.

(b) Paragraph (a) of this subsection (10) shall not apply after the director has made a decision to proceed with a disciplinary action and has served by first-class mail a notice of formal complaint on the licensee.

(11) (a) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the director, does not warrant formal action by the director but that should not be

dismissed as being without merit, the director may issue and send a letter of admonition to the licensee.

(b) When the director sends a letter of admonition to a licensee, the letter must advise the licensee that he or she has the 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 upon which the letter of admonition is based.

(c) If the request for adjudication is timely made, the letter of admonition shall be deemed vacated and the matter shall be processed by means of formal disciplinary proceedings.

(11.5) When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the director and, in the opinion of the director, the complaint should be dismissed, but the director has noticed indications of possible errant conduct by the licensee that could lead to serious consequences if not corrected, a confidential letter of concern may be issued and sent to the licensee.

(12) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the director, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(13) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a 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 license, the director may issue an order to cease and desist such activity. 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 unlicensed practices immediately cease.

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

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

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (14) shall be promptly notified by the director of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the director for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order issued. Personal service or mailing of an order or document pursuant to this subsection (14) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the director as provided in paragraph (b) of this subsection (14). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (14) does not appear at the hearing, the director may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (14) and such other evidence related to the matter as the director deems appropriate. The director shall issue the order within ten days after the director's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(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 license, or has or is about to engage in acts or practices constituting violations of this article, a final cease-and-desist order may be issued, directing such person to cease and desist from further unlawful acts or unlicensed practices.

(IV) The director shall provide notice, in the manner set forth in paragraph (b) of this subsection (14), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

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

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

(17) A person aggrieved by the final cease-and-desist order may seek judicial review of the director's determination or of the director's final order as provided in subsection (7) of this section.

(18) A respiratory therapist whose license is revoked or who surrenders his or her license to avoid discipline under this section is not eligible to apply for a license under this article for two years after the license is revoked or surrendered.

Source: L. 2000: Entire article added, p. 1309, § 1, effective July 1. **L. 2001:** (5.5) added, p. 253, § 1, effective March 30. **L. 2002:** (2)(b)(I)(A) amended, p. 1480, § 85, effective October 1. **L. 2003:** (2)(j)(I) amended, p. 622, § 36, effective July 1. **L. 2004:** (5.5)(b) and (8) amended and (11) and (12) added, p. 1847, § 97, effective August 4. **L. 2005:** (2)(h) amended and (2.5) added, p. 243, § 1, effective July 1. **L. 2006:** IP(2) amended and (11.5) and (13) to (17) added, p. 810, § 38, effective July 1; (2)(l) to (2)(q) added with relocated provisions, p. 91, § 43, effective August 7. **L. 2012:** (2)(h) amended, (HB 12-1311), ch. 281, p. 1615, § 28, effective July 1. **L. 2015:** IP (2), (2)(i), (2)(p), (5.5)(b)(II), (5.5)(b)(III), (11)(a), (11)(b), and (17) amended and (2)(r), (2)(s), and (18) added, (SB 15-105), ch. 112, p. 332, § 3, effective July 1. **L. 2017:** (2)(h), (2)(i)(I), and (2)(i)(II) amended, (SB 17-242), ch. 263, p. 1282, § 76, effective May 25.

Editor's note: Subsections (2)(l), (2)(m), (2)(n), (2)(o), (2)(p), and (2)(q) are similar to former §§ 12-41.5-112 (1)(a), (1)(b), (1)(c), (1)(d), (1)(e), and (1)(f) as they existed prior to 2006.

Cross references: (1) For the legislative declaration contained in the 2002 act amending subsection (2)(b)(I)(A), see section 1 of chapter 318, Session Laws of Colorado 2002.

(2) For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-41.5-109.5. Mental and physical examination of licensees. (1) (a) If the director has reasonable cause to believe that a licensee is unable to practice with reasonable skill and safety to clients, the director may order the licensee to submit to a mental or physical examination administered by a physician or other licensed health care professional designated by the director.

(b) 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, and the refusal is not due to circumstances beyond the licensee's control:

(I) The refusal constitutes grounds for discipline pursuant to section 12-41.5-109 (2)(s); and

(II) The director may suspend the licensee's license in accordance with section 12-41.5-109 until:

(A) The licensee submits to the examination and the results of the examination are known; and

(B) The director has made a determination of the licensee's fitness to practice.

(c) The director shall proceed with an order for examination and determination of a licensee's fitness to practice in a timely manner.

(2) In an order to a licensee pursuant to subsection (1) of this section to undergo a mental or physical examination, the director shall include the basis of the director's reasonable cause to believe that the licensee is unable to practice with reasonable skill and safety. For purposes of any disciplinary proceeding authorized under this article, the 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 licensee may submit to the director testimony or examination reports from a physician or other licensed health care professional chosen by the licensee and pertaining to any condition that the director has alleged might preclude the licensee from practicing with reasonable skill and safety. The director may 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.

(4) The results of a mental or physical examination ordered by the director must not be used as evidence in any proceeding other than one before the director, are not public records, and must not be made available to the public.

Source: L. 2015: Entire section added, (SB 15-105), ch. 112, p. 333, § 4, effective July 1.

12-41.5-109.7. Confidential agreement to limit practice - violation - grounds for discipline. (1) If a respiratory therapist has a physical illness; a physical condition; or a behavioral or mental health disorder that renders the person unable to practice respiratory therapy with reasonable skill and safety to clients, the respiratory therapist shall notify the director of the physical illness; the physical condition; or the behavioral or mental health disorder in a manner and within a period determined by the director. The director may require the respiratory therapist to submit to an examination to evaluate the extent of the physical illness; the physical condition; or the behavioral or mental health disorder and its effect on the respiratory therapist's ability to practice respiratory therapy with reasonable skill and safety to clients.

(2) (a) Upon determining that a respiratory therapist with a physical illness; a physical condition; or a behavioral or mental health disorder is able to render limited services with reasonable skill and safety to clients, the director may enter into a confidential agreement with the respiratory therapist in which the respiratory therapist agrees to limit his or her practice based on the restrictions imposed by the physical illness; the physical condition; or the behavioral or mental health disorder, as determined by the director.

(b) As part of the agreement, the respiratory therapist is subject to periodic reevaluation 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 respiratory therapist is not engaging in activities that are grounds for discipline pursuant to section 12-41.5-109. The agreement does not constitute a restriction or discipline by the director. However, if the respiratory therapist fails to comply with the terms of the agreement, the failure constitutes a prohibited activity pursuant to section 12-41.5-109 (2)(i), and the respiratory therapist is subject to discipline in accordance with section 12-41.5-109.

(4) This section does not apply to a respiratory therapist subject to discipline for prohibited activities as described in section 12-41.5-109 (2)(h).

Source: L. 2015: Entire section added, (SB 15-105), ch. 112, p. 334, § 4, effective July 1. **L. 2017:** (1) and (2)(a) amended, (SB 17-242), ch. 263, p. 1282, § 77, effective May 25.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-41.5-110. Exceptions.

(1) Repealed.

(2) This article does not prohibit:

(a) (I) Any practice of respiratory therapy that is an integral part of a program of study by students enrolled in an accredited respiratory therapy program. Students enrolled in respiratory therapy education programs shall be identified as "student respiratory therapists" and shall only provide respiratory therapy under direct supervision of a respiratory therapist on the premises who is available for prompt consultation or treatment.

(II) The practice of respiratory therapy by pulmonary function technology students or polysomnographic technology students that is an integral part of a program of study that leads to

certification or registration for their respective disciplines. Students enrolled in such programs shall be identified as "student pulmonary functions technologists" or "student polysomnographic technologists" and shall practice only under the direct supervision of a respiratory therapist or physician or under the supervision of an individual exempted from the provisions of this article pursuant to paragraph (g) of this subsection (2).

(III) The practice of respiratory therapy by polysomnographic technologists who are not registered by or do not hold credentials from a nationally recognized organization, but such polysomnographic technologists shall only practice under the supervision of a respiratory therapist, a physician, or an individual exempted from the provisions of this article pursuant to paragraph (g) of this subsection (2).

(b) Self-therapy by a patient or gratuitous therapy by a friend or family member who does not represent himself or herself to be a respiratory therapist;

(c) Any service provided during an emergency that may be included in the definition of the practice of respiratory therapy;

(d) Respiratory therapy services rendered in the course of assigned duties of persons serving in the military or persons working in federal facilities;

(e) Respiratory therapy services rendered in the course of assigned duties of persons delivering oxygen supplies, including the inspection and maintenance of associated apparatus by a person who does not represent himself or herself as a respiratory therapist;

(f) Any person registered, certified, or licensed in this state under this title from engaging in the practice for which such person is registered, certified, or licensed;

(g) The practice of procedures that fall within the definition of respiratory therapy by certified pulmonary function technologists, registered pulmonary function technologists, registered polysomnographic technologists, or others who hold credentials from a nationally recognized organization as determined by the director; except that the scope of practice of a registered polysomnographic technologist must not exceed oxygen titration with pulse oximetry and noninvasive positive pressure ventilation titration;

(h) The instruction or training of persons to administer emergency oxygen during an aquatic emergency, when such instruction or training is provided by an individual who has been certified to conduct such instruction or training by a nationally recognized certifying agency; or

(i) The practice by an unlicensed person of procedures that fall within the definition of respiratory therapy but that do not require the unlicensed person to perform an assessment, to perform an invasive procedure as defined by the director, or to alter care beyond the scope of approved protocols, so long as the unlicensed person is under supervision as determined appropriate by the respiratory therapist and after such respiratory therapist has considered all of the following:

(I) The health status and mental and physical stability of the individual receiving care;

(II) The complexity of the procedures;

(III) The training and competence of the unlicensed person;

(IV) The proximity and availability of the respiratory therapist when the procedures are performed;

(V) The degree of supervision required for the unlicensed person;

(VI) The length and number of times that the procedure may be performed; and

(VII) The predictability of the outcome of the procedure.

Source: L. 2000: Entire article added, p. 1311, § 1, effective July 1. **L. 2001:** (1) repealed, (2)(a), (2)(g), and (2)(h) amended, and (2)(i) added, p. 254, §§ 2, 3, effective March 30. **L. 2005:** (2)(a)(II) and (2)(g) amended and (2)(a)(III) added, p. 244, §§ 2, 3, effective July 1. **L. 2015:** (2)(g) amended, (SB 15-105), ch. 112, p. 335, § 6, effective July 1.

12-41.5-111. Practice of medicine prohibited. Subject to section 12-36-106 (3)(m), nothing in this article shall be construed to permit the practice of medicine as defined in section 12-36-106.

Source: L. 2000: Entire article added, p. 1312, § 1, effective July 1.

12-41.5-112. Unauthorized practice - penalties.

(1) Repealed.

(2) A person who practices or offers or attempts to practice respiratory 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 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: L. 2000: Entire article added, p. 1312, § 1, effective July 1. **L. 2002:** (2) amended, p. 1481, § 86, effective October 1. **L. 2006:** IP(1) and (1)(a) to (1)(h) repealed and (2) amended, p. 92, §§ 46, 45, 44, effective August 7.

Editor's note: Subsections (1)(a), (1)(b), (1)(c), (1)(d), (1)(e), and (1)(f) were relocated to § 12-41.5-109 (2)(l), (2)(m), (2)(n), (2)(o), (2)(p), and (2)(q) in 2006.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-41.5-113. Rule-making authority. The director shall promulgate such rules as are necessary or convenient for the administration of this article.

Source: L. 2000: Entire article added, p. 1313, § 1, effective July 1.

12-41.5-114. Severability. If any provision of this article is held to be invalid, such invalidity shall not affect other provisions of this article that can be given effect without such invalid provision.

Source: L. 2000: Entire article added, p. 1313, § 1, effective July 1.

12-41.5-115. Repeal of article - termination of functions. (1) This article is repealed, effective September 1, 2024. Prior to the repeal, the department of regulatory agencies shall review the licensure functions of the director pursuant to section 24-34-104, C.R.S.

(2) (Deleted by amendment, L. 2015.)

Source: L. 2000: Entire article added, p. 1313, § 1, effective July 1. **L. 2005:** (1) and (2)(a) amended, p. 244, § 4, effective July 1. **L. 2015:** Entire section amended, (SB 15-105), ch. 112, p. 331, § 2, effective July 1.

ARTICLE 42

Psychiatric Technicians

12-42-101. Legislative declaration. It is declared to be the policy of the state of Colorado that, in order to safeguard life, health, property, and the public welfare of the people of the state of Colorado, and in order to protect the people of the state of Colorado against unauthorized, unqualified, and improper application of interpersonal psychiatric nursing relationships, it is necessary that a proper regulatory authority be established, and adequately provided for. Any person who practices as a psychiatric technician without qualifying for proper registration, and without submitting to the regulations provided in this article, endangers the public health thereby.

Source: L. 67: p. 236, § 1. **C.R.S. 1963:** § 97-3-1.

12-42-102. Definitions. As used in this article 42, unless the context otherwise requires:

(1) "Accredited psychiatric technician education program" means a course of training conducted by a school for the training of psychiatric technicians carrying out the basic curriculum prescribed by this article and accredited by the board.

(2) "Board" means the state board of nursing.

(3) "Person" includes an individual, firm, partnership, association, or corporation.

(4) The practice as a "psychiatric technician" means the performance for compensation of selected acts requiring interpersonal and technical skills and includes the administering of selected treatments and selected medications prescribed by a licensed physician or dentist, in the care of and in the observation and recognition of symptoms and reactions of a patient with a behavioral or mental health disorder or an intellectual and developmental disability under the direction of a licensed physician and the supervision of a registered professional nurse. The selected acts in the care of a patient with a behavioral or mental health disorder or an intellectual and developmental disability must not require the substantial specialized skill, judgment, and knowledge required in professional nursing.

Source: L. 67: p. 236, § 2. **C.R.S. 1963:** § 97-3-2. **L. 76:** (4) amended, p. 425, § 1, effective April 22. **L. 79:** (4) amended, p. 551, § 1, effective July 1. **L. 94:** (4) amended, p. 2638, § 80, effective July 1. **L. 95:** (4) amended, p. 291, § 2, effective July 1. **L. 2006:** (4) amended, p. 1394, § 31, effective August 7. **L. 2017:** IP and (4) amended, (SB 17-242), ch. 263, p. 1283, § 78, effective May 25.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-42-103. State board of nursing - repeal of article - review of licensing and regulation functions. (1) The licensing and regulation of psychiatric technicians shall be under the control of the board.

(2) (a) This article is repealed, effective July 1, 2019.

(b) Prior to such repeal, the licensure and regulation functions of the state board of nursing shall be reviewed as provided in section 24-34-104, C.R.S.

Source: L. 67: p. 237, § 3. **C.R.S. 1963:** § 97-3-3. **L. 90:** Entire section amended, p. 332, § 14, effective April 3. **L. 91:** Entire section amended, p. 683, § 31, effective April 20. **L. 95:** Entire section amended, p. 292, § 3, effective July 1. **L. 2004:** (2)(a) amended, p. 348, § 11, effective July 1. **L. 2009:** (2)(a) amended, (HB 09-1341), ch. 265, p. 1213, § 3, effective July 1.

Cross references: For powers of the state board of nursing, see § 12-38-108.

12-42-104. Application for license. (1) Every applicant for license as a psychiatric technician shall file a written application on forms provided by the board.

(2) Every applicant shall accompany his application with a license fee established pursuant to section 24-34-105, C.R.S., together with a statement of whether or not he has been convicted of a felony or a misdemeanor involving moral turpitude.

(3) Every person licensed under this article shall be known as a licensed psychiatric technician and may place the letters "L.P.T." after his name. Said term or said abbreviation shall not be used to identify anyone not licensed under this article. The terms "psychiatric technician", "psychiatric aide", "trained psychiatric technician", or "graduate psychiatric technician" shall for the purposes of this article be deemed synonymous with the term "psychiatric technician", and none of said terms shall be used to identify anyone not licensed under this article.

Source: L. 67: p. 237, § 4. **C.R.S. 1963:** § 97-3-4. **L. 73:** p. 528, § 60. **L. 79:** (2) amended, p. 1655, § 100, effective July 19.

12-42-105. License by examination. (1) Every applicant for license by examination shall submit written evidence, verified by oath, and satisfactory to the board that said applicant:

(a) Has not committed an act which would be grounds for disciplinary action against a licensee under this article;

(b) Has completed a four-year high school course or the equivalent thereof; and

(c) Has completed the required accredited psychiatric technician educational program and holds a diploma from a state accredited program.

Source: L. 67: p. 237, § 5. **C.R.S. 1963:** § 97-3-5. **L. 73:** p. 528, § 61. **L. 85:** (1)(a) R&RE, p. 526, § 4, effective July 1.

12-42-106. Examinations. (1) All applicants, unless licensed by endorsement, shall be required to pass a written examination.

(2) Examinations shall be held within the state, at least once a year, at such times and places as the board shall determine.

Source: L. 67: p. 237, § 6. **C.R.S. 1963:** § 97-3-6. **L. 77:** IP(1) amended, p. 278, § 17, effective June 29. **L. 79:** (1)(b) amended, p. 551, § 2, effective July 1. **L. 95:** (1) amended, p. 292, § 4, effective July 1.

12-42-107. Issuance of license after examination. The board shall issue a license to each applicant who passes the examination and who is not otherwise disqualified to receive a license under the provisions of this article.

Source: L. 67: p. 237, § 7. **C.R.S. 1963:** § 97-3-7.

12-42-108. License by waiver and examination. (Repealed)

Source: L. 67: p. 237, § 8. **C.R.S. 1963:** § 97-3-8. **L. 73:** p. 528, § 62. **L. 75:** Entire section repealed, p. 209, § 18, effective July 16. **L. 79:** Entire section RC&RE, p. 552, § 3, effective July 1; (1)(c) amended, p. 1663, § 129, effective July 19. **L. 85:** (1)(a) R&RE, p. 526, § 5, effective July 1. **L. 94:** (1)(b) amended, p. 2638, § 81, effective July 1. **L. 95:** Entire section repealed, p. 292, § 5, effective July 1.

12-42-109. License by endorsement. The board may issue a license without examination to an applicant who is licensed or otherwise registered as a psychiatric technician by another state or a territory of the United States if the requirements for license or registration in such state or territory are substantially equal to the requirements in this article; but in no event shall an applicant be required to meet qualifications higher than those in force in this state at the time of his application for license in this state. Every applicant under this section shall state under oath that he has not committed an act which would be grounds for disciplinary action under this article and that he has completed a four-year high school course of study or the equivalent thereof.

Source: L. 67: p. 238, § 9. **C.R.S. 1963:** § 97-3-9. **L. 77:** Entire section amended, p. 643, § 7, effective March 16. **L. 85:** Entire section amended, p. 526, § 6, effective July 1.

12-42-110. Disposition of fees. All fees collected by the board under the provisions of this article shall be transmitted to the state treasurer, who shall credit the same pursuant to section 24-34-105, C.R.S.

Source: L. 67: p. 238, § 10. **C.R.S. 1963:** § 97-3-10. **L. 73:** p. 1375, § 36. **L. 79:** Entire section amended, p. 1655, § 101, effective July 19. **L. 2004:** Entire section amended, p. 1848, § 98, effective August 4.

12-42-111. Accredited psychiatric technician educational program. (1) (a) Any institution within the state of Colorado desiring to conduct an accredited preservice psychiatric technician educational program may apply to the board and submit evidence that it is prepared to carry out a psychiatric technician curriculum that contains theoretical content and clinical practice to prepare the psychiatric technician student to care for clients with intellectual and

developmental disabilities or behavioral or mental health disorders in institutional and community settings.

(b) Content in a psychiatric technician educational program must include but is not limited to:

(I) Fundamental nursing principles and skills;

(II) Growth and developmental and other physical and behavioral skills;

(III) Intellectual and developmental disabilities theory and rehabilitation nursing principles and skills if the technician is to be licensed to care for clients with intellectual and developmental disabilities; and

(IV) Psychopathology and psychiatric nursing principles and skills if the technician is to be licensed to care for clients with behavioral or mental health disorders.

(2) A survey of the institution and its entire psychiatric technician educational program shall be made by the executive secretary or other authorized board employee. Such survey may be conducted in conjunction with an authorized consultant appointed by the board. The persons making such survey shall submit a written report of the survey to the board. One or more board members may participate in any such survey.

(3) If the requirements of this article 42 for an accredited psychiatric technician educational program are met, the institution must be accredited as a psychiatric technician educational program for psychiatric technicians for work with patients with mental health disorders or intellectual and developmental disabilities, for so long as such institution meets the requirements of this article 42.

(4) The board shall examine, from time to time, the accredited psychiatric technician educational programs of all institutions in the state having such programs. Such examinations shall be made by the executive secretary or other authorized representative of the board, and the results thereof shall be submitted to the board in the form of written reports. If the board determines that an institution having an accredited psychiatric technician educational program is not maintaining the standards required by this article, notice thereof in writing specifying the defect shall be served on such institution by certified mail, postage prepaid, return receipt requested. If the institution receiving such notice fails within one year after mailing of such notice to correct the conditions complained of therein, its authority to conduct an accredited psychiatric technician educational program shall be revoked by the board. An institution shall have the right, at any time before the expiration of one year from the date it receives such notice, to demand and be granted a hearing before the board. In case of such demand, no action shall be taken by the board until after the hearing.

Source: L. 67: p. 238, § 11. **C.R.S. 1963:** § 97-3-11. **L. 79:** (1)(b) and (3) amended, p. 552, § 4 and, (4) amended, p. 439, § 21, effective July 1. **L. 95:** (1) amended, p. 293, § 6, effective July 1. **L. 2006:** (3) amended, p. 1394, § 32, effective August 7. **L. 2017:** (1)(a), IP(1)(b), (1)(b)(III), (1)(b)(IV), and (3) amended, (SB 17-242), ch. 263, p. 1283, § 79, effective May 25.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-42-112. Renewal of license. (1) To renew a license issued pursuant to this article, a licensee shall submit an application for renewal pursuant to a schedule established by the director of the division of professions and occupations within the department of regulatory agencies, and the license shall be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director of the division of professions and occupations may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license pursuant to the schedule established by the director of the division of professions and occupations, such license shall expire. Any person whose license has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

(2) (Deleted by amendment, L. 2004, p. 1848, § 99, effective August 4, 2004.)

(3) A person who is not engaged as a psychiatric technician in the state shall not be required to pay a renewal fee for so long as he does not so practice, but shall notify the board of his inactive status in writing. Prior to resumption of the practice as a psychiatric technician such person shall be required to notify the board and remit a renewal fee for the current annual period. After a five-year period in an inactive status, such license may be renewed only by complying with the provisions in this article relating to the issuance of an original license.

Source: L. 67: p. 239, § 12. **C.R.S. 1963:** § 97-3-12. **L. 79:** (1) and (2) amended, p. 1655, § 102, effective July 19. **L. 85:** (1) amended, p. 526, § 7, effective July 1. **L. 95:** (1) amended, p. 294, § 7, effective July 1. **L. 2004:** (1) and (2) amended, p. 1848, § 99, effective August 4.

12-42-113. Grounds for discipline. (1) "Grounds for discipline", as used in this article 42, means any action by any person who:

(a) Has procured or attempted to procure a license by fraud, deceit, misrepresentation, misleading omission, or material misstatement of fact;

(b) (I) Has been convicted of a felony or any crime that would constitute a violation of this article.

(II) (A) For purposes of this paragraph (b), a conviction includes a plea of guilty or nolo contendere or the imposition of a sentence that is deferred prior to final sentencing or dismissal with prejudice.

(B) 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.

(III) Repealed.

(c) Has willfully or negligently acted in a manner inconsistent with the health or safety of persons under his care;

(d) Has had a license to practice as a psychiatric technician 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.

(e) Has violated any provision of this article or has aided or knowingly permitted any person to violate any provision of this article;

(f) Has negligently or willfully practiced as a psychiatric technician in a manner which fails to meet generally accepted standards for such practice;

(g) Has negligently or willfully violated any order, rule, or regulation of the board pertaining to practice or licensure as a psychiatric technician;

(h) Has falsified or in a negligent manner made incorrect entries or failed to make essential entries on patient records;

(i) Has an alcohol use disorder, as defined in section 27-81-102, or a substance use disorder, as defined in section 27-82-102, is a habitual user of controlled substances, as defined in section 18-18-102 (5), or other drugs having similar effects, or is diverting controlled substances, as defined in section 18-18-102 (5), or other drugs having similar effects from the licensee's place of employment; except that the board has the discretion not to discipline the licensee if such licensee is participating in good faith in an alcohol or substance use disorder treatment program approved by the board;

(j) Has a physical disability or an intellectual and developmental disability that renders him or her unable to practice as a psychiatric technician with reasonable skill and safety to the patients and which may endanger the health or safety of persons under his or her care;

(k) Has violated the confidentiality of information or knowledge as prescribed by law concerning any patient;

(l) Has engaged in any conduct which would constitute a crime as defined in title 18, C.R.S., and which conduct relates to such person's employment as a psychiatric technician;

(m) Willfully fails to respond in a materially factual and timely manner to a complaint issued pursuant to section 12-38-116.5 (3);

(n) Fraudulently obtains, sells, transfers, or furnishes any psychiatric technician diploma, license, renewal of license, or record, or aids or abets another in such activity;

(o) Advertises, represents, or holds himself or herself out in any manner as a psychiatric technician or practices as a psychiatric technician without having a license to practice as a psychiatric technician issued under this article;

(p) Uses in connection with his or her name any designation tending to imply that he or she is a licensed psychiatric technician without having a license issued under this article; or

(q) Practices as a psychiatric technician during the time his or her license is suspended or revoked.

(2) to (6) Repealed.

Source: L. 67: p. 239, § 13. **C.R.S. 1963:** § 97-3-13. **L. 73:** p. 528, § 63. **L. 85:** Entire section R&RE, p. 527, § 8, effective July 1. **L. 95:** IP(1), (1)(b), and (1)(i) amended and (6) added, p. 295, § 8, effective July 1. **L. 99:** IP(1) amended, (1)(b)(III) and (2) to (6) repealed, and (1)(m) added, pp. 244, 247, §§ 9, 12, effective July 1. **L. 2006:** (1)(n) to (1)(q) added with relocated provisions, p. 92, § 47, effective August 7. **L. 2012:** (1)(i) amended, (HB 12-1311), ch. 281, p. 1616, § 29, effective July 1. **L. 2017:** IP(1), (1)(i), and (1)(j) amended, (SB 17-242), ch. 263, p. 1284, § 80, effective May 25.

Editor's note: Subsections (1)(n), (1)(o), (1)(p), and (1)(q) are similar to former § 12-42-119 (1)(a), (1)(b), (1)(c), and (1)(d) as they existed prior to 2006.

Cross references: (1) For an alternative disciplinary action for persons licensed pursuant to this article, see § 24-34-106.

(2) For the legislative declaration contained in the 1999 act amending the introductory portion to subsection (1), repealing subsections (1)(b)(III) and (2) to (6), and enacting subsection (1)(m), see section 1 of chapter 84, Session Laws of Colorado 1999.

(3) For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-42-114. Withholding or denial of license - hearing. (1) The board is empowered to determine summarily whether an applicant for a license to practice as a psychiatric technician possesses the qualifications required by this article or whether there is probable cause to believe that an applicant has done any of the acts set forth in section 12-42-113 as grounds for discipline. As used in this section, "applicant" does not include a renewal applicant.

(2) If the board determines that an applicant does not possess the qualifications required by this article or that probable cause exists to believe that an applicant has done any of the acts set forth in section 12-42-113, the board may withhold or deny the applicant a license. In such instance, the provisions of section 24-4-104 (9), C.R.S., shall apply, and the board shall provide such applicant with a statement in writing setting forth the basis of the board's determination that the applicant does not possess the qualifications required by this article or the factual basis for probable cause that the applicant has done any of the acts set forth in section 12-42-113.

(3) If the applicant requests a hearing pursuant to the provisions of section 24-4-104 (9), C.R.S., and fails to appear without good cause at such hearing, the board may affirm its prior action of withholding or denial without conducting a hearing.

(4) Following a hearing, the board shall affirm, modify, or reverse its prior action in accordance with its findings at such hearing.

(5) No action shall lie against the board for the withholding or denial of a license without a hearing in accordance with the provisions of this section if the board acted reasonably and in good faith.

(6) At such hearing, the applicant shall have the burden of proof to show that he possesses the qualifications required for licensure under this article. The board shall have the burden of proof to show commission of acts set forth in section 12-42-113.

Source: L. 67: p. 240, § 14. **C.R.S. 1963:** § 97-3-14. **L. 77:** (4) added, p. 666, § 11, effective July 1. **L. 85:** Entire section R&RE, p. 528, § 9, effective July 1.

12-42-115. Mental or physical examination of licensees - review of medical records. (Repealed)

Source: L. 67: p. 241, § 15. **C.R.S. 1963:** § 97-3-15. **L. 85:** Entire section R&RE, p. 529, § 10, effective July 1. **L. 95:** (2)(a) amended and (2)(e) added, p. 295, § 9, effective July 1. **L. 99:** Entire section repealed, p. 247, § 13, effective July 1.

Cross references: For the legislative declaration contained in the 1999 act repealing this section, see section 1 of chapter 84, Session Laws of Colorado 1999.

12-42-115.3. Disciplinary proceedings. Disciplinary proceedings under this article shall be conducted pursuant to section 12-38-116.5.

Source: L. 85: Entire section added, p. 530, § 11, effective July 1. **L. 87:** (1) and (4) amended, p. 949, § 44, effective March 13. **L. 95:** (6) amended, p. 296, § 10, effective July 1. **L. 99:** Entire section amended, p. 248, § 14, effective July 1.

Cross references: For the legislative declaration contained in the 1999 act amending this section, see section 1 of chapter 84, Session Laws of Colorado 1999.

12-42-115.5. Immunity in professional review. (1) If a professional review committee is established pursuant to section 12-38-109 to investigate the quality of care being given by a person licensed pursuant to this article, it shall include in its membership at least three persons licensed in the same category as the licensee under review, but such committee may be authorized to act only by the board.

(2) Any member of the board or of a professional review committee, any member of the board's or committee's staff, any person acting as a witness or consultant to the board or committee, 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 liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as board or committee member, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this article shall be immune from any civil or criminal liability that may result from such participation.

Source: L. 85: Entire section added, p. 531, § 11, effective July 1. **L. 2004:** (2) amended, p. 1849, § 100, effective August 4.

12-42-115.7. Surrender of license. (1) Prior to the initiation of an investigation or hearing, any licensee may surrender his license to practice as a psychiatric technician.

(2) Following the initiation of an investigation or hearing and upon a finding that to do so would be in the public interest, the board may allow a licensee to surrender his license to practice.

(3) The board shall not issue a license to a former licensee whose license has been surrendered unless the licensee meets all of the requirements of this article for a new applicant, including the passing of an examination.

(4) The surrender of a license in accordance with this section removes all rights and privileges to practice as a psychiatric technician, including renewal of a license.

Source: L. 85: Entire section added, p. 531, § 11, effective July 1.

12-42-115.9. Judicial review. The court of appeals shall have initial jurisdiction to review all final actions and orders that are subject to judicial review of the board. Such proceedings shall be conducted in accordance with section 24-4-106 (11), C.R.S.

Source: L. 85: Entire section added, p. 532, § 11, effective July 1.

Cross references: For judicial review of decisions and determinations by state agencies, see § 24-4-106.

12-42-116. Exclusions. (1) This article 42 does not affect or apply to the gratuitous care of a person with a behavioral or mental health disorder by friends or members of the family or to any person taking care of a person with a behavioral or mental health disorder for hire who does not represent himself or herself or hold himself or herself out to the public as a trained or licensed psychiatric technician; but a person for hire shall not hold himself or herself out as or perform the full duties of a psychiatric technician who is not a psychiatric technician licensed under the provisions of this article 42.

(2) This article shall not be construed to prohibit the practice as a psychiatric technician by students enrolled in an accredited psychiatric technician educational program or by graduates of such accredited psychiatric technician educational program pending the results of the first licensing examination scheduled by the board following their graduation.

(3) Furthermore, this article shall not be construed to prohibit:

(a) Practical nursing; subsidiary workers in hospitals or similarly related institutions from assisting in the nursing care of patients where adequate medical and nursing supervision is provided;

(b) Subsidiary workers in the offices of persons licensed to practice medicine or dentistry in this state from assisting in the care of patients under the personal and responsible supervision and direction of such persons; or

(c) The practice of any legally qualified psychiatric technician of this state or another state who is employed by the United States government or any bureau, division, or agency thereof while in the discharge of his official duties.

Source: L. 67: p. 241, § 16. **C.R.S. 1963:** § 97-3-16. **L. 2006:** (1) amended, p. 1395, § 33, effective August 7. **L. 2017:** (1) amended, (SB 17-242), ch. 263, p. 1284, § 81, effective May 25.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-42-117. Religious exclusions. No provision of this article shall be construed as applying to any sanitarium, nursing home, or rest home conducted in accordance with the practice of the tenets of any religious denomination in which persons of good faith rely solely upon spiritual means or prayer in the free exercise of religion to prevent or cure disease.

Source: L. 67: p. 242, § 17. **C.R.S. 1963:** § 97-3-17.

12-42-118. Unauthorized practice. The practice as a psychiatric technician by any person who has not been issued a license under the provisions of this article, or whose license has been suspended or revoked, or has expired, is hereby declared to be inimical to the general public welfare and to constitute a public nuisance.

Source: L. 67: p. 242, § 18. **C.R.S. 1963:** § 97-3-18.

12-42-119. Unauthorized practice - penalties.

(1) Repealed.

(2) Any person who practices or offers or attempts to practice as a psychiatric technician 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 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(3) (Deleted by amendment, L. 2006, p. 93, § 48, effective August 7, 2006.)

Source: L. 67: p. 242, § 19. **C.R.S. 1963:** § 97-3-19. **L. 85:** IP(1) and (2) amended, p. 409, § 17, July 1. **L. 2002:** (2) amended, p. 1481, § 87, October 1. **L. 2006:** IP(1) and (1)(a) to (1)(e) repealed and (2) and (3) amended, p. 93, §§ 50, 49, 48, effective August 7.

Editor's note: Subsections (1)(a), (1)(b), (1)(c), and (1)(d) were relocated to § 12-42-113 (1)(n), (1)(o), (1)(p), and (1)(q) in 2006.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-42-120. Professional nursing and the practice of a psychiatric technician. Nothing in this article shall be construed as conferring any authority to practice medicine or professional nursing or to undertake the treatment or care of disease, pain, injury, deformity, or physical or mental condition in violation of the law of this state.

Source: L. 67: p. 242, § 20. **C.R.S. 1963:** § 97-3-20.

12-42-121. Other groups. Nothing in this article shall be construed to enlarge or detract from the rights, powers, and duties of any other licensed business, occupation, or profession.

Source: L. 67: p. 242, § 21. **C.R.S. 1963:** § 97-3-21.

ARTICLE 42.5

Pharmacists, Pharmacy Businesses,
and Pharmaceuticals

Editor's note: This article was added with relocations in 2012. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

PART 1

GENERAL PROVISIONS

12-42.5-101. Public interest. The practice of pharmacy is a professional practice affecting the public health, safety, and welfare and is subject to regulation and control in the public interest. It is a matter of public interest and concern that the practice of pharmacy, as defined in this article, merits and receives the confidence of the public, and that only qualified persons be permitted to practice pharmacy in this state. This article is liberally construed to carry out these objects and purposes. Pursuant to these standards and obligations, the state board of pharmacy may adopt rules of professional conduct in accordance with article 4 of title 24, C.R.S.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1531, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-101 as it existed prior to 2012.

12-42.5-102. Definitions. As used in this article 42.5, unless the context otherwise requires or the term is otherwise defined in another part of this article 42.5:

(1) "Administer" means the direct application of a drug to the body of a patient or research subject by injection, inhalation, ingestion, or any other method.

(2) "Advertise" means to publish or display information about prescription prices or drugs in any medium.

(3) "Anabolic steroid" has the same meaning as set forth in section 18-18-102 (3), C.R.S.

(3.5) "Authorized distributor of record" means a wholesaler with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's prescription drug. For purposes of this subsection (3.5), an ongoing relationship is deemed to exist between a wholesaler and a manufacturer when the wholesaler, including any affiliated group of the wholesaler as defined in section 1504 of the federal "Internal Revenue Code of 1986", complies with the following:

(a) The wholesaler has a written agreement currently in effect with the manufacturer evidencing such ongoing relationship; and

(b) The wholesaler is listed on the manufacturer's current list of authorized distributors of record, which list is updated by the manufacturer on no less than a monthly basis.

(3.7) "Biological product" has the same meaning as "biological product", as defined in 42 U.S.C. sec. 262 (i)(1).

(4) "Board" means the state board of pharmacy.

(5) "Bureau" means the drug enforcement administration, or its successor agency, of the United States department of justice.

(6) "Casual sale" means a transfer, delivery, or distribution to a corporation, individual, or other entity, other than a consumer, entitled to possess prescription drugs; except that the amount of drugs transferred, delivered, or distributed in such manner by any registered prescription drug outlet or hospital other outlet shall not exceed ten percent of the total number of dosage units of drugs dispensed and distributed on an annual basis by such outlet.

(6.5) "Chain pharmacy warehouse" means a physical location for prescription drugs that serves as a central warehouse and performs intracompany sales or transfers of prescription drugs to a group of chain pharmacies or other chain pharmacy warehouses that are under common ownership or control. Notwithstanding any other provision of this article, a chain pharmacy warehouse receiving distributions on behalf of, or making distributions to, an intracompany

pharmacy need not be an authorized distributor of record to be part of the normal distribution channel.

(7) (a) "Compounding" means the preparation, mixing, assembling, packaging, or labeling of a drug or device:

(I) As the result of a practitioner's prescription drug order, chart order, or initiative, based on the relationship between the practitioner, patient, and pharmacist in the course of professional practice; or

(II) For the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale or dispensing.

(b) "Compounding" also includes the preparation of drugs or devices in anticipation of prescription drug orders based on routine, regularly observed prescribing patterns.

(8) "Controlled substance" shall have the same meaning as in section 18-18-102 (5), C.R.S.

(9) "Delivery" means the actual, constructive, or attempted transfer of a drug or device from one person to another, whether or not for consideration.

(10) "Device" means an instrument, apparatus, implement, machine, contrivance, implant, or similar or related article that is required under federal law to bear the label, **"Caution: federal law requires dispensing by or on the order of a physician."** "Device" also includes any component part of, or accessory or attachment to, any such article, whether or not the component part, accessory, or attachment is separately so labeled.

(11) "Dispense" means to interpret, evaluate, and implement a prescription drug order or chart order, including the preparation of a drug or device for a patient or patient's agent in a suitable container appropriately labeled for subsequent administration to or use by a patient.

(12) "Distribution" means the transfer of a drug or device other than by administering or dispensing.

(13) (a) "Drug" means:

(I) Substances recognized as drugs in the official compendia;

(II) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in individuals or animals;

(III) Substances, other than food, intended to affect the structure or any function of the body of individuals or animals; and

(IV) Substances intended for use as a component of any substance specified in subparagraph (I), (II), or (III) of this paragraph (a).

(b) "Drug" does not include devices or their components, parts, or accessories.

(13.5) "FDA" means the federal food and drug administration.

(14) "Generic drug type" means the chemical or generic name, as determined by the United States adopted names (USAN) and accepted by the federal food and drug administration (FDA), of those drug products having exactly the same active chemical ingredients in exactly the same strength and quantity.

(15) "Hospital" means a general hospital or specialty hospital having a license or certificate of compliance issued by the department of public health and environment.

(16) "Hospital satellite pharmacy" means a satellite that registers pursuant to section 12-42.5-117 (10) for the purpose of administration of drugs to patients while being treated in the facility.

(16.5) "Interchangeable", in reference to a biological product, means:

(a) "Interchangeable" or "interchangeability", as determined by the FDA pursuant to 42 U.S.C. sec. 262 (k)(4); or

(b) That the FDA has deemed the biological product therapeutically equivalent to another biological product, as set forth in the latest edition or supplement of the FDA Approved Drug Products with Therapeutic Equivalence Evaluations, also referred to as the "Orange Book".

(17) "Intern" means a person who is:

(a) (I) Enrolled in a professional degree program of a school or college of pharmacy that has been approved by the board;

(II) Currently licensed by the board to engage in the practice of pharmacy; and

(III) Satisfactorily progressing toward meeting the requirements for licensure as a pharmacist;

(b) Repealed.

(c) A graduate of an approved professional degree program of a school or college of pharmacy or a graduate who has established education equivalency by obtaining a board-approved foreign pharmacy graduate certification and who is currently licensed by the board for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist; or

(d) A qualified applicant awaiting examination for licensure as a pharmacist or meeting board requirements for licensure.

(18) "Labeling" means the process of preparing and affixing a label to any drug container, exclusive, however, of the labeling by a manufacturer, packer, or distributor of a nonprescription drug or commercially packaged legend drug or device. Any such label shall include all information required by federal and state law or regulation.

(19) "Location" means the physical confines of an individual building or at the same address.

(19.5) "Long-term care facility" means a nursing facility, as defined in section 25.5-4-103 (14), C.R.S., that is licensed pursuant to section 25-1.5-103, C.R.S.

(20) "Manufacture" means to cultivate, grow, or prepare by other process drugs for sale to wholesalers or other persons entitled to purchase drugs other than the ultimate user, but "manufacture" does not include the compounding and dispensing of a prescription drug pursuant to a prescription order.

(20.5) "Manufacturer's exclusive distributor" means a person who contracts with a manufacturer to provide or coordinate warehousing, distribution, or other services on behalf of a manufacturer and who takes title to the manufacturer's prescription drug but who does not have general responsibility to direct the sale or disposition of the manufacturer's prescription drug. To be considered part of the normal distribution channel, as defined in section 12-42.5-301 (6), a manufacturer's exclusive distributor shall be an authorized distributor of record.

(21) "Nonprescription drug" means a drug that may be sold without a prescription and that is labeled for use by the consumer in accordance with the requirements of the law and rules of this state and the federal government.

(22) "Nuclear pharmacy" means a specialized pharmacy that deals with the preparation and delivery of radioactive material as defined in section 25-11-101, C.R.S.

(23) "Official compendia" means the official United States pharmacopeia, national formulary, homeopathic pharmacopoeia of the United States, or any supplements thereto.

(24) "Order" means:

(a) A prescription order that is any order, other than a chart order, authorizing the dispensing of a single drug or device that is written, mechanically produced, computer generated and signed by the practitioner, transmitted electronically or by facsimile, or produced by other means of communication by a practitioner to a licensed pharmacy or pharmacist and that includes the name or identification of the patient, the date, the symptom or purpose for which the drug is being prescribed, if included by the practitioner at the patient's authorization, and sufficient information for compounding, dispensing, and labeling; or

(b) A chart order, which is an order for inpatient drugs or medications that are to be dispensed by a pharmacist, or by a pharmacy intern under the direct supervision of a pharmacist, and administered by an authorized person only during the patient's stay in a hospital, medical clinic operated by a hospital, ambulatory surgical center, hospice, or long-term care facility. The chart order shall contain the name of the patient and the medicine ordered and such directions as the practitioner may prescribe concerning strength, dosage, frequency, and route of administration.

(25) "Other outlet" means:

(a) A hospital that does not operate a registered pharmacy, a rural health clinic, a federally qualified health center, as defined in section 1861 (aa)(4) of the federal "Social Security Act", 42 U.S.C. sec. 1395x (aa)(4), a family planning clinic, an acute treatment unit licensed by the department of public health and environment, a school, a jail, a county or district public health agency, a community health clinic, a university, or a college that:

(I) Has facilities in this state registered pursuant to this article; and

(II) Engages in the compounding, dispensing, and delivery of drugs or devices;

(b) An ambulatory surgical center licensed pursuant to part 1 of article 3 of title 25, C.R.S., a medical clinic operated by a hospital, or a hospice licensed pursuant to part 1 of article 3 of title 25, C.R.S., that:

(I) Has facilities in this state registered pursuant to this article; and

(II) Engages in the compounding, dispensing, and delivery of drugs or devices for administration to patients while being treated in the facility; or

(c) A telepharmacy outlet.

(26) "Patient counseling" means the oral communication by a pharmacist or intern of information to the patient or caregiver in order to improve therapy by ensuring proper use of drugs and devices.

(27) "Pharmaceutical care" means the provision of drug therapy and other pharmaceutical patient care services by a pharmacist intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process. In addition to the preparation, dispensing, and distribution of medications, "pharmaceutical care" may include assessment and evaluation of the patient's medication-related needs and development and communication of a therapeutic plan with defined outcomes in consultation with the patient and the patient's other health care professionals to attain the desired outcome. This function includes efforts to prevent, detect, and resolve medication-related problems for individual patients. "Pharmaceutical care" does not include prescriptive authority; except that a pharmacist may prescribe only over-the-counter medications to a recipient under the "Colorado Medical Assistance Act" as authorized pursuant to section 25.5-5-322 or pursuant to a collaborative pharmacy practice agreement as defined in section 12-42.5-601 (1)(b).

(28) "Pharmacist" means an individual licensed by this state to engage in the practice of pharmacy.

(29) "Pharmacist manager" means an individual, licensed in this state as a pharmacist, who has direct control of the pharmaceutical affairs of a prescription drug outlet, and who is not the manager of any other prescription drug outlet.

(29.5) "Pharmacy buying cooperative warehouse" means a permanent physical location that acts as a central warehouse for prescription drugs and from which sales of prescription drugs are made to an exclusive group of pharmacies that are members or member owners of the buying cooperative operating the warehouse.

(30) "Pharmacy technician" means an unlicensed person who performs those functions set forth in paragraph (b) of subsection (31) of this section under the supervision of a pharmacist.

(31) "Practice of pharmacy" means:

(a) The interpretation, evaluation, implementation, and dispensing of orders; participation in drug and device selection, drug administration, drug regimen reviews, and drug or drug-related research; provision of patient counseling; and the provision of those acts or services necessary to provide pharmaceutical care in all areas of patient care;

(b) (I) The preparation, mixing, assembling, packaging, labeling, or delivery of a drug or device;

(II) Proper and safe storage of drugs or devices; and

(III) The maintenance of proper records for such drugs and devices; and

(c) The provision of a therapeutic interchange selection or a therapeutically equivalent selection to a patient if, during the patient's stay at a nursing care facility or a long-term acute care hospital licensed under part 1 of article 3 of title 25, C.R.S., the selection has been approved for the patient:

(I) In accordance with written guidelines and procedures for making therapeutic interchange or therapeutically equivalent selections, as developed by a quality assessment and assurance committee that includes a pharmacist licensed under this article and is formed by the nursing care facility or the long-term acute care hospital in accordance with 42 CFR 483.75 (o); and

(II) By one of the following health care providers:

(A) A physician licensed under article 36 of this title;

(B) A physician assistant licensed under section 12-36-107.4, if the physician assistant is under the supervision of a licensed physician; or

(C) An advanced practice nurse prescriber licensed as a professional nurse under section 12-38-111, registered as an advanced practice nurse under section 12-38-111.5, and authorized to prescribe controlled substances or prescription drugs pursuant to section 12-38-111.6, if the advanced practice nurse prescriber has developed an articulated plan to maintain ongoing collaboration with physicians and other health care professionals.

(32) "Practitioner" means a person authorized by law to prescribe any drug or device, acting within the scope of such authority, including a pharmacist who is participating within the parameters of a statewide drug therapy protocol pursuant to a collaborative pharmacy practice agreement as defined in section 12-42.5-601 (1)(b), or prescribing over-the-counter medications pursuant to section 25.5-5-322.

(33) "Prescription" means the finished product of the dispensing of a prescription order in an appropriately labeled and suitable container.

(34) "Prescription drug" means a drug that:

(a) Is required by any applicable federal or state law or rule to be dispensed only pursuant to an order;

(b) Is restricted by any applicable federal or state law or rule to use by practitioners only; or

(c) Prior to being dispensed or delivered, is required under federal law to be labeled with one of the following statements:

(I) "Rx only"; or

(II) "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian."

(35) "Prescription drug outlet" or "pharmacy" means any pharmacy outlet registered pursuant to this article where prescriptions are compounded and dispensed. "Prescription drug outlet" includes, without limitation, a compounding prescription drug outlet registered pursuant to section 12-42.5-117 (9) or specialized prescription drug outlet registered pursuant to section 12-42.5-117 (11).

(36) "Refill" means the compounding and dispensing of any drug pursuant to a previously executed order.

(36.3) "Repackage" means repackaging or otherwise changing the container, wrapper, or labeling to further the distribution of a prescription drug, excluding repackaging or labeling completed by the pharmacist responsible for dispensing product to the patient.

(36.5) "Repackager" means a person who repackages prescription drugs.

(37) "Sample" means any prescription drug given free of charge to any practitioner for any reason except for a bona fide research program.

(38) "Satellite" means an area outside the prescription drug outlet where pharmaceutical care and services are provided and that is in the same location.

(39) "Supervision" means that a licensed pharmacist is on the location and readily available to consult with and assist unlicensed personnel performing tasks described in paragraph (b) of subsection (31) of this section. If the unlicensed person is a pharmacy technician located at a registered telepharmacy outlet, the licensed pharmacist need not be physically present at the telepharmacy outlet as long as the licensed pharmacist is connected to the telepharmacy outlet via computer link, video link, and audio link, or via other telecommunication equipment of equivalent functionality, and is readily available to consult with and assist the pharmacy technician in performing tasks described in paragraph (b) of subsection (31) of this section.

(39.5) (a) "Telepharmacy outlet" means a remote pharmacy site that:

(I) Is registered as an other outlet under this article;

(II) At the time of registration, is located more than twenty miles from the nearest prescription drug outlet and from any other telepharmacy outlet registered under this article;

(III) Is connected via computer link, video link, and audio link, or via other functionally equivalent telecommunication equipment, with a central pharmacy that is registered under this article; and

(IV) Has a pharmacy technician on site who, under the remote supervision of a licensed pharmacist located at the central pharmacy, performs the tasks described in paragraph (b) of subsection (31) of this section.

(b) The board may adopt rules as necessary to specify additional criteria for a telepharmacy outlet that the board deems necessary.

(39.7) "Therapeutic interchange" means the substitution of one drug for another drug with similar therapeutic effects.

(40) "Therapeutically equivalent" or "equivalent" means those compounds containing the identical active chemical ingredients of identical strength, quantity, and dosage form and of the same generic drug type, which, when administered in the same amounts, will provide the same therapeutic effect as evidenced by the control of a symptom or disease.

(41) "Ultimate user" means a person who lawfully possesses a prescription drug for his or her own use, for the use of a member of the person's household, or for use in administering to an animal owned by the person or a member of his or her household.

(42) (a) "Wholesale distribution" means distribution of prescription drugs to persons or entities other than a consumer or patient.

(b) "Wholesale distribution" does not include:

(I) Intracompany sales or transfers of prescription drugs, including a transaction or transfer between a division, subsidiary, parent, or affiliated or related company under common ownership or control of an entity;

(II) The sale, purchase, distribution, trade, or transfer of a prescription drug or offer to sell, purchase, distribute, trade, or transfer a prescription drug for emergency medical reasons or during a state or national declaration of emergency;

(III) The sale or transfer of a drug for medical reasons by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage;

(IV) The distribution of prescription drug samples by a manufacturer's representative;

(V) Drug returns, when conducted by a hospital, health care entity, or charitable institution in accordance with 21 CFR 203.23;

(VI) The sale of minimal quantities of prescription drugs by retail pharmacies to licensed practitioners for office use;

(VII) A retail pharmacy's delivery of prescription drugs to a patient or patient's agent pursuant to the lawful order of a licensed practitioner;

(VIII) The sale, transfer, merger, or consolidation of all or part of the business of a pharmacy or pharmacies from or with another pharmacy or pharmacies, whether accomplished as a purchase and sale of stock or business assets;

(IX) The direct sale, purchase, distribution, trade, or transfer of a prescription drug from a manufacturer to an authorized distributor of record to one additional authorized distributor of record but only if an authorized distributor of record that purchases a prescription drug from an authorized distributor of record that purchased the prescription drug directly from the manufacturer:

(A) Provides the supplying authorized distributor of record with a verifiable statement that the product is unavailable from the manufacturer; and

(B) Receives a verifiable statement from the supplying authorized distributor of record that the product was purchased directly from the manufacturer;

(X) The delivery of, or offer to deliver, a prescription drug by a common carrier solely in the common carrier's usual course of business of transporting prescription drugs where the common carrier does not store, warehouse, or take legal ownership of the prescription drug;

(XI) The sale or transfer from a retail pharmacy or chain pharmacy warehouse of expired, damaged, returned, or recalled prescription drugs to the original manufacturer or to a third-party returns processor;

(XII) The sale or transfer of compounded drugs compounded by a retail pharmacy as defined in subsection (7) of this section and as authorized by section 12-42.5-118 (6)(b);

(XIII) The transfer of prescription drugs within Colorado purchased with public funds by the department of public health and environment, created in section 25-1-102, C.R.S., or a district or county public health agency, created pursuant to section 25-1-506, C.R.S., and procured by a physician licensed in Colorado who is either the executive director or the chief medical officer appointed pursuant to section 25-1-105, C.R.S., or a public health director or medical officer of a county or district public health agency selected pursuant to section 25-1-508 (5)(c)(I), C.R.S. The transfers may only be made to the department of public health and environment pursuant to the Colorado medical license of the executive director or chief medical officer, a district or county public health agency pursuant to the Colorado medical license of the public health director or medical officer, or a physician licensed in Colorado.

(XIV) The distribution of naloxone;

(XV) The distribution, donation, or sale by a manufacturer or wholesaler of a stock supply of epinephrine auto-injectors to public schools or nonpublic schools for emergency use by designated school personnel in accordance with the requirements of section 22-1-119.5, C.R.S., or to other entities for emergency use in accordance with the requirements of article 47 of title 25, C.R.S.

(43) "Wholesaler" means a person engaged in the wholesale distribution of prescription drugs to persons, other than consumers, who are entitled to possess prescription drugs, including: Repackagers; own-label distributors; private-label distributors; jobbers; brokers; warehouses, including manufacturers' and distributors' warehouses; manufacturers' exclusive distributors; authorized distributors of record; drug wholesalers or distributors; independent wholesale drug traders; pharmacy buying cooperative warehouses; retail pharmacies that conduct wholesale distribution; and chain pharmacy warehouses that conduct wholesale distribution.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1532, § 1, effective July 1. **L. 2013:** (42)(b)(XIV) added, (SB 13-014), ch. 178, p. 660, § 7, effective May 10; (17)(b) repealed, (HB 13-1310), ch. 320, p. 1739, § 1, effective May 28; (42)(b)(XV) added, (HB 13-1171), ch. 348, p. 2026, § 4, effective May 28. **L. 2014:** IP(25)(a) amended, (HB14-1083), ch. 32, p. 182, § 1, effective March 14; (25)(c) and (39.5) added and (39) amended, (HB 14-1290), ch. 171. p. 625, § 1, effective August 6. **L. 2015:** (3.7), (13.5), and (16.5) added, (SB 15-071), ch. 77, p. 203, § 1, effective April 3; (42)(b)(XV) amended, (HB 15-1232), ch. 191, p. 632, § 4, effective May 14; (31) amended and (39.7) added, (SB 15-192), ch. 289, p. 1183, § 1, effective June 5. **L. 2017:** (42)(b)(XII) amended, (SB 17-294), ch. 264, p. 1417, § 115, effective May 25. **L. 2018:** IP, (27), and (32) amended, (HB 18-1313), ch. 384, p. 2307, § 1, effective August 8.

Editor's note: (1) The provisions of this section are similar to provisions of several former sections as they existed prior to 2012. For a detailed comparison, see the comparative tables located in the back of the index.

(2) Subsection (39.5) was numbered as (40.5) in HB 14-1290 but has been renumbered on revision for ease of location.

Cross references: For the legislative declaration in the 2013 act adding subsection (42)(b)(XIV), see section 1 of chapter 178, Session Laws of Colorado 2013.

12-42.5-103. State board of pharmacy - creation - subject to termination - repeal of parts. (1) The responsibility for enforcement of this article is vested in the state board of pharmacy, which is hereby created. The board has all of the duties, powers, and authority specifically granted by and necessary to the enforcement of this article, as well as other duties, powers, and authority as may be granted by statute from time to time. Except as otherwise provided to the contrary, the board shall exercise all its duties, powers, and authority in accordance with the "State Administrative Procedure Act", article 4 of title 24, C.R.S.

(2) The board shall exercise its powers and perform its duties and functions specified by this article under the department of regulatory agencies and the executive director of the department as if the same were transferred to the department by a **type 1** transfer, as is defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.

(3) (a) Section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state, unless extended as provided in that section, applies to the state board of pharmacy created by this section.

(b) Parts 1 to 3 of this article are repealed, effective September 1, 2021. Prior to the repeal, the department of regulatory agencies shall review the board and the regulation of the practice of pharmacy pursuant to parts 1 to 3 of this article as provided in section 24-34-104, C.R.S.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1540, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-103 as it existed prior to 2012.

12-42.5-104. Membership of board - removal - compensation - meetings. (1) (a) The board is composed of five licensed pharmacists, each having at least five years' experience in this state and actively engaged in the practice of pharmacy in this state, and two nonpharmacists who have no financial interest in the practice of pharmacy.

(b) The governor shall make all appointments to the board in accordance with this section.

(c) For purposes of achieving a balance in the membership on the board, the governor shall consider:

(I) Whether the appointee's home is in:

(A) An urban or rural location; and

(B) An area already represented geographically by another appointee on the board; and

(II) The type of practice of the appointee so that various types of practices are represented on the board.

(d) (I) The term of office of each member is four years.

(II) In the case of an appointment to fill a vacancy, the appointee shall complete the unexpired term of the former board member.

(III) No member of the board may serve more than two consecutive full terms.

(e) No more than four members of the board shall be members of the same major political party.

(f) The governor shall appoint the pharmacist members in a manner to ensure that the term of one member expires July 1 of each year.

(2) The governor may remove any board member for misconduct, incompetence, or neglect of duty.

(3) Each member of the board shall receive the compensation provided for in section 24-34-102 (13), C.R.S.

(4) The board shall hold meetings at least once every four months at the times and places fixed by the board. At one meeting, the board shall elect a president and a vice-president. A majority of the members of the board constitutes a quorum for the conduct of business, and, except as otherwise provided in this part 1, all actions of the board must be by a majority of a quorum. The board shall give full and timely notice of all meetings of the board pursuant to any requirements of state laws. All board meetings and hearings are open to the public; except that the board may conduct any portion of its meetings in executive session closed to the public, as may be permitted by law.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1541, § 1, effective July 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 2012. For a detailed comparison, see the comparative tables located in the back of the index.

12-42.5-104.5. Veterinary pharmaceutical advisory committee - creation - appointments - rules - repeal. (1) (a) (I) There is created in the department of regulatory agencies the veterinary pharmaceutical advisory committee comprised of three members, each appointed by the state veterinarian who serves under the commissioner of agriculture pursuant to section 35-50-104, C.R.S., as follows:

(A) One member who is a licensed veterinarian who predominantly works on large animals, having at least five years' experience in this state, in good standing, and actively engaged in the practice of veterinary medicine;

(B) One member who is either a licensed pharmaceutical wholesaler engaged in the distribution of animal drugs, having at least five years' experience in this state, in good standing, and actively engaged in the practice of wholesale pharmacy or a licensed veterinarian, having at least five years' experience in this state, in good standing, and actively engaged in the practice of veterinary medicine, but who is not both a pharmaceutical wholesaler and a veterinarian; and

(C) One member who has a background in agriculture and who is not a pharmacist, pharmaceutical wholesaler, or veterinarian.

(II) The state veterinarian shall choose a person who does not do business along the front range for at least one of the professional appointments on the advisory committee.

(b) The members of the advisory committee serve three-year terms; except that the state veterinarian shall appoint one of the initial members of the advisory committee for a two-year term. If there is a vacancy on the advisory committee, the state veterinarian shall appoint a successor to fill the unexpired portion of the member's term.

(c) (I) The advisory committee shall elect a member to serve as chair of the advisory committee. The advisory committee shall meet as required by the board in accordance with subsection (2) of this section.

(II) Members of the advisory committee serve without compensation or reimbursement of expenses.

(III) A member of the advisory committee shall not perform an official act that:

(A) May provide a direct economic benefit to a business or other undertaking in which the member has a direct or substantial financial interest; or

(B) Involves a person with whom the member has engaged in a substantial number of business transactions.

(d) The department of regulatory agencies shall provide staff assistance to the advisory committee.

(2) (a) Unless a matter presented to the board constitutes an emergency requiring prompt resolution, the board shall refer the following matters that concern veterinary pharmaceuticals to the advisory committee for a recommendation on how the board should proceed on the matter:

(I) Whether and to what extent action, if any, should be taken on an investigation into or complaint of an alleged violation of this article, including whether to:

(A) Suspend or revoke a license or registration;

(B) Impose a fine against a licensee or registrant, whether the violation is egregious, and the amount of any fine recommended;

(C) Seek a restraining order or injunction in civil court against a person; or

(D) Pursue other disciplinary action against a licensee, registrant, or other person;

(II) Review of license and registration applications and renewal, reactivation, and reinstatement applications; and

(III) Promulgation of rules.

(b) Upon being referred a matter by the board, the advisory committee shall meet, in person or by teleconference, as soon as practicable to review the matter. The board shall share all documents, recordings, and other materials that are relevant to the matter referred with the advisory committee for the advisory committee's review of the matter. The advisory committee shall treat all shared materials as confidential. The advisory committee shall provide the board a written recommendation on how the board should proceed on the matter referred, setting forth its findings and conclusions. At the advisory committee's discretion, the advisory committee may also present its recommendations to the board in person or by teleconference.

(c) The board shall adopt the advisory committee's recommendation on a referred matter unless the board determines that there exists material and substantial evidence or information related to the matter that warrants a resolution of the matter that is distinct from the advisory committee's recommendation. If the board deviates from the advisory committee's recommendation, the board shall make a record of the reasons for the deviation.

(3) The board, in consultation with the state veterinarian, may promulgate rules to implement this section.

(4) (a) This section is repealed, effective September 1, 2026.

(b) Before the repeal of this section, the department of regulatory agencies shall review the advisory committee pursuant to section 2-3-1203, C.R.S.

Source: L. 2016: Entire section added, (SB 16-062), ch. 295, p. 1200, § 1, effective July 1.

12-42.5-105. Rules. (1) The board shall make, adopt, amend, or repeal rules in accordance with article 4 of title 24, C.R.S., that the board deems necessary for the proper administration and enforcement of the responsibilities and duties delegated to the board by this article, including those relating to nuclear pharmacies.

(2) On or before January 1, 2016, the board shall adopt or amend rules as necessary to permit the dispensing of an opiate antagonist in accordance with section 12-42.5-120 (3).

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1542, § 1, effective July 1. **L. 2013:** Entire section amended, (SB 13-014), ch. 178, p. 660, § 8, effective May 10. **L. 2015:** (2) amended, (SB 15-053), ch. 78, p. 212, § 5, effective April 3.

Editor's note: This section is similar to former § 12-22-108 as it existed prior to 2012.

Cross references: For the legislative declaration in the 2013 act amending this section, see section 1 of chapter 178, Session Laws of Colorado 2013.

12-42.5-106. Powers and duties. (1) The board shall:

(a) Inspect, or direct inspectors who are licensed pharmacists to inspect, all outlets and investigate violations of this article;

(b) Prescribe forms and receive applications for licensure and registration and grant, renew, reactivate, and reinstate licenses and registrations;

(c) Deny, suspend, or revoke licenses or registrations;

(d) Apply to the courts for and obtain in accordance with the Colorado rules of civil procedure restraining orders and injunctions to enjoin violations of the laws that the board is empowered to enforce;

(e) Administer examinations to, and determine the qualifications and fitness of, applicants for licensure or registration;

(f) Keep a record of:

(I) All licenses, registrations, and license and registration renewals, reactivations, and reinstatements for a reasonable period;

(II) All suspensions, revocations, and any other disciplinary actions; and

(III) Its own proceedings;

(g) Collect all fees prescribed by this article;

(h) Fine registrants when consistent with the provisions of this article and the rules adopted pursuant to this article;

(i) (I) Conduct investigations, hold hearings, and take evidence in all matters relating to the exercise and performance of the powers and duties of the board.

(II) (A) The board or an administrative law judge may administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the

production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter before the board.

(B) The board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence, make findings, and report the findings to the board.

(III) Upon failure of any witness to comply with a subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the board; 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. The court may hold the person or licensee in contempt of court for failure to obey the order of the court.

(j) Review and approve or reject applications for participation in the pharmacy peer health assistance diversion program pursuant to part 2 of this article and perform any other functions that were performed by the rehabilitation evaluation committee prior to its repeal.

(2) The board has other duties, powers, and authority as may be necessary to enforce this article and the rules adopted pursuant to this article.

(3) The board may:

(a) Adopt a seal to be used only in the manner the board prescribes;

(b) Promulgate rules governing the compounding of pharmaceutical products, which rules must address the following:

(I) Training and qualifications;

(II) Quality control;

(III) Internal operating procedures;

(IV) Procurement of compounding materials;

(V) Formulation, documentation, and testing requirements;

(VI) Equipment standards;

(VII) Facility standards; and

(VIII) A recall system.

(4) (a) (I) Whenever a duly authorized agent of the board finds or has probable cause to believe that, in any registered outlet, any drug, nonprescription drug, or device is adulterated or misbranded within the meaning of the "Colorado Food and Drug Act", part 4 of article 5 of title 25, C.R.S., the agent shall affix to the article a tag or other appropriate marking giving notice:

(A) That the article is, or is suspected of being, adulterated or misbranded;

(B) That the article has been detained or embargoed; and

(C) Warning all persons not to remove or dispose of the article by sale or otherwise until the board, its agent, or the court gives provision for removal or disposal.

(II) No person shall remove or dispose of an embargoed article by sale or otherwise without the permission of the board or its agent or, after summary proceedings have been instituted, without permission from the court.

(b) If the board or the court removes the embargo, neither the board nor the state is liable for damages because of the embargo if the court finds that there was probable cause for the embargo.

(c) When an agent finds that an article detained or embargoed under paragraph (a) of this subsection (4) is adulterated or misbranded, the agent shall petition the judge of the district court in whose jurisdiction the article is detained or embargoed for an order for condemnation of the

article. When the agent finds that an article so detained or embargoed is not adulterated or misbranded, he or she shall remove the tag or other marking.

(d) (I) If the court finds that a detained or embargoed article is adulterated or misbranded, except as provided in subparagraph (II) of this paragraph (d), the court shall order the article, after entry of the decree, to be destroyed at the expense of the owner of the article under the supervision of the agent. The owner of the article or the owner's agent shall bear all court costs and fees, storage, and other proper expense.

(II) When the owner can correct the adulteration or misbranding by proper labeling or processing of the article, after entry of the decree and after the owner has paid the costs, fees, and expenses and has posted a good and sufficient bond, conditioned that the article be properly labeled or processed, the court may direct, by order, that the article be delivered to the owner for proper labeling or processing under the supervision of an agent. The owner shall pay the expense of the agent's supervision. The bond must be returned to the owner of the article once the board represents to the court that the article is no longer in violation of the embargo and that the owner has paid the expenses of supervision.

(e) It is the duty of the attorney general or the district attorney to whom the board reports any violation of this subsection (4) to institute appropriate proceedings in the proper courts without delay and to prosecute the matter in the manner required by law. Nothing in this paragraph (e) requires the board to report violations when the board believes the public interest will be adequately served in the circumstances by a suitable written notice or warning.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1542, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-110 as it existed prior to 2012.

12-42.5-107. Drugs, devices, and other materials. (1) The board is responsible for the control and regulation of drugs, including the following:

(a) The regulation of the sale at retail and the dispensing of drugs;

(b) The specification of minimum professional and technical equipment, environment, supplies, and procedures for the compounding or dispensing of medications and drugs;

(c) The control of the purity and quality of drugs.

(2) The board is responsible for the control and regulation of the sale of devices at retail; except that the board shall not regulate the sale of any disposable veterinary device. The board may also exempt from regulation veterinary devices:

(a) That are regulated by the FDA; or

(b) For which the board determines regulation is unnecessary.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1545, § 1, effective July 1. **L. 2016:** (2) amended, (SB 16-062), ch. 295, p. 1202, § 2, effective July 1.

Editor's note: This section is similar to former § 12-22-112 as it existed prior to 2012.

12-42.5-108. Publications. The board shall issue its publications that are circulated in quantity outside the executive branch in accordance with section 24-1-136, C.R.S. The board

shall circulate its publications to all registered prescription drug outlets that will be directly affected by the publications.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1545, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-113 as it existed prior to 2012.

12-42.5-109. Reporting - malpractice claims. (1) Each insurance company licensed to do business in this state and engaged in the writing of malpractice insurance for licensed pharmacists and pharmacies, and each pharmacist or pharmacy that self-insures, shall send to the board, in the form prescribed by the board, information relating to each malpractice claim against a licensed pharmacist that is settled or in which judgment is rendered against the insured.

(2) The insurance company or self-insured pharmacist or pharmacy shall provide information relating to each malpractice claim as is deemed necessary by the board to conduct a further investigation and hearing.

(3) Information relating to each malpractice claim provided by insurance companies or self-insured pharmacists or pharmacies is exempt from the provisions of any law requiring that the proceedings of the board be conducted publicly or that the minutes or records of the board be open to public inspection unless the board takes final disciplinary action. The board may use the information in any formal hearing involving a licensee or registrant.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1545, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-113.5 as it existed prior to 2012.

12-42.5-110. Fees. (1) The director of the division of professions and occupations shall determine, and the board shall collect, fees pursuant to section 24-34-105, C.R.S., for the following licenses and registrations:

(a) For certifying to another state the grades of a person who has taken the pharmacist examination in this state;

(b) For the initial licensure, upon examination, as a pharmacist, as provided in section 12-42.5-112 (4);

(c) For the initial licensure, without examination and upon presentation of evidence of licensure in another state, as a pharmacist, as provided in section 12-42.5-112 (8);

(d) For the renewal of a license as a licensed pharmacist, as provided in section 12-42.5-114 (1);

(e) For reinstatement as a licensed pharmacist, as provided in section 12-42.5-114 (2);

(f) For the transfer of a prescription drug outlet registration to a new owner, as provided in section 12-42.5-116 (2);

(g) For the transfer of a manager's name, as provided in section 12-42.5-116 (1);

(h) For the issuance of a duplicate certificate to a licensed pharmacist;

(i) For the initial licensure as a pharmacy intern;

(j) For the issuance of a duplicate license of a pharmacy intern;

(k) For the transfer of a prescription drug outlet registration to a new location, as provided in section 12-42.5-116 (2);

(l) For reissuing a prescription drug outlet registration in a new store name, without change of owner or manager, as provided in section 12-42.5-116 (2);

(m) For the initial registration or the renewal of the registration of a prescription drug outlet, as provided in section 12-42.5-116 (2);

(n) For the initial certificate evidencing licensure for all pharmacists;

(o) For the initial and renewal registration of all other outlets under section 12-42.5-117 not covered in this section;

(p) For the initial and renewal registration of all nonresident prescription drug outlets under section 12-42.5-130;

(q) For the initial and renewal registration of humane societies and animal control agencies pursuant to section 12-42.5-117 (12).

(2) Any pharmacist licensed in Colorado for fifty years or more as a pharmacist is exempt from the payment of fees under this article and is allowed to practice as a licensed pharmacist.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1546, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-114 as it existed prior to 2012.

12-42.5-111. Approval of schools. (1) A school or college of pharmacy that is approved by the board as a school or college of pharmacy from which graduation is required in order for the graduate of the school or college of pharmacy to apply for a license as a pharmacist must meet the requirements set forth by the board.

(2) The board may utilize the facilities, reports, requirements, and recommendations of any recognized accrediting organization in determining the requirements for a school or college of pharmacy.

(3) The board shall maintain a list of approved schools or colleges.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1547, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-115 as it existed prior to 2012.

12-42.5-112. Licensure or registrations - applicability - applications - licensure requirements - rules. (1) This article applies to all persons in this state engaged in the practice of pharmacy and to all outlets in this state engaged in the manufacture, dispensing, production, sale, and distribution of drugs, devices, and other materials used in the treatment of injury, illness, and disease.

(2) (a) Every applicant for a license under this article must read and write the English language, or if the applicant is a partnership, each member of the partnership must read and write the English language. If the applicant is a Colorado corporation, the corporation must be in good

standing, and if the applicant is a foreign corporation, it must be qualified to do business in this state.

(b) The board shall issue the appropriate registration to each manufacturer and wholesaler that meets the requirements of this article unless the board determines that the issuance of the registration would be inconsistent with the public interest. In determining the public interest, the board shall consider the following factors:

(I) Maintenance of effective controls against diversion of controlled substances into illegitimate medical, scientific, or industrial channels;

(II) Compliance with applicable state and local laws;

(III) Any conviction of the applicant under any federal or state law relating to a controlled substance;

(IV) Past experience in the manufacture or distribution of controlled substances and the existence in the applicant's establishment of effective controls against diversion;

(V) Any false or fraudulent information in an application filed under this part 1;

(VI) Suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense a controlled substance as authorized by federal law; and

(VII) Any other factors relevant to and consistent with the public peace, health, and safety.

(3) Every applicant for a license or registration under this article shall make written application in the manner and form prescribed by the board, setting forth the applicant's name and address, the applicant's qualifications for the license or registration, and other information required by the board. The applicant shall submit with the application the required fee, and, if the applicant is required to take an examination, the applicant shall appear for examination at the time and place fixed by the board.

(4) (a) (I) An applicant who has graduated from a school or college of pharmacy approved by the board may take an examination before the board.

(II) The examination must be designed fairly to test the applicant's knowledge of pharmacy and other related subjects and must be in a form approved by the board. The examination cannot be administered orally.

(III) An applicant for licensure by examination shall have completed an internship as prescribed by the board.

(b) A person who produces evidence satisfactory to the board that the person has graduated and obtained a degree from a school of pharmacy outside the United States and has passed a foreign graduate equivalency test given or approved by the board may apply to take the examination set forth in paragraph (a) of this subsection (4).

(5) Every applicant for licensure as a pharmacist, whether by examination, transfer of license, reactivation, or reinstatement, shall take a jurisprudence examination approved by the board that tests such applicant's knowledge of the laws of this state.

(6) No applicant shall exercise the privileges of licensure or registration until the board grants the license or registration.

(7) The board may require any applicant for licensure to display written or oral competency in English. The board may utilize a standardized test to determine language proficiency.

(8) A person licensed by examination and in good standing in another state may apply for a license transfer. The board shall designate a clearinghouse for license transfer applicants,

and a person applying for a license transfer shall apply through the clearinghouse designated by the board.

(9) The board shall adopt rules as necessary to ensure that any person who manufactures drugs and any wholesaler of drugs possesses the minimum qualifications required for wholesale drug distributors pursuant to the federal "Prescription Drug Marketing Act of 1987", 21 U.S.C. sec. 353, as amended.

(10) A person whose license has been revoked shall not reapply for licensure earlier than two years after the effective date of the revocation.

(11) Issuance of a license or registration under this section and section 12-42.5-117 does not entitle a licensee or registered facility or outlet to wholesale, manufacture, distribute, dispense, or professionally use controlled substances beyond the scope of his or her federal registration.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1547, § 1, effective July 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 2012. For a detailed comparison, see the comparative tables located in the back of the index.

12-42.5-113. Exemptions from licensure - hospital residency programs - home renal dialysis - research companies. (1) The board is authorized to approve hospital residency programs in the practice of pharmacy. Persons accepted into an approved hospital residency program who are licensed to practice pharmacy in another state are exempt from the licensing requirements of this article so long as their practice is limited to participation in the residency program.

(2) This article does not apply to the sale or delivery of a dialysis solution if all of the following conditions are met:

(a) The sale or delivery is made directly by the manufacturer to a person with chronic kidney failure or to the designee of the person;

(b) The sale or delivery is for the purpose of self-administration by the person pursuant to an order by a physician lawfully practicing in this state; and

(c) The solution is sold or delivered in original packages, properly labeled, and unadulterated in accordance with the requirements of the "Colorado Food and Drug Act", part 4 of article 5 of title 25, C.R.S., and the "Federal Food, Drug, and Cosmetic Act".

(3) A manufacturer that must obtain a prescription drug or device solely for use in its research, development, or testing procedures and that does not further distribute the drug or device may apply to the board for a waiver of registration pursuant to this subsection (3). The board may grant a waiver if the manufacturer submits to the board the name of the drug or device it requires and an affidavit certifying that the drug or device will only be used for necessary research, development, or testing procedures and will not be further distributed. A waiver granted pursuant to this subsection (3) does not apply to a controlled substance, as defined in section 18-18-102 (5), C.R.S., or in federal law.

(4) An employee of a facility, as defined in section 25-1.5-301, C.R.S., who is administering and monitoring medications to persons under the care or jurisdiction of the facility

pursuant to part 3 of article 1.5 of title 25, C.R.S., need not be licensed by the board to lawfully possess controlled substances under this article.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1549, § 1, effective July 1.

Editor's note: This section is similar to former §§ 12-22-116.5 and 12-22-304 (5) as they existed prior to 2012.

12-42.5-114. Expiration and renewal of licenses or registrations. (1) All licenses and registrations expire pursuant to a schedule established by the director of the division of professions and occupations within the department of regulatory agencies and must be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director of the division of professions and occupations may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license or registration pursuant to the schedule established by the director of the division of professions and occupations, the license or registration expires. Any person whose license or registration expires is subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

(2) A pharmacist who fails to renew his or her license on or before the applicable renewal time may have his or her license reinstated for the remainder of the current renewal period by filing a proper application, satisfying the board that the pharmacist is fully qualified to practice, and paying the reinstatement fee as provided in section 12-42.5-110 (1)(e) and all delinquent fees.

(3) Except for good cause shown, the board shall not grant a license to a pharmacy intern more than two years after the applicant has ceased to be an enrolled student in a college or school of pharmacy approved by the board.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1550, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-118 as it existed prior to 2012.

12-42.5-115. Continuing education. (1) Except as permitted in subsections (2) and (3) of this section, the board shall not renew, reinstate, or reactivate the license of any pharmacist until the pharmacist presents evidence that he or she has completed twenty-four hours of approved continuing pharmaceutical education within the preceding two years. Subject to subsection (9) of this section, the evidence may be provided by checking a sign-off box on the license renewal application.

(2) (a) The board may renew the license of a pharmacist who presents acceptable evidence that the pharmacist was unable to comply with subsection (1) of this section.

(b) The board may grant a six-month compliance extension to pharmacists who are unable to comply with subsection (1) of this section.

(3) The board may renew the license for the first renewal period following the issuance of the original license without requiring a pharmacist to complete any continuing pharmaceutical

education if the pharmacist obtains a license within one year after the completion of the pharmacist's pharmaceutical education.

(4) To qualify for continuing education credit, a program of continuing pharmaceutical education must be currently approved by the accreditation council on pharmaceutical education or an equivalent accrediting body as determined by the board.

(5) Each program of continuing pharmaceutical education must consist of at least one continuing education unit, which is one hour of participation in an organized continuing educational experience, including postgraduate studies, institutes, seminars, lectures, conferences, workshops, correspondence courses, cassette programs, programmed learning courses, audiovisual programs, internet programs, and any other form of presentation that is accredited.

(6) Any aspect of the practice of pharmacy may be the subject of a program of continuing pharmaceutical education, including pharmaceutics, compounding, pharmacology, pharmaceutical chemistry, biochemistry, physiology, microbiology, pharmacy administration, and professional practice management.

(7) A program of continuing pharmaceutical education may include the following:

(a) A definite stated objective;

(b) Presentation in an organized manner; and

(c) A method of program evaluation that is suitable to the type of program being presented.

(8) A program of continuing pharmaceutical education must meet the requirements as established by the accrediting body.

(9) The board may annually audit up to five percent of the pharmacists licensed and residing in Colorado to determine compliance with this section.

(10) If a licensed pharmacist fails to obtain the twenty-four hours of approved continuing pharmaceutical education, the pharmacist's license becomes inactive. An inactive licensee is not required to comply with any continuing pharmaceutical education requirement so long as the licensee remains inactive, but the licensee must continue to pay applicable fees, including renewal fees. The board shall note "inactive status" on the face of any license it issues to a licensee while the licensee remains inactive. Should an inactive pharmacist wish to resume the practice of pharmacy after being placed on an inactive list, the pharmacist shall file an application to activate his or her license, pay the license renewal fee, and, subject to subsections (2) and (3) of this section, meet the twenty-four-hour continuing education requirement. If a licensed pharmacist engages in the practice of pharmacy while on inactive status, that conduct may be grounds for license revocation under this article.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1551, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-118.5 as it existed prior to 2012.

12-42.5-116. Prescription drug outlet under charge of pharmacist. (1) (a) A prescription drug outlet must be under the direct charge of a pharmacist manager. A proprietor who is not a pharmacist shall comply with this requirement and shall provide a manager who is a pharmacist.

(b) The registration of any prescription drug outlet becomes void if the pharmacist manager in whose name the prescription drug outlet registration was issued ceases to be engaged as the manager. The owner shall close the prescription drug outlet unless the owner:

(I) Employs a new pharmacist manager; and

(II) Within thirty days after termination of the former manager's employment:

(A) Applies to transfer the registration to the new pharmacist manager; and

(B) Pays the registration transfer fee.

(c) At the time the pharmacist manager in whose name the registration was obtained ceases to be employed as the pharmacist manager, he or she shall immediately report to the board the fact that he or she is no longer manager of the prescription drug outlet. The pharmacist manager is responsible as the manager until the cessation of employment is reported. The proprietor of the prescription drug outlet shall also notify the board of the termination of managership.

(2) A prescription drug outlet shall not commence business until it applies to the board for a registration and receives from the board a registration showing the name of the proprietor and the name of the manager. Upon transfer of the ownership of a prescription drug outlet, the new proprietor shall submit to the board an application to transfer the registration of the prescription drug outlet, and, upon approval of the transfer by the board, the board shall transfer the registration to the new proprietor. Upon the change of name or location of a prescription drug outlet, the registrant shall submit an application to change the name or location and the applicable fee, and, upon approval of the application, the board shall issue a new registration showing the new name or new location.

(3) (a) A prescription drug outlet operated by the state of Colorado or any political subdivision of the state is not required to be registered but, in lieu of a registration, must apply to the board, on a form approved by the board, for a certificate of compliance. The board shall determine whether the prescription drug outlet is operated in accordance with the laws of this state and the rules of the board. If the board determines that the prescription drug outlet is operated in accordance with state laws and board rules, except for the holding of a prescription drug outlet registration, the board shall issue a certificate of compliance, which certificate expires and may be renewed in accordance with section 24-34-102 (8), C.R.S. Once the board issues the certificate of compliance, the prescription drug outlet has the rights and privileges of, and is treated in all respects as, a registered prescription drug outlet. The provisions of this article with respect to the denial, suspension, or revocation of a prescription drug outlet registration apply to a certificate of compliance.

(b) An outlet as recognized in section 12-42.5-117 (1)(d) need not be under the direct charge of a pharmacist, but a licensed pharmacist shall either initially interpret all prescription orders compounded or dispensed from the outlet or provide written protocols for compounding and dispensing by unlicensed persons. An outlet qualifying for registration under this paragraph (b) may also apply to the board for a waiver of the requirements concerning physical space, equipment, inventory, or business hours as necessary and consistent with the outlet's limited public welfare purpose. In determining the granting or denial of a waiver application, the board shall ensure that the public interest criteria set forth in section 12-42.5-101 are satisfied. All other provisions of this article, except as specifically waived by the board, apply to the outlet.

(4) Every outlet and every pharmacist and pharmacy intern regularly practicing shall conspicuously display the registration and license, respectively, within the premises of the place of practice or outlet.

(5) The pharmacist responsible for the prescription order or chart order may delegate certain specific tasks described in section 12-42.5-102 (31)(b) to a person who is not a pharmacist or pharmacy intern but who is an unlicensed assistant under the pharmacist's supervision if, in the pharmacist's professional judgment, the delegation is appropriate; except that the pharmacist shall not make the delegation if the delegation jeopardizes the public health, safety, or welfare, is prohibited by rule of the board, or violates section 12-42.5-126 (1).

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1552, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-119 as it existed prior to 2012.

12-42.5-117. Registration of facilities - rules. (1) All outlets with facilities in this state shall register with the board in one of the following classifications:

(a) Prescription drug outlet;

(b) Wholesale drug outlet;

(c) Manufacturing drug outlet;

(d) Any other outlet, as may be authorized by this article or that meets the definition of outlet as set forth in section 12-42.5-102 (25).

(2) The board shall establish, by rule, criteria, consistent with section 12-42.5-112 and with the public interest as set forth in section 12-42.5-101, that an outlet that has employees or personnel engaged in the practice of pharmacy must meet to qualify for registration in each classification.

(3) The board shall specify by rule the registration procedures applicants must follow, including the specifications for application for registration and the information needed.

(4) Registrations issued by the board pursuant to this section are transferable or assignable only pursuant to this article and rules established by the board.

(5) It is lawful for a person to sell and distribute nonprescription drugs. Any person engaged in the sale and distribution of nonprescription drugs is not improperly engaged in the practice of pharmacy, and the board shall not promulgate any rule pursuant to this article that permits the sale of nonprescription drugs only by a licensed pharmacist or only under the supervision of a licensed pharmacist or that would otherwise apply to or interfere with the sale and distribution of nonprescription drugs.

(6) The board shall accept the licensure or certification of nursing care facilities and intermediate care facilities required by the department of public health and environment as sufficient registration under this section.

(7) A separate registration is required under this section for any area outside the outlet that is not a satellite where pharmaceutical care and services are provided and for any area outside the outlet that is under different ownership from the outlet.

(8) No hospital outlet filling inpatient chart orders shall sell or otherwise transfer any portion of its prescription drug inventory to another registered outlet for sale or dispensing at

retail. This subsection (8) does not limit any transfer of prescription drugs for the hospital's own use or limit the ability of a hospital outlet to engage in a casual sale.

(9) (a) Subject to paragraph (b) of this subsection (9), a prescription drug outlet may register as a compounding prescription drug outlet.

(b) The board shall not register a facility as a compounding prescription drug outlet unless:

(I) The facility has been accredited by a board-approved compounding accreditation entity to be within acceptable parameters to compound more than ten percent of the facility's total sales; and

(II) Ownership of the facility is vested solely in a pharmacist.

(c) To be approved by the board to accredit a compounding prescription drug outlet, a compounding accreditation entity shall be, at a minimum, a scientific organization with expertise in compounding medications.

(10) (a) On or after January 1, 2013, a satellite shall register as a hospital satellite pharmacy if the satellite:

(I) Is located in a facility that is under the same management and control as the building or site where the prescription drug outlet is located; and

(II) Has a different address than the prescription drug outlet.

(b) The board shall adopt rules as necessary to implement this subsection (10). At a minimum, the rules must set forth the manner in which a satellite is to apply for a hospital satellite pharmacy registration and the limits on the distance of satellites from the main prescription drug outlet.

(11) On or after January 1, 2013, a prescription drug outlet may register as a specialized prescription drug outlet if it engages in the compounding, dispensing, and delivery of drugs and devices to, or the provision of pharmaceutical care to residents of, a long-term care facility. The board shall adopt rules as necessary to implement this subsection (11).

(12) (a) A humane society that is duly registered with the secretary of state and has been in existence and in business for at least five years in this state as a nonprofit corporation, or an animal control agency that is operated by a unit of government, shall register with the board.

(b) The board may issue a limited license to a humane society or animal control agency to perform the activities described in section 12-42.5-118 (17).

(c) The board shall adopt rules as necessary to ensure strict compliance with this subsection (12) and section 12-42.5-118 (17) and, in conjunction with the state board of veterinary medicine, shall develop criteria for training individuals in the administration of the drug or combination of drugs.

(d) Nothing in this subsection (12) applies to a licensed veterinarian.

(13) A facility or outlet applying for a registration under this section shall have adequate and proper facilities for the handling and storage of controlled substances and shall maintain proper control over the controlled substances to ensure the controlled substances are not illegally dispensed or distributed.

(14) The board shall not issue a registration under this section to a manufacturer or distributor of marijuana or marijuana concentrate, as those terms are defined in section 27-80-203 (15) and (16), C.R.S., respectively.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1554, § 1, effective July 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 2012. For a detailed comparison, see the comparative tables located in the back of the index.

12-42.5-118. Compounding - dispensing - sale of drugs and devices - rules - definition. (1) Except as otherwise provided in this section or part 2 of article 80 of title 27, C.R.S., no drug, controlled substance, or device shall be sold, compounded, dispensed, given, received, or held in possession unless it is sold, compounded, dispensed, given, or received in accordance with this section.

(2) Except as provided in subsection (7) of this section, a manufacturer of drugs may sell or give any drug to:

(a) Any wholesaler of drugs;

(b) A licensed hospital;

(c) An other outlet;

(d) A registered prescription drug outlet; or

(e) Any practitioner authorized by law to prescribe the drugs.

(3) (a) A wholesaler may sell or give any drug or device to:

(I) Another wholesaler of drugs or devices;

(II) Any licensed hospital;

(III) A registered prescription drug outlet;

(IV) An other outlet; or

(V) Any practitioner authorized by law to prescribe the drugs or devices.

(b) A wholesaler may sell or deliver to a person responsible for the control of an animal a drug intended for veterinary use for that animal only if a licensed veterinarian has issued, prior to such sale or delivery, a written prescription order for the drug in the course of an existing, valid veterinarian-client-patient relationship as defined in section 12-64-103 (15.5); except that, if the prescription order is for a drug that is not a controlled substance or is a controlled substance listed on schedule III, IV, or V, the licensed veterinarian may issue an oral prescription order for that drug. If the licensed veterinarian issues an oral prescription order for a controlled substance listed on schedule III, IV, or V, the licensed veterinarian shall provide a written prescription to the wholesaler within three business days after issuing the oral order.

(4) Only a registered prescription drug outlet or other outlet registered pursuant to section 12-42.5-117 (1)(d) may compound or dispense a prescription. Initial interpretation and final evaluation, as defined by the board, may be conducted at a location other than a registered prescription drug outlet or other outlet registered pursuant to this article in accordance with rules adopted by the board.

(5) (a) A registered prescription drug or licensed hospital other outlet may:

(I) Make a casual sale or loan of or give a drug to another registered outlet or to a wholesaler of drugs;

(II) Sell or give a drug to a practitioner authorized by law to prescribe the drug;

(III) Supply an emergency kit or starter dose, as defined by the board by rule, to:

(A) Any facility approved by the board for receipt of an emergency kit;

(B) Any home health agency licensed by the department of public health and environment and approved by the board for receipt of an emergency kit;

(C) Any licensed hospice approved by the board for receipt of an emergency kit in compliance with subsection (12) of this section; and

(D) Any acute treatment unit licensed by the department of public health and environment and approved by the board for receipt of an emergency kit.

(b) In the case of a county or district public health agency that operates registered other outlets, one registered other outlet may make a casual sale of a drug to another registered other outlet if:

(I) The drug is sold in the original sealed container in which it was originally received from the wholesaler;

(II) A casual sale is not made to a registered other outlet that is not owned or operated by that county or district public health agency; and

(III) The amount sold does not exceed the ten percent limit established by section 12-42.5-102 (6).

(c) Pursuant to section 17-1-113.1, C.R.S., the department of corrections may transfer, deliver, or distribute to a corporation, individual, or other entity entitled to possess prescription drugs, other than a consumer, prescription drugs in an amount that is less than, equal to, or in excess of five percent of the total number of dosage units of drugs dispensed and distributed on an annual basis.

(6) (a) A practitioner may personally compound and dispense for any patient under the practitioner's care any drug that the practitioner is authorized to prescribe and that the practitioner deems desirable or necessary in the treatment of any condition being treated by the practitioner, and the practitioner is exempt from all provisions of this article except section 12-42.5-126.

(b) (I) The board shall promulgate rules authorizing a prescription drug outlet located in this state to compound drugs for office use by a practitioner or for use by a hospital located in this state. The rules must limit the amount of drugs a prescription drug outlet may compound and distribute to a practitioner or hospital pursuant to this paragraph (b) to no more than ten percent of the total number of drug dosage units dispensed and distributed on an annual basis by the outlet.

(II) (A) The ten percent limitation set forth in subparagraph (I) of this paragraph (b) applies to a compounded drug for veterinary use that a prescription drug outlet distributes in Colorado.

(B) For purposes of this subparagraph (II), a "prescription drug outlet" includes a nonresident pharmacy outlet registered or licensed pursuant to this article where prescriptions are compounded and dispensed, but only if the nonresident pharmacy outlet has provided the board with a copy of the most recent inspection of the nonresident pharmacy outlet by the agency that regulates pharmaceuticals in the state of residence and a copy of the most recent inspection received from a board-approved third-party entity that inspects pharmacy outlets, for which third-party inspection the nonresident pharmacy outlet shall obtain and pay for on an annual basis, and the board approves the inspection reports as satisfactorily demonstrating proof of compliance with the board's own inspection procedure and standards.

(c) Nothing in this section prohibits an optometrist licensed pursuant to article 40 of this title or a physician licensed pursuant to article 36 of this title from charging a fee for prescribing,

adjusting, fitting, adapting, or dispensing drugs for ophthalmic purposes and ophthalmic devices, such as contact lenses, that are classified by the federal food and drug administration as a drug or device, as long as the activity is within the scope of practice of the optometrist pursuant to article 40 of this title or the scope of practice of the physician pursuant to article 36 of this title.

(7) Distribution of any sample may be made only upon written receipt from a practitioner, and the receipt must be given specifically for each drug or drug strength received.

(8) It is lawful for the vendor of any drug or device to repurchase the drug or device from the vendee to correct an error, to retire an outdated article, or for other good reason, under rules the board may adopt to protect consumers of drugs and devices against the possibility of obtaining unsafe or contaminated drugs or devices.

(9) A duly authorized agent or employee of an outlet registered by the board is not deemed to be in possession of a drug or device in violation of this section if he or she is in possession of the drug or device for the sole purpose of carrying out the authority granted by this section to his or her principal or employer.

(10) Any hospital employee or agent authorized by law to administer or dispense medications may dispense a twenty-four-hour supply of drugs on the specific order of a practitioner to a registered emergency room patient.

(11) The original, duplicate, or electronic or mechanical facsimile of a chart order by the physician or lawfully designated agent constitutes a valid authorization to a pharmacist or pharmacy intern to dispense to a hospitalized patient for administration the amounts of the drugs as will enable an authorized person to administer to the patient the drug ordered by the practitioner. The practitioner is responsible for verifying the accuracy of any chart order he or she transmitted to anyone other than a pharmacist or pharmacist intern within forty-eight hours of the transmittal.

(12) Any facility approved by the board, any home health agency certified by the department of public health and environment and approved by the board, and any licensed hospice approved by the board may maintain emergency drugs provided and owned by a prescription drug outlet, consisting of drugs and quantities as established by the board.

(13) An intern under the direct and immediate supervision of a pharmacist may engage in the practice of pharmacy. An intern, as defined in section 12-42.5-102 (17)(a), engaged in the practice of pharmacy within the curriculum of a school or college of pharmacy in accordance with section 12-42.5-102 (17)(a), may be supervised by a manufacturer registered pursuant to section 12-42.5-112 or by another regulated individual as provided for in rules adopted by the board.

(14) A manufacturer or wholesaler of prescription drugs shall not sell or give any prescription drug, as provided in subsections (2) and (3) of this section, to a licensed hospital or registered outlet or to any practitioner unless the prescription drug stock container bears a label containing the name and place of business of the manufacturer of the finished dosage form of the drug and, if different from the manufacturer, the name and place of business of the packer or distributor.

(15) (a) A compounding prescription drug outlet registered pursuant to section 12-42.5-117 (9) may dispense and distribute compounded drugs without limitation to practitioners or to prescription drug outlets under common ownership with the pharmacist who owns the compounding prescription drug outlet.

(b) The following may distribute compounded and prepackaged medications, without limitation, to pharmacies and other outlets under common ownership of the entity:

(I) A prescription drug outlet owned and operated by a hospital that is accredited by the joint commission on accreditation of healthcare organizations or a successor organization;

(II) A prescription drug outlet operated by a health maintenance organization, as defined in section 10-16-102, C.R.S.; and

(III) The Colorado department of corrections.

(c) (I) A prescription drug outlet shall not compound drugs that are commercially available except as provided in subparagraph (II) of this paragraph (c).

(II) A pharmacist may compound a commercially available drug if the compounded drug is significantly different from the commercially available drug or if use of the compounded drug is in the best medical interest of the patient, based upon the practitioner's drug order, including the removal of a dye that causes an allergic reaction. If the pharmacist compounds a drug in lieu of a commercially available product, the pharmacist shall notify the patient of that fact.

(16) A prescription drug outlet may allow a licensed pharmacist to remove immunizations and vaccines from the prescription drug outlet for the purpose of administration by a licensed pharmacist, or an intern under the supervision of a pharmacist certified in immunization, pursuant to rules promulgated by the board. The board shall promulgate rules regarding the storage, transportation, and record keeping of immunizations and vaccines that are administered off-site.

(17) (a) A humane society or animal control agency that is registered with the board pursuant to section 12-42.5-117 (12) is authorized to:

(I) Purchase, possess, and administer sodium pentobarbital, or sodium pentobarbital in combination with other prescription drugs that are medically recognized for euthanasia, to euthanize injured, sick, homeless, or unwanted pets and animals; and

(II) Purchase, possess, and administer drugs commonly used for the chemical capture of animals for control purposes or to sedate or immobilize pet animals immediately prior to euthanasia.

(b) A society or agency registered pursuant to section 12-42.5-117 (12) shall not permit a person to administer scheduled controlled substances, sodium pentobarbital, or sodium pentobarbital in combination with other noncontrolled prescription drugs that are medically recognized for euthanasia unless the person has demonstrated adequate knowledge of the potential hazards and proper techniques to be used in administering the drug or combination of drugs.

(18) Persons registered as required under this part 1, or otherwise licensed or registered as required by federal law, may possess, manufacture, distribute, dispense, or administer controlled substances only to the extent authorized by their registrations or federal registrations or licenses and in conformity with this article and with article 18 of title 18, C.R.S.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1557, § 1, effective July 1. **L. 2014:** (5)(a)(III)(B) and (5)(a)(III)(C) amended and (5)(a)(III)(D) added, (HB 14-1083), ch. 32, p. 182, § 2, effective March 14; (6)(c) amended, (HB 14-1099), ch. 37, p. 195, § 2, effective March 14; (6)(b) amended, (SB 14-095), ch. 76, p. 309, § 1, effective March 27. **L. 2016:** (15)(b) amended, (HB 16-1152), ch. 70, p. 178, § 1, effective April 7; (6)(b)

amended, (HB 16-1324), ch. 362, p. 1510, § 1, effective August 10. **L. 2017:** (15)(b) amended, (HB 17-1371), ch. 292, p. 1612, § 1, effective June 2.

Editor's note: This section is similar to former §§ 12-22-121 and 12-22-304 (3)(b) and (4) as they existed prior to 2012.

12-42.5-118.5. Compounding drugs for office use by a veterinarian - rules - definitions. (1) A registered prescription drug outlet may compound and distribute a drug to a licensed veterinarian so that the veterinarian may maintain the drug as part of the veterinarian's office stock.

(2) (a) A veterinarian may dispense a compounded drug maintained as part of the veterinarian's office stock pursuant to subsection (1) of this section only if:

(I) The compounded drug is necessary for the treatment of an animal patient's emergency condition; and

(II) As determined by the veterinarian, the veterinarian cannot access, in a timely manner, the compounded drug through a registered prescription drug outlet.

(b) A veterinarian shall not dispense a compounded drug pursuant to this section in an amount greater than the amount required to treat an animal patient's emergency condition for five days.

(3) A licensed veterinarian shall not administer or dispense a compounded drug maintained for office stock pursuant to this section or for office use pursuant to section 12-42.5-118 (6)(b)(II) without a valid veterinarian-client-patient relationship in place at the time of administering the compounded drug to an animal patient or dispensing the compounded drug to a client.

(4) To compound and distribute a controlled substance pursuant to this section or section 12-42.5-118 (6)(b)(II), a registered prescription drug outlet shall possess a valid manufacturing registration from the federal drug enforcement administration.

(5) As used in this section, unless the context otherwise requires:

(a) "Client" has the same meaning as set forth in section 12-64-103 (4.3).

(b) "Office stock" means the storage of a compounded drug:

(I) That was distributed or sold by a registered prescription drug outlet to a veterinarian;

(II) Without a specific animal patient indicated to receive the compounded drug; and

(III) That the veterinarian may subsequently administer to an animal patient or dispense to a client.

(c) Repealed.

(d) (I) "Prescription drug outlet" means any:

(A) Resident or nonresident pharmacy outlet registered or licensed pursuant to this article where prescriptions are compounded and dispensed; or

(B) Federally owned and operated pharmacy registered with the federal drug enforcement administration.

(II) Notwithstanding subparagraph (I) of this paragraph (d), "prescription drug outlet" does not include a nonresident pharmacy outlet unless the nonresident pharmacy outlet has provided the board with a copy of the most recent inspection of the nonresident pharmacy by the agency that regulates pharmaceuticals in the state of residence and a copy of the most recent inspection received from a board-approved third-party entity that inspects pharmacy outlets, for

which third-party inspection the nonresident pharmacy outlet shall obtain and pay for on an annual basis, and the board approves the inspection reports as satisfactorily demonstrating proof of compliance with the board's own inspection procedure and standards.

(6) The board may promulgate rules as necessary concerning compounded veterinary pharmaceuticals pursuant to this section and section 12-42.5-118 (6)(b)(II).

Source: L. 2016: Entire section added, (HB 16-1324), ch. 362, p. 1511, § 2, effective August 10. **L. 2017:** (2)(a)(I), (2)(b), (5)(b)(II), and (5)(b)(III) amended and (5)(c) repealed, (HB 17-1274), ch. 369, p. 1921, § 1, effective August 9.

12-42.5-119. Limited authority to delegate activities constituting practice of pharmacy to pharmacy interns or pharmacy technicians. (1) A pharmacist may supervise up to six persons who are either pharmacy interns or pharmacy technicians, of whom no more than two may be pharmacy interns. If three or more pharmacy technicians are on duty, the majority must be certified by a nationally recognized certification board, possess a degree from an accredited pharmacy technician training program, or have completed five hundred hours of experiential training in duties described in section 12-42.5-102 (31)(b) at the pharmacy as certified by the pharmacist manager within eighteen months of hire.

(2) The pharmacy shall retain documentation verifying the training for review by the pharmacist responsible for the final check on prescriptions filled by the pharmacy technician and shall make the documentation available for inspection by the board.

(3) The supervision ratio specified in subsection (1) of this section does not include other ancillary personnel who may be in the prescription drug outlet but who are not performing duties described in section 12-42.5-102 (31)(b) that are delegated to the interns or pharmacy technicians.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1561, § 1, effective July 1. **L. 2017:** (1) amended, (SB 17-268), ch. 186, p. 678, § 1, effective August 9.

Editor's note: This section is similar to former § 12-22-121.7 as it existed prior to 2012.

12-42.5-120. Prescription required - exception - dispensing opiate antagonists - definitions. (1) Except as provided in section 18-18-414, C.R.S., and subsections (2) and (3) of this section, an order is required prior to dispensing any prescription drug. Orders shall be readily retrievable within the appropriate statute of limitations.

(2) A pharmacist may refill a prescription order for any prescription drug without the practitioner's authorization when all reasonable efforts to contact the practitioner have failed and when, in the pharmacist's professional judgment, continuation of the medication is necessary for the patient's health, safety, and welfare. The prescription refill may only be in an amount sufficient to maintain the patient until the practitioner can be contacted, but in no event may a refill under this subsection (2) continue medication beyond seventy-two hours. However, if the practitioner states on the prescription that no emergency filling of the prescription is permitted, then the pharmacist shall not issue any medication that is not authorized by the prescription. Neither a prescription drug outlet nor a pharmacist is liable as a result of refusing to refill a prescription pursuant to this subsection (2).

(3) (a) A pharmacist may dispense, pursuant to an order or standing orders and protocols, an opiate antagonist to:

(I) An individual at risk of experiencing an opiate-related drug overdose event;

(II) A family member, friend, or other person in a position to assist an individual at risk of experiencing an opiate-related drug overdose event;

(III) An employee or volunteer of a harm reduction organization; or

(IV) A first responder.

(b) A pharmacist who dispenses an opiate antagonist pursuant to this subsection (3) is strongly encouraged to educate persons receiving the opiate antagonist on the use of an opiate antagonist for overdose, including instruction concerning risk factors for overdose, recognizing an overdose, calling emergency medical services, rescue breathing, and administering an opiate antagonist.

(c) (I) A pharmacist does not engage in unprofessional conduct pursuant to section 12-42.5-123 if the pharmacist dispenses, pursuant to an order or standing orders and protocols, an opiate antagonist in a good-faith effort to assist:

(A) An individual who is at risk of experiencing an opiate-related drug overdose event;

(B) A family member, friend, or other person who is in a position to assist an individual who is at risk of experiencing an opiate-related drug overdose event; or

(C) A first responder or an employee or volunteer of a harm reduction organization in responding to, treating, or otherwise assisting an individual who is experiencing or is at risk of experiencing an opiate-related drug overdose event or a friend, family member, or other person in a position to assist an at-risk individual.

(II) A pharmacist who dispenses an opiate antagonist in accordance with this section is not subject to civil liability or criminal prosecution, as specified in sections 13-21-108.7 (4) and 18-1-712 (3), C.R.S., respectively.

(III) This subsection (3) does not establish a duty or standard of care regarding the dispensing of an opiate antagonist.

(d) (I) A first responder or an employee or volunteer of a harm reduction organization may, pursuant to an order or standing orders and protocols:

(A) Possess an opiate antagonist;

(B) Furnish an opiate antagonist to a family member, friend, or other person who is in a position to assist an individual who is at risk of experiencing an opiate-related drug overdose event; or

(C) Administer an opiate antagonist to an individual experiencing, or who a reasonable person would believe is experiencing, an opiate-related drug overdose event.

(II) A first responder or harm reduction organization is strongly encouraged to educate its employees and volunteers, as well as persons receiving an opiate antagonist from the first responder or harm reduction organization, on the use of an opiate antagonist for overdose, including instruction concerning risk factors for overdose, recognizing an overdose, calling emergency medical services, rescue breathing, and administering an opiate antagonist.

(III) A first responder or an employee or volunteer of a harm reduction organization acting in accordance with this paragraph (d) is not subject to civil liability or criminal prosecution, as specified in sections 13-21-108.7 (3) and 18-1-712 (2), C.R.S., respectively.

(e) As used in this section:

(I) "First responder" means:

(A) A peace officer, as defined in section 16-2.5-101, C.R.S.;

(B) A firefighter, as defined in section 29-5-203 (10), C.R.S.; or

(C) A volunteer firefighter, as defined in section 31-30-1102 (9), C.R.S.

(II) "Harm reduction organization" means an organization that provides services, including medical care, counseling, homeless services, or drug treatment, to individuals at risk of experiencing an opiate-related drug overdose event or to the friends and family members of an at-risk individual.

(III) "Opiate" has the same meaning as set forth in section 18-18-102 (21), C.R.S.

(IV) "Opiate antagonist" means naloxone hydrochloride or any similarly acting drug that is not a controlled substance and that is approved by the federal food and drug administration for the treatment of a drug overdose.

(V) "Opiate-related drug overdose event" means an acute condition, including a decreased level of consciousness or respiratory depression, that:

(A) Results from the consumption or use of a controlled substance or another substance with which a controlled substance was combined;

(B) A layperson would reasonably believe to be caused by an opiate-related drug overdose event; and

(C) Requires medical assistance.

(VI) "Protocol" means a specific written plan for a course of medical treatment containing a written set of specific directions created by a physician, group of physicians, hospital medical committee, pharmacy and therapeutics committee, or other similar practitioners or groups of practitioners with expertise in the use of opiate antagonists.

(VII) "Standing order" means a prescription order written by a practitioner that is not specific to and does not identify a particular patient.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1562, § 1, effective July 1. **L. 2015:** (1) amended and (3) added, (SB 15-053), ch. 78, p. 212, § 6, effective April 3.

Editor's note: This section is similar to former § 12-22-122 as it existed prior to 2012.

12-42.5-121. Labeling. (1) A prescription drug dispensed pursuant to an order must be labeled as follows:

(a) Drugs compounded and dispensed pursuant to a chart order for a patient in a hospital must bear a label containing the name of the outlet, the name and location of the patient, the identification of the drug, and, when applicable, any suitable control numbers, the expiration date, any warnings, and any precautionary statements.

(b) (I) If the prescription is for an anabolic steroid, the purpose for which the anabolic steroid is being prescribed must appear on the label.

(II) If the prescription is for any drug other than an anabolic steroid, the symptom or purpose for which the drug is being prescribed must appear on the label, if, after being advised by the practitioner, the patient or the patient's authorized representative so requests. If the practitioner does not provide the symptom or purpose for which a drug is being prescribed, the pharmacist may fill the prescription order without contacting the practitioner, patient, or patient's representative, unless the prescription is for an anabolic steroid.

(2) Except as otherwise required by law, any drug dispensed pursuant to a prescription order must bear a label prepared and placed on or securely attached to the medicine container stating at least the name and address of the prescription drug outlet, the serial number and the date of the prescription or of its dispensing, the name of the drug dispensed unless otherwise requested by the practitioner, the name of the practitioner, the name of the patient, and, if stated in the prescription, the directions for use and cautionary statements, if any, contained in the prescription.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1562, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-123 as it existed prior to 2012.

12-42.5-122. Substitution of prescribed drugs authorized - when - conditions. (1) (a) A pharmacist filling a prescription order for a specific drug by brand or proprietary name may substitute an equivalent drug product if the substituted drug product is the same generic drug type and, in the pharmacist's professional judgment, the substituted drug product is therapeutically equivalent, is interchangeable with the prescribed drug, and is permitted to be moved in interstate commerce. A pharmacist making a substitution shall assume the same responsibility for selecting the dispensed drug product as he or she would incur in filling a prescription for a drug product prescribed by a generic name; except that the pharmacist is charged with notice and knowledge of the FDA list of approved drug substances and manufacturers that is published periodically.

(b) (I) A pharmacist filling a prescription order for a specific biological product may substitute an interchangeable biological product for the prescribed biologic only if:

(A) The FDA has determined that the biological product to be substituted is interchangeable with the prescribed biological product; and

(B) The practitioner has not indicated, in the manner described in subsection (2) of this section, that the pharmacist shall not substitute an interchangeable biological product for the prescribed biological product.

(II) Within a reasonable time after dispensing a biological product, the dispensing pharmacist or his or her designee shall communicate to the prescribing practitioner the specific biological product dispensed to the patient, including the name and manufacturer of the biological product. The pharmacist or designee shall communicate the information to the prescribing practitioner by making an entry into an interoperable electronic medical records system, through electronic prescribing technology, or through a pharmacy record that the prescribing practitioner can access electronically. Otherwise, the pharmacist or his or her designee shall communicate to the prescribing practitioner the name and manufacturer of the biological product dispensed to the patient using facsimile, telephone, electronic transmission, or other prevailing means except when:

(A) There is no FDA-approved interchangeable biological product for the prescribed biological product; or

(B) A refill prescription is not changed from the biological product dispensed on the prior filling of the prescription.

(III) The pharmacy from which the biological product was dispensed must retain a written or electronic record of the dispensed biological product for at least two years after the substitution.

(IV) This paragraph (b) does not apply to the administration of vaccines and immunizations as outlined in board rules.

(2) (a) If, in the opinion of the practitioner, it is in the best interest of the patient that the pharmacist not substitute an equivalent drug or interchangeable biological product for the specific drug or biological product he or she prescribed, the practitioner may convey this information to the pharmacist in any of the following manners:

(I) Initialing by hand or electronically a preprinted box that states "dispense as written" or "DAW";

(II) Signing by hand or electronically a preprinted box stating "do not substitute" or "dispense as written"; or

(III) Orally, if the practitioner communicates the prescription orally to the pharmacist.

(b) The practitioner shall not transmit by facsimile his or her handwritten signature, nor preprint his or her initials, to indicate "dispense as written".

(3) (a) If a pharmacist makes a substitution pursuant to subsection (1) of this section, the pharmacist shall communicate the substitution to the purchaser in writing and orally, label the container with the name of the drug or biological product dispensed, and indicate on the file copy of the prescription both the name of the prescribed drug or biological product and the name of the drug or biological product dispensed in lieu of the prescribed drug or prescribed biological product.

(b) The pharmacist is not required to communicate a substitution to institutionalized patients.

(4) Except as provided in subsection (5) of this section, the pharmacist shall not substitute a drug or interchangeable biological product as provided in this section unless the drug or interchangeable biological product substituted costs the purchaser less than the drug or biological product prescribed. The prescription shall be priced for a drug, other than a biological product, as if it had been prescribed generically.

(5) If a prescription drug outlet does not have in stock the prescribed drug or biological product and the only equivalent drug or interchangeable biological product in stock is higher priced, the pharmacist, with the consent of the purchaser, may substitute the higher priced drug or interchangeable biological product. This subsection (5) applies only to a prescription drug outlet located in a town, as defined in section 31-1-101 (13), C.R.S.

(6) The board shall maintain on its website a link to the FDA resource, if one is available, that identifies all biological products approved as interchangeable with specific biological products.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1563, § 1, effective July 1. **L. 2015:** Entire section amended, (SB 15-071), ch. 77, p. 203, § 2, effective April 3.

Editor's note: This section is similar to former § 12-22-124 as it existed prior to 2012.

12-42.5-123. Unprofessional conduct - grounds for discipline. (1) The board may suspend, revoke, refuse to renew, or otherwise discipline any license or registration issued by it, after a hearing held in accordance with the provisions of this section, upon proof that the licensee or registrant:

(a) Is guilty of misrepresentation, fraud, or deceit in procuring, attempting to procure, or renewing a license or registration;

(b) Is guilty of the commission of a felony or has had accepted by a court a plea of guilty or nolo contendere to a felony or has received a deferred judgment and sentence for a felony;

(c) Has violated:

(I) Any of the provisions of this article, including commission of an act declared unlawful in section 12-42.5-126;

(II) The lawful rules of the board; or

(III) Any state or federal law pertaining to drugs;

(d) Is unfit or incompetent by reason of negligence or habits, or for any other cause, to practice pharmacy;

(e) Has an alcohol use disorder, as defined in section 27-81-102, or a substance use disorder, as defined in section 27-82-102, or engages in the habitual or excessive use or abuse of alcohol, a habit-forming drug, or a controlled substance, as defined in section 18-18-102 (5);

(f) Knowingly permits a person not licensed as a pharmacist or pharmacy intern to engage in the practice of pharmacy;

(g) Has had his or her license to practice pharmacy in another state revoked or suspended, or is otherwise disciplined or has committed acts in any other state that would subject him or her to disciplinary action in this state;

(h) Has engaged in advertising that is misleading, deceptive, or false;

(i) Has dispensed a schedule III, IV, or V controlled substance order as listed in sections 18-18-205 to 18-18-207, C.R.S., more than six months after the date of issue of the order;

(j) Has engaged in the practice of pharmacy while on inactive status;

(k) Has failed to meet generally accepted standards of pharmacy practice;

(l) Fails or has failed to permit the board or its agents to conduct a lawful inspection;

(m) Has violated any lawful board order;

(n) Has committed any fraudulent insurance act as defined in section 10-1-128, C.R.S.;

(o) Has willfully deceived or attempted to deceive the board or its agents with regard to any matter under investigation by the board;

(p) Has failed to notify the board of any criminal conviction or deferred judgment within thirty days after the conviction or judgment;

(q) Has failed to notify the board of any discipline against his or her license in another state within thirty days after the discipline;

(r) (I) Has failed to notify the board of a physical illness; a physical condition; or a behavioral, mental health, or substance use disorder that affects the person's ability to treat clients with reasonable skill and safety or that may endanger the health or safety of persons under his or her care;

(II) Has failed to act within the limitations created by a physical illness; a physical condition; or a behavioral, mental health, or substance use disorder that renders the person unable to practice pharmacy with reasonable skill and safety or that may endanger the health or safety of persons under his or her care; or

(III) Has failed to comply with the limitations agreed to under a confidential agreement entered pursuant to section 12-42.5-134;

(s) Has had his or her federal registration to manufacture, distribute, or dispense a controlled substance suspended or revoked.

(2) In considering the conviction of a crime, the board is governed by section 24-5-101, C.R.S.

(3) Repealed.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1564, § 1, effective July 1. **L. 2013:** (3) added, (SB 13-014), ch. 178, p. 660, § 5, effective May 10. **L. 2015:** (3) repealed, (SB 15-053), ch. 78, p. 214, § 7, effective April 3. **L. 2017:** (1)(e), (1)(r)(I), and (1)(r)(II) amended, (SB 17-242), ch. 263, p. 1284, § 82, effective May 25.

Editor's note: This section is similar to former §§ 12-22-125 and 12-22-308 (1)(c) as they existed prior to 2012.

Cross references: (1) For the legislative declaration in the 2013 act adding subsection (3), see section 1 of chapter 178, Session Laws of Colorado 2013.

(2) For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-42.5-124. Disciplinary actions. (1) (a) The board may deny or discipline an applicant, licensee, or registrant when the board determines that the applicant, licensee, or registrant has engaged in activities that are grounds for discipline.

(b) The board may suspend or revoke a registration issued pursuant to section 12-42.5-117 (12) upon determination that the person administering a drug or combination of drugs to an animal has not demonstrated adequate knowledge required by sections 12-42.5-117 (12) and 12-42.5-118 (17).

(2) (a) Proceedings for the denial, suspension, or revocation of a license or registration and any judicial review of a suspension or revocation must be conducted in accordance with article 4 of title 24, C.R.S., and the board or, at the board's discretion, an administrative law judge, shall conduct the hearing and opportunity for review.

(b) Upon finding that grounds for discipline pursuant to section 12-42.5-123 exist, the board may impose one or more of the following penalties on a person who holds or is seeking a new or renewal license or registration:

(I) Suspension of the offender's license or registration for a period to be determined by the board;

(II) Revocation of the offender's license or registration;

(III) Restriction of the offender's license or registration to prohibit the offender from performing certain acts or from practicing pharmacy in a particular manner for a period to be determined by the board;

(IV) Refusal to renew the offender's license or registration;

(V) Placement of the offender on probation and supervision by the board for a period to be determined by the board;

(VI) Suspension of the registration of the outlet that is owned by or employs the offender for a period to be determined by the board.

(c) The board may limit revocation or suspension of a registration to the particular controlled substance which was the basis for revocation or suspension.

(d) If the board suspends or revokes a registration, the board may place all controlled substances owned or possessed by the registrant at the time of the suspension or on the effective date of the revocation order under seal. The board may not dispose of substances under seal until the time for making an appeal has elapsed or until all appeals have been concluded, unless a court orders otherwise or orders the sale of any perishable controlled substances and the deposit of the proceeds with the court. When a revocation becomes final, all controlled substances may be forfeited to the state.

(e) The board shall promptly notify the bureau and the appropriate professional licensing agency, if any, of all charges and the final disposition of the charges and of all forfeitures of a controlled substance.

(3) The board may also include in any disciplinary order that allows the licensee or registrant to continue to practice conditions that the board deems appropriate to assure that the licensee or registrant is physically, mentally, morally, and otherwise qualified to practice pharmacy in accordance with the generally accepted professional standards of practice, including any or all of the following:

(a) Requiring the licensee or registrant to submit to examinations that the board may order to determine the licensee's physical or mental condition or professional qualifications;

(b) Requiring the licensee to take therapy courses of training or education that the board deems necessary to correct deficiencies found either in the hearing or by examinations required pursuant to paragraph (a) of this subsection (3);

(c) Requiring the review or supervision of the licensee's practice to determine the quality of and correct deficiencies in his or her practice; and

(d) Imposing restrictions upon the nature of the licensee's practice to assure that he or she does not practice beyond the limits of his or her capabilities.

(4) Upon failure of the licensee or registrant to comply with any conditions imposed by the board pursuant to subsection (3) of this section, unless due to conditions beyond the licensee's or registrant's control, the board may order suspension of the license or registration in this state until the licensee or registrant complies with the conditions.

(5) (a) (I) Except as provided in subparagraphs (II) and (III) of this paragraph (a), in addition to any other penalty the board may impose pursuant to this section, the board may fine any registrant violating this article or any rules promulgated pursuant to this article not less than five hundred dollars and not more than five thousand dollars for each violation.

(II) In addition to any other penalty the board may impose pursuant to this section, the board may fine a registrant violating part 4 of this article not less than five hundred dollars and not more than one thousand dollars for the first time the board imposes a fine, not more than two thousand dollars for the second time the board imposes a fine, and not more than five thousand dollars for a third or subsequent time the board imposes a fine. If a registrant violates an agreement to refrain from committing subsequent violations of part 4 of this article, the board may impose a fine of not more than one thousand dollars for each violation of the agreement.

(III) (A) The board, after providing notice and an opportunity to be heard, may fine a registrant who distributes a veterinary drug in violation of this article not less than fifty dollars

nor more than five hundred dollars for each violation, with a maximum aggregated fine of five thousand dollars for multiple violations; except that, if, after considering the recommendations of the advisory committee created in section 12-42.5-104.5, the board determines that the registrant has committed one or more egregious violations, the board may fine the registrant in accordance with subparagraph (I) of this paragraph (a).

(B) In setting a fine, the board shall consider the registrant's ability to pay. If the board determines that paying the fine would cause the registrant an undue hardship, the board shall waive the fine.

(b) The board shall transmit any moneys collected as administrative fines pursuant to this subsection (5) to the state treasurer for credit to the general fund.

(6) (a) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, does not warrant formal action by the board but should not be dismissed as being without merit, the board may send a letter of admonition by certified mail to the licensee or registrant against whom the complaint was made or who was the subject of investigation and, in the case of a complaint, may send a copy of the letter of admonition to the person making the complaint.

(b) When the board sends a letter of admonition to a licensee or registrant complained against, the board shall include in the letter a statement advising the licensee or registrant that the licensee or registrant has the right to request in writing, within twenty days after receipt of the letter, that the board initiate formal disciplinary proceedings to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(c) If the licensee or registrant timely requests adjudication, the letter of admonition is vacated, and the board shall process the matter by means of formal disciplinary proceedings.

(7) (a) When a complaint or an investigation discloses an instance of conduct that does not warrant formal action by the board but the board determines that the conduct could warrant action if continued, the board may send a confidential letter of concern to the licensee or registrant against whom the complaint was made or who was the subject of investigation. If a complaint precipitated the investigation, the board shall send a response to the person making the complaint.

(b) A confidential letter of concern is not discipline.

(8) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, warrants formal action, the board shall not resolve the complaint by a deferred settlement, action, judgment, or prosecution.

(9) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a licensee or registrant 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 license or registration, the board may issue an order to cease and desist the activity. The board shall set forth in the order 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 unlicensed or unregistered practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (9), the respondent may request a hearing on the question of whether acts or practices in violation of this article have occurred. The board shall conduct the hearing pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(10) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this article, then, in addition to any specific powers granted pursuant to this article, the board may issue to the person an order to show cause as to why the board should not issue a final order directing the person to cease and desist from the unlawful act or unlicensed or unregistered practice.

(b) The board shall promptly notify a person against whom the board has issued an order to show cause pursuant to paragraph (a) of this subsection (10) of the issuance of the order and shall include in the notice a copy of the order, the factual and legal basis for the order, and the date set by the board for a hearing on the order. The board may serve the notice upon the person against whom the order is issued by personal service, by first-class United States mail, postage prepaid, or as may be practicable. Personal service or mailing of an order or document pursuant to this subsection (10) constitutes notice to the person.

(c) (I) The board shall commence the hearing on an order to show cause no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the board as provided in paragraph (b) of this subsection (10). The board may continue the hearing by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the board commence the hearing later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (10) does not appear at the hearing, the board may present evidence that notification was properly sent or served upon the person pursuant to paragraph (b) of this subsection (10) and such other evidence related to the matter as the board deems appropriate. The board shall issue the order within ten days after the board's determination related to reasonable attempts to notify the respondent, and the order becomes final as to that person by operation of law. The hearing must be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

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

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

(11) If it appears to the board, based upon credible evidence presented to the board, that a person has engaged in or is about to engage in any unlicensed or unregistered act or practice, any act or practice constituting a violation of this article, any rule promulgated pursuant to this article, or any order issued pursuant to this article, or any act or practice constituting grounds for administrative sanction pursuant to this article, the board may enter into a stipulation with the person.

(12) If any person fails to comply with a final cease-and-desist order or a stipulation, the board may request the attorney general or the district attorney for the judicial district in which

the alleged violation exists to bring, and if so requested such attorney shall bring, suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

(13) A person aggrieved by the final cease-and-desist order may seek judicial review of the board's determination or of the board's final order as provided in section 12-42.5-125.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1566, § 1, effective July 1. **L. 2016:** (5)(a)(I) amended and (5)(a)(III) added, (SB 16-062), ch. 295, p. 1202, § 3, effective July 1.

Editor's note: This section is similar to former §§ 12-22-125.2 and 12-22-308 (2), (3), and (4) as they existed prior to 2012.

12-42.5-125. Judicial review. The court of appeals has initial jurisdiction to review all final actions and orders that are subject to judicial review of the board and shall conduct the judicial review proceedings in accordance with section 24-4-106 (11), C.R.S.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1570, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-125.5 as it existed prior to 2012.

12-42.5-126. Unlawful acts - civil fines. (1) It is unlawful:

(a) To practice pharmacy without a license;

(b) To obtain or dispense or to procure the administration of a drug by fraud, deceit, misrepresentation, or subterfuge, by the forgery or alteration of an order, or by the use of a false name or the giving of a false address;

(c) To willfully make a false statement in any order, report, application, or record required by this article;

(d) To falsely assume the title of or falsely represent that one is a pharmacist, practitioner, or registered outlet;

(e) To make or utter a false or forged order;

(f) To affix a false or forged label to a package or receptacle containing drugs;

(g) To sell, compound, dispense, give, receive, or possess any drug or device unless it was sold, compounded, dispensed, given, or received in accordance with sections 12-42.5-118 to 12-42.5-122;

(h) Except as provided in section 12-42.5-122, to dispense a different drug or brand of drug in place of the drug or brand ordered or prescribed without the oral or written permission of the practitioner ordering or prescribing the drug;

(i) To manufacture, process, pack, distribute, sell, dispense, or give a drug, or the container or labeling of the drug, that, without authorization, bears the trademark, trade name, or other identifying mark, imprint, or device, or any likeness thereof, of a drug manufacturer, processor, packer, or distributor other than the person who in fact manufactured, processed, packed, or distributed such drug, container, or label and that thereby falsely purports or is

represented to be the product of or to have been packed or distributed by such other drug manufacturer, processor, packer, or distributor;

(j) For an employer or an employer's agent or employee to coerce a pharmacist to dispense a prescription drug against the professional judgment of the pharmacist;

(k) For an employer, an employer's agent or employee, or a pharmacist to use or coerce to be used nonpharmacist personnel in any position or task that would require the nonpharmacist to practice pharmacy or to make a judgmental decision using pharmaceutical knowledge or in violation of the delegatory restrictions enumerated in section 12-42.5-116 (5);

(l) To dispense any drug without complying with the labeling, drug identification, and container requirements imposed by law;

(m) (I) To possess, sell, dispense, give, receive, or administer a drug or device that is adulterated or misbranded within the meaning of the "Colorado Food and Drug Act", part 4 of article 5 of title 25, or is a counterfeit drug.

(II) As used in this subsection (1)(m), "counterfeit drug" means a drug, or the container or labeling of a drug, that, without authorization, bears the trademark, trade name, or other identifying mark, imprint, or device or any likeness thereof of a drug manufacturer, processor, packer, or distributor other than the person who in fact manufactured, processed, packed, or distributed the drug and that falsely purports or is represented to be the product of, or to have been packed or distributed by, the drug manufacturer, processor, packer, or distributor whose trademark, trade name, or other identifying mark, imprint, or device or likeness thereof appears on the drug or its container or labeling.

(2) In addition to any other penalties that may be imposed under this part 1, a person who engages in an unlawful act under this section may be punished by a civil fine of not less than one thousand dollars and not more than ten thousand dollars for each violation. Fines imposed and paid under this section shall be deposited in the general fund.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1570, § 1, effective July 1. **L. 2017:** (1)(m) and (2) added, (HB 17-1224), ch. 341, p. 1810, § 1, effective June 5.

Editor's note: This section is similar to former § 12-22-126 as it existed prior to 2012.

12-42.5-127. Unauthorized practice - penalties. Any person who practices or offers or attempts to practice pharmacy 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 any person committing a second or subsequent offense commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1571, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-127 as it existed prior to 2012.

12-42.5-128. New drugs - when sales permissible. (1) No person shall sell, deliver, offer for sale, hold for sale, or give away any new drug not authorized to move in interstate commerce under appropriate federal law.

(2) This section does not apply to a drug intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety and effectiveness of drugs if the drug is plainly labeled to be for investigational use only.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1571, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-128 as it existed prior to 2012.

12-42.5-129. Advertising of prescription drug prices. A prescription drug outlet may advertise its prices for prescription drugs. If the drug is advertised by its brand or proprietary name, the prescription drug outlet shall also include its generic name in the advertisement.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1572, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-129 as it existed prior to 2012.

12-42.5-130. Nonresident prescription drug outlet - registration. (1) Any prescription drug outlet located outside this state that ships, mails, or delivers, in any manner, drugs or devices into this state is a nonresident prescription drug outlet and shall register with the board and disclose to the board the following:

(a) The location, names, and titles of all principal entity officers and all pharmacists who are dispensing drugs or devices to the residents of this state. The nonresident prescription drug outlet shall submit a report containing this information to the board on an annual basis and within thirty days after any change of office, officer, or pharmacist.

(b) A verification that it complies with all lawful directions and requests for information from the regulatory or licensing agency of the state in which it is licensed as well as with all requests for information made by the board pursuant to this section. The nonresident prescription drug outlet shall maintain at all times a valid, unexpired license, permit, or registration to conduct the prescription drug outlet in compliance with the laws of the state in which it is a resident. As a prerequisite to registering with the board, the nonresident prescription drug outlet shall submit a copy of the most recent inspection report resulting from an inspection conducted by the regulatory or licensing agency of the state in which it is located.

(2) The registration requirements of this section apply only to a nonresident prescription drug outlet that only ships, mails, or delivers, in any manner, drugs and devices into this state pursuant to a prescription order.

(3) A nonresident prescription drug outlet doing business in this state that has not obtained a registration shall not conduct the business of selling or distributing drugs in this state without first registering as a nonresident prescription drug outlet. A nonresident prescription drug outlet shall make application for a nonresident prescription drug outlet registration on a

form furnished by the board. The board may require such information as it deems necessary to carry out the purpose of this section.

(4) (a) The board may deny, revoke, or suspend a nonresident prescription drug outlet registration for failure to comply with this section or with any rule promulgated by the board.

(b) The board may deny, revoke, or suspend a nonresident prescription drug outlet registration if the nonresident prescription drug outlet's license or registration has been revoked or not renewed for noncompliance with the laws of the state in which it is a resident.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1572, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-130 as it existed prior to 2012.

12-42.5-131. Records. (1) (a) All persons licensed or registered under this article shall keep and maintain records of the receipt, distribution, or other disposal of prescription drugs or controlled substances, shall make the records available to the board upon request for inspection, copying, verification, or any other purpose, and shall retain the records for two years or for a period otherwise required by law.

(b) The board may permit a wholesaler to maintain a portion of its records at a central location that is different from the storage facility of the wholesaler. If the board grants the permission, the wholesaler shall make available all relevant records within forty-eight hours after a request for inspection, copying, verification, or any other purpose by the board. The wholesaler shall make all other records that are available for immediate access readily available to the board.

(2) A wholesaler shall establish and maintain inventories and records of all transactions regarding the receipt and distribution of prescription drugs. A wholesaler shall make its records available to the board in accordance with subsection (1) of this section. A wholesaler shall include the following information in its records:

(a) The source of the prescription drugs, including the name and principal address of the seller or transferor of the prescription drugs and the address of the location from which the prescription drugs were shipped;

(b) The identity and quantity of the drugs received, distributed, or disposed of by the wholesale distributor; and

(c) The dates of receipt, distribution, or other disposition of the prescription drugs.

(3) The record of any controlled substance distributed, administered, dispensed, or otherwise used must show the date the controlled substance was distributed, administered, dispensed, used, or otherwise disposed of, the name and address of the person to whom or for whose use the controlled substance was distributed, administered, dispensed, used, or otherwise disposed of, and the kind and quantity of the controlled substance.

(4) Manufacturing records of controlled substances must include the kind and quantity of controlled substances produced or removed from process of manufacture and the dates of production or removal from process of manufacture.

(5) A person who maintains a record required by federal law that contains substantially the same information as set forth in subsections (1) to (4) of this section is deemed to comply with the record-keeping requirements of this section.

(6) A person required to maintain records pursuant to this section shall keep a record of any controlled substance lost, destroyed, or stolen, the kind and quantity of the controlled substance, and the date of the loss, destruction, or theft.

(7) Prescription drug outlets shall report thefts of controlled substances to the proper law enforcement agencies and to the board within thirty days after the occurrence of the thefts.

(8) A person licensed, registered, or otherwise authorized under this article or other laws of this state shall distribute, administer, dispense, use, or otherwise dispose of controlled substances listed in schedule I or II of part 2 of article 18 of title 18, C.R.S., only pursuant to an order form. Compliance with the provisions of federal law respecting order forms is deemed compliance with this section.

(9) Prescriptions, orders, and records required by this part 1 and stocks of controlled substances are open for inspection only to federal, state, county, and municipal officers whose duty it is to enforce the laws of this state or of the United States relating to controlled substances or the regulation of practitioners. No officer having knowledge by virtue of his or her office, of a prescription, order, or record shall divulge his or her knowledge, except in connection with a prosecution or proceeding in court or before a licensing or registration board or officer to which prosecution or proceeding the person to whom the prescriptions, orders, or records relate is a party.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1573, § 1, effective July 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 2012. For a detailed comparison, see the comparative tables located in the back of the index.

12-42.5-132. Immunity. Any member of the board, any member of the board's staff, any person acting as a witness or consultant to the board, any witness testifying in a proceeding authorized under this article, and any person who lodges a complaint pursuant to this article is immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as board member, staff, consultant, or witness, respectively, if the individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this article is immune from any civil or criminal liability that may result from participation.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1574, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-132 as it existed prior to 2012.

12-42.5-133. Unused medication - licensed facilities - correctional facilities - reuse - rules. (1) As used in this section, unless the context otherwise requires:

(a) "Correctional facility" means a facility under the supervision of the United States, the department of corrections, or a similar state agency or department in a state other than Colorado in which persons are or may be lawfully held in custody as a result of conviction of a crime; a jail or an adult detention center of a county, city, or city and county; and a private contract prison operated by a state, county, city, or city and county.

(a.5) "Licensed facility" means a hospital, hospital unit, community mental health center, acute treatment unit, hospice, nursing care facility, assisted living residence, or any other facility that is required to be licensed pursuant to section 25-3-101, C.R.S., or a licensed long-term care facility as defined in section 25-1-124 (2.5)(b), C.R.S.

(b) "Medical device" means an instrument, apparatus, implement, machine, contrivance, implant, or similar or related article that is required to be labeled pursuant to 21 CFR part 801.

(c) "Medical supply" means a consumable supply item that is disposable and not intended for reuse.

(d) "Medication" means a prescription that is not a controlled substance.

(2) (a) (I) If donated by the patient, resident, or the patient's or resident's next of kin, a licensed facility may return unused medications or medical supplies, and used or unused medical devices to a pharmacist within the licensed facility or a prescription drug outlet in order for the materials to be redispensed to another patient or donated to a nonprofit entity that has the legal authority to possess the materials or to a practitioner authorized by law to dispense the materials.

(II) (A) A licensed facility or a prescription drug outlet may donate materials to a nonprofit entity that has legal authority to possess the materials or to a person legally authorized to dispense the materials. A licensed pharmacist shall review the process of donating the unused medications to the nonprofit entity.

(B) Nothing in this subparagraph (II): Creates or abrogates any liability on behalf of a prescription drug manufacturer for the storage, donation, acceptance, or dispensing of a medication or product; or creates any civil cause of action against a prescription drug manufacturer in addition to that which is available under applicable law.

(C) A person or entity is not subject to civil or criminal liability or professional disciplinary action for donating, accepting, dispensing, or facilitating the donation of materials in good faith, without negligence, and in compliance with this section.

(III) A correctional facility may return unused medications or medical supplies, and used or unused medical devices to the pharmacist within the correctional facility or a prescription drug outlet in order for the medication to be redispensed to another patient or donated to a nonprofit entity that has the legal authority to possess the materials or to a practitioner authorized by law to prescribe the materials.

(b) Medications are only available to be dispensed to another person or donated to a nonprofit entity under this section if the medications are:

(I) Liquid and the vial is still sealed and properly stored;

(II) Individually packaged and the packaging has not been damaged; or

(III) In the original, unopened, sealed, and tamper-evident unit dose packaging.

(c) The following medications may not be donated:

(I) Medications packaged in traditional brown or amber pill bottles;

(II) Controlled substances;

(III) Medications that require refrigeration, freezing, or special storage;

(IV) Medications that require special registration with the manufacturer; or

(V) Medications that are adulterated or misbranded, as determined by a person legally authorized to dispense the medications on behalf of the nonprofit entity.

(3) Medication dispensed or donated pursuant to this section must not be expired. A medication shall not be dispensed that will expire before the use by the patient based on the prescribing practitioner's directions for use.

(3.5) Medication, medical supplies, and medical devices donated pursuant to this section may not be resold for profit. The entity that receives the donated materials may charge the end user a handling fee, which shall not exceed the amount specified by rule of the board.

(4) The board shall adopt rules that allow a pharmacist to redispense medication pursuant to this section and section 25.5-5-502, C.R.S., and to donate medication pursuant to this section.

(5) Nothing in this section or section 25.5-5-502, C.R.S., creates or abrogates any liability on behalf of a prescription drug manufacturer for the storage, donation, acceptance, or dispensing of an unused donated medication or creates any civil cause of action against a prescription drug manufacturer in addition to that which is available under applicable law.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1574, § 1, effective July 1; (1)(a) amended and (1)(a.5) and (2)(a)(III) added, (SB 12-161), ch. 205, p. 815, § 1, effective August 8. **L. 2015:** (1)(a.5), (2)(a)(I), (2)(a)(II)(A), (2)(a)(III), and (3) amended and (2)(a)(II)(C) and (3.5) added, (HB 15-1039), ch. 23, p. 55, § 1, effective August 5.

Editor's note: (1) This section is similar to former §§ 12-22-133 and 12-22-134 as they existed prior to 2012.

(2) Amendments to section 12-22-133 by Senate Bill 12-161 were relocated and harmonized with amendments to this section by House Bill 12-1311.

12-42.5-134. Confidential agreement to limit practice - violation - grounds for discipline. (1) If a pharmacist or intern has a physical illness; a physical condition; or a behavioral or mental health disorder that renders the person unable to practice pharmacy with reasonable skill and safety to clients, the pharmacist or intern shall notify the board of the physical illness; the physical condition; or the behavioral or mental health disorder in a manner and within a period determined by the board. The board may require the pharmacist or intern to submit to an examination or refer the pharmacist or intern to the pharmacy peer health assistance diversion program established in part 2 of this article 42.5 to evaluate the extent of the physical illness; the physical condition; or the behavioral or mental health disorder and its impact on the pharmacist's or intern's ability to practice pharmacy with reasonable skill and safety to clients.

(2) (a) Upon determining that a pharmacist or intern with a physical illness; a physical condition; or a behavioral or mental health disorder is able to render limited services with reasonable skill and safety to clients, the board may enter into a confidential agreement with the pharmacist or intern in which the pharmacist or intern agrees to limit his or her practice based on the restrictions imposed by the physical illness; the physical condition; or the behavioral or mental health disorder, as determined by the board.

(b) As part of the agreement, the pharmacist or intern is subject to periodic reevaluations or monitoring as determined appropriate by the board. The board may refer the pharmacist or intern to the pharmacy peer health assistance diversion program for reevaluation or monitoring.

(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 board pursuant to this section to limit his or her practice, a pharmacist or intern is not engaging in activities prohibited pursuant to section 12-42.5-123. The agreement does not constitute a restriction or discipline by the board. However, if the pharmacist or intern fails to comply with the terms of an agreement entered into pursuant to this section, the failure constitutes a prohibited activity pursuant to section 12-42.5-123 (1)(r), and the pharmacist or intern is subject to discipline in accordance with section 12-42.5-124.

(4) This section does not apply to a pharmacist or intern subject to discipline for prohibited activities as described in section 12-42.5-123 (1)(e).

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1576, § 1, effective July 1. **L. 2017:** (1) and (2)(a) amended, (SB 17-242), ch. 263, p. 1285, § 83, effective May 25.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

PART 2

PHARMACY PEER HEALTH ASSISTANCE
DIVERSION PROGRAM

12-42.5-201. Legislative declaration. (1) The general assembly finds, determines, and declares that the creation of a pharmacy peer health assistance diversion program for those persons subject to the jurisdiction of the board will serve to safeguard the life, health, property, and public welfare of the people of this state. A pharmacy peer health assistance diversion program will help practitioners experiencing impaired practice due to psychiatric, psychological, or emotional problems; excessive alcohol or drug use; or alcohol or substance use disorders. The general assembly further declares that a pharmacy peer health assistance diversion program will protect the privacy and welfare of those persons who provide services and at the same time assist the board in carrying out its duties and responsibilities to ensure that only qualified persons are allowed to engage in providing those services that are under the jurisdiction of the board.

(2) It is the intent of the general assembly that the pharmacy peer health assistance diversion program and its related procedures be utilized by the board in conjunction with, or as an alternative to, the use of disciplinary proceedings by the board, which proceedings are by their nature time-consuming and costly to the people of this state. The pharmacy peer health assistance diversion program is hereby established to alleviate the need for disciplinary proceedings, while at the same time providing safeguards that protect the public health, safety, and welfare. The general assembly further declares that it intends that the board will act to implement the provisions of this article.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1577, § 1, effective July 1. **L. 2018:** (1) amended, (SB 18-091), ch. 35, p. 381, § 5, effective August 8.

Editor's note: This section is similar to former § 12-22-601 as it existed prior to 2012.

Cross references: For the legislative declaration in SB 18-091, see section 1 of chapter 35, Session Laws of Colorado 2018.

12-42.5-202. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Impaired practice" means a licensee's inability to meet the requirements of the laws of this state and the rules of the board governing his or her practice when the licensee's cognitive, interpersonal, or psychomotor skills are affected by psychiatric, psychological, or emotional problems; excessive alcohol or drug use; or alcohol or substance use disorders.

(2) "Licensee" means any pharmacist or intern who is licensed by the board.

(3) "Peer health assistance organization" means an organization that provides a formal, structured program that meets the requirements specified in this part 2 and is administered by appropriate professionals for the purpose of assisting licensees experiencing impaired practice to obtain evaluation, treatment, short-term counseling, monitoring of progress, and ongoing support for the purpose of arresting and treating the licensee's psychiatric, psychological, or emotional problems; excessive alcohol or drug use; or alcohol or substance use disorders.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1577, § 1, effective July 1. **L. 2018:** (1) and (3) amended, (SB 18-091), ch. 35, p. 381, § 6, effective August 8.

Editor's note: This section is similar to former § 12-22-602 as it existed prior to 2012.

Cross references: For the legislative declaration in SB 18-091, see section 1 of chapter 35, Session Laws of Colorado 2018.

12-42.5-203. Pharmacy peer health assistance fund. (1) There is hereby created in the state treasury the pharmacy peer health assistance fund. The fund consists of moneys collected by the board and credited to the fund pursuant to subsection (2) of this section. Any interest earned on the investment of moneys in the fund must be credited at least annually to the fund.

(2) (a) As a condition of licensure and licensure renewal in this state, every applicant shall pay to the administering entity that has been selected by the board pursuant to this section an amount set by the board not to exceed fifty-six dollars biennially. The amount must be used to support designated providers that have been selected by the board to provide assistance to pharmacists and interns needing help in dealing with physical, emotional, psychiatric, or psychological problems or behavioral, mental health, or substance use disorders that may be detrimental to their ability to practice.

(b) The board shall select one or more peer health assistance organizations as designated providers. To be eligible for designation by the board a peer health assistance diversion program shall:

(I) Provide for the education of pharmacists and interns with respect to the recognition and prevention of physical, emotional, and psychological problems and provide for intervention when necessary or under circumstances that may be established by rules promulgated by the board;

(II) Offer assistance to a pharmacist or intern in identifying physical, emotional, or psychological problems;

(III) Evaluate the extent of physical, emotional, or psychological problems and refer the pharmacist or intern for appropriate treatment;

(IV) Monitor the status of a pharmacist or intern who has been referred for treatment;

(V) Provide counseling and support for the pharmacist or intern and for the family of any pharmacist or intern referred for treatment;

(VI) Agree to receive referrals from the board;

(VII) Agree to make their services available to all licensed Colorado pharmacists and interns.

(c) The administering entity must be a qualified, nonprofit, private foundation that is qualified under section 501 (c)(3) of the federal "Internal Revenue Code of 1986", as amended, and must be dedicated to providing support for charitable, benevolent, educational, and scientific purposes that are related to pharmaceutical education, pharmaceutical research and science, and other pharmaceutical charitable purposes.

(d) The responsibilities of the administering entity are:

(I) To collect the required annual payments, directly or through the board;

(II) To verify to the board, in a manner acceptable to the board, the names of all pharmacist and intern applicants who have paid the fee set by the board;

(III) To distribute the moneys collected, less expenses, to the designated provider, as directed by the board;

(IV) To provide an annual accounting to the board of all amounts collected, expenses incurred, and amounts disbursed; and

(V) To post a surety performance bond in an amount specified by the board to secure performance under the requirements of this section. The administering entity may recover the actual administrative costs incurred in performing its duties under this section in an amount not to exceed ten percent of the total amount collected.

(e) The board, at its discretion, may collect the required annual payments payable to the administering entity for the benefit of the administering entity and shall transfer all such payments to the administering entity. All required annual payments collected or due to the board for each fiscal year are custodial funds that are not subject to appropriation by the general assembly, and the funds do not constitute state fiscal year spending for purposes of section 20 of article X of the state constitution.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1578, § 1, effective July 1. **L. 2017:** (2)(a) amended, (SB 17-242), ch. 263, p. 1285, § 84, effective May 25. **L. 2018:** (2)(a) amended, (HB 18-1375), ch. 274, p. 1695, § 6, effective May 29.

Editor's note: This section is similar to former § 12-22-603 as it existed prior to 2012.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-42.5-204. Eligibility - participants. (1) Any licensee may apply to the board for participation in a qualified peer health assistance diversion program.

(2) In order to be eligible for participation, a licensee shall:

(a) Acknowledge the existence or the potential existence of a psychiatric, psychological, or emotional problem; excessive alcohol or drug use; or an alcohol use disorder, as defined in section 27-81-102, or a substance use disorder, as defined in section 27-82-102;

(b) After a full explanation of the operation and requirements of the peer health assistance diversion program, agree to voluntarily participate in the program and agree in writing to participate in the program of the peer health assistance organization designated by the board.

(3) Notwithstanding the provisions of this section, the board may summarily suspend the license of any licensee who is referred to a peer health assistance diversion program by the board and who fails to attend or to complete the program. If the board summarily suspends the license, the board shall schedule a hearing on the suspension, which shall be conducted in accordance with section 24-4-105, C.R.S.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1580, § 1, effective July 1. **L. 2017:** (2)(a) amended, (SB 17-242), ch. 263, p. 1286, § 85, effective May 25.

Editor's note: This section is similar to former § 12-22-605 as it existed prior to 2012.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-42.5-205. Liability. Nothing in this part 2 creates any liability of the board, members of the board, or the state of Colorado for the actions of the board in making awards to pharmacy peer health assistance organizations or in designating licensees to participate in the programs of pharmacy peer health assistance organizations. No civil action may be brought or maintained against the board, its members, or the state for an injury alleged to have been the result of an act or omission of a licensee participating in or referred to a state-funded program provided by a pharmacy peer health assistance organization. However, the state remains liable under the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S., if an injury alleged to have been the result of an act or omission of a licensee participating in or referred to a state-funded peer health assistance diversion program occurred while the licensee was performing duties as an employee of the state.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1580, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-607 as it existed prior to 2012.

12-42.5-206. Immunity. Any member of the board acting pursuant to this part 2 is immune from suit in any civil action if the member acted in good faith within the scope of the function of the board, made a reasonable effort to obtain the facts of the matter as to which the member acted, and acted in the reasonable belief that the action taken by the member was warranted by the facts.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1580, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-608 as it existed prior to 2012.

PART 3

WHOLESALERS

12-42.5-301. Definitions. As used in this part 3, unless the context otherwise requires:

(1) "Authentication" means the process of affirmatively verifying that each transaction listed on a pedigree has occurred before any wholesale distribution of a prescription drug occurs.

(2) "Board-registered outlet" means a prescription drug outlet, an other outlet, a nonresident prescription drug outlet, a wholesaler, or a manufacturer.

(3) "Designated representative" means a person authorized by a licensed wholesaler to act as a representative for the wholesaler.

(4) "Drop shipment" means the sale by a manufacturer of the manufacturer's prescription drug, that manufacturer's third-party logistics provider, or that manufacturer's exclusive distributor to a wholesaler whereby the wholesaler takes title to, but not possession of, the prescription drug and the wholesaler invoices the board-registered outlet or practitioner authorized by law to prescribe the prescription drug and the board-registered outlet or the practitioner authorized by law to prescribe the prescription drug receives delivery of the prescription drug directly from the manufacturer of such drug, that manufacturer's third-party logistics provider, or that manufacturer's exclusive distributor.

(5) "Facility" means a facility of a wholesaler where prescription drugs are stored, handled, repackaged, or offered for sale.

(6) "Normal distribution channel" means a chain of custody for a prescription drug that goes directly or by drop shipment from a manufacturer of the prescription drug to:

(a) (I) A wholesaler to a pharmacy to a patient or other designated persons authorized by law to dispense or administer a prescription drug to a patient;

(II) A wholesaler to a chain pharmacy warehouse to their intracompany pharmacies to a patient;

(III) A chain pharmacy warehouse to its intracompany pharmacies to a patient; or

(IV) A pharmacy to a patient; or

(b) A manufacturer's colicensed partner, third-party logistics provider, or exclusive distributor to a wholesaler to a pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient; or

(c) A manufacturer's colicensed partner, or that manufacturer's third-party logistics provider, or exclusive distributor to a wholesaler to a chain pharmacy warehouse to that chain pharmacy warehouse's intracompany pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient; or

(d) A wholesaler to a pharmacy buying cooperative warehouse to a pharmacy that is a member or member owner of the cooperative to a patient or other designated person authorized by law to dispense or administer the prescription drug to a patient.

(7) "Pedigree" means a document or electronic file containing information that records each distribution of any given prescription drug that leaves the normal distribution channel.

(8) "Third-party logistics provider" means anyone who contracts with a manufacturer to provide or coordinate warehousing, distribution, or other services on behalf of a manufacturer but does not take title to a prescription drug or have general responsibility to direct the prescription drug's sale or disposition.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1580, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-801 (1) and (2) as it existed prior to 2012.

12-42.5-302. Exemptions. (1) (a) The board may exempt a pharmacy benefits entity from the requirements of sections 12-42.5-303 and 12-42.5-304 if the entity's purchases are solely from a manufacturer or a wholesale distributor in the normal distribution channel, and any subsequent sales or further distributions are to entities other than a wholesaler within the normal distribution channel.

(b) For the purposes of this section, "pharmacy benefits entity" means an entity that is not engaged in the activities of a chain pharmacy warehouse but that assists in the administration of pharmacy benefits under contracts with insurers or to a company under common ownership with that entity.

(2) The board may exempt a wholesaler from any requirement of this part 3 if the wholesaler exclusively distributes animal health medicines. The board may exempt a wholesaler that distributes animal health medicines from the requirements of section 12-42.5-306.

(3) The board shall exempt from the requirements of sections 12-42.5-303 and 12-42.5-304:

(a) A licensed wholesaler operated by a nonprofit organization exempt from taxation under section 501 (c)(3) of the federal "Internal Revenue Code of 1986", as amended, that engages only in intracompany sales or transfers of prescription drugs to licensed other outlets or pharmacies that are controlled by, or under common ownership or control with, the wholesaler and that purchase drugs directly from the manufacturer or the manufacturer's authorized distributor of record for distribution or transfer to the wholesaler's licensed other outlets, pharmacies, or other areas authorized by state law;

(b) A licensed wholesaler operated by a hospital, a state agency, or a political subdivision if the entity purchases drugs directly from a manufacturer or a manufacturer's authorized distributor of record and if any further distribution is to authorized licensed entities within its own network.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1585, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-801 (3) as it existed prior to 2012.

12-42.5-303. Wholesaler license requirements. (1) (a) A wholesaler that resides in this state must be licensed by the board. A wholesaler that does not reside in this state must be licensed in this state prior to engaging in the wholesale distribution of prescription drugs in this state. The board shall exempt a manufacturer and that manufacturer's third-party logistics providers to the extent involving that manufacturer's drugs under contract from any licensing qualifications and other requirements, including the requirements in subparagraphs (VI) and (VII) of paragraph (a) of subsection (3) of this section, subsections (4) to (6) of this section, and section 12-42.5-304, to the extent the requirements are not required by federal law or regulation, unless the particular requirements are deemed necessary and appropriate following rule-making by the board.

(b) A manufacturer's exclusive distributor and pharmacy buying cooperative warehouse must be licensed by the board as a wholesaler pursuant to this part 3. A third-party logistics provider must be licensed by the board as a wholesale distributor pursuant to this part 3.

(2) (a) The board may adopt rules to approve an accreditation body to evaluate a wholesaler's operations to determine compliance with professional standards and any other applicable laws and to perform inspections of each facility and location where the wholesaler conducts wholesale distribution operations.

(b) An applicant for a license shall pay any fee required by the accreditation body or the board and comply with any rules promulgated by the board.

(c) The board shall not issue or renew a license to a wholesaler who does not comply with this part 3.

(3) (a) An applicant for a wholesaler license shall provide to the board the following information, and any other information deemed appropriate by the board on a form provided by the board:

(I) The name, full business address, and telephone number of the applicant;

(II) The trade and business names used by the applicant;

(III) The addresses, telephone numbers, and names of the contact persons for all facilities used by the applicant for the storage, handling, and distribution of prescription drugs;

(IV) The type of ownership or operation of the applicant;

(V) The names of the owner and the operator of the applicant, including:

(A) The name of each partner if the applicant is a partnership;

(B) The name and title of each officer and director, the name of the corporation, and the state of incorporation, if the applicant is a corporation;

(C) The name of the limited liability company, if the applicant is a limited liability company, and the name of the parent company, if any, and the state of incorporation or formation of both; or

(D) The name of the sole proprietor and the business entity if the applicant is a sole proprietorship;

(VI) A list of the licenses and permits issued to the applicant by any other state that authorizes the applicant to purchase or possess prescription drugs; and

(VII) The name of the applicant's designated representative for the facility, the fingerprints of the designated representative, and a personal information statement for the designated representative that includes information as required by the board, including but not limited to the information in subsection (5) of this section.

(b) A licensee shall complete and return a form approved by the board at each renewal period. The board may suspend or revoke the license of a wholesaler if the board determines that the wholesaler no longer qualifies for a license.

(4) Prior to issuing a wholesaler license to an applicant, the board, the regulatory oversight body from another state, or board-approved accreditation body may conduct a physical inspection of the facility at the business address provided by the applicant. Nothing in this subsection (4) shall preclude the board from inspecting a wholesaler.

(5) The designated representative of an applicant for a wholesaler license shall:

(a) Be at least twenty-one years of age;

(b) Have at least three years of full-time employment history with a pharmacy or a wholesaler in a capacity related to the dispensing and distribution of and the record keeping related to prescription drugs;

(c) Be employed by the applicant in a full-time managerial position;

(d) Be actively involved in and aware of the actual daily operation of the wholesaler;

(e) Be physically present at the facility of the applicant during regular business hours, except when the absence of the designated representative is authorized, including, but not limited to, sick leave and vacation leave;

(f) Serve in the capacity of a designated representative for only one applicant or wholesaler at a time, except where more than one licensed wholesaler is co-located in the same facility and the wholesalers are members of an affiliated group as defined by section 1504 of the federal "Internal Revenue Code of 1986";

(g) Not have any convictions under federal, state, or local law relating to wholesale or retail prescription drug distribution or a controlled substance, as defined in section 18-18-102 (5), C.R.S.;

(h) Not have any felony convictions pursuant to federal, state, or local law; and

(i) Update all of the information required in this part 3 whenever changes occur.

(6) A wholesaler shall obtain a license for each facility it uses for the distribution of prescription drugs.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1585, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-802 as it existed prior to 2012.

12-42.5-304. Criminal history record check. Prior to submission of an application, each designated representative must have his or her fingerprints taken by a local law enforcement agency or any third party approved by the Colorado bureau of investigation for the purpose of obtaining a fingerprint-based criminal history record check. If an approved third party takes the person's fingerprints, the fingerprints may be electronically captured using Colorado bureau of investigation-approved livescan equipment. Third-party vendors shall not keep the applicant information for more than thirty days unless requested to do so by the applicant. The designated representative shall submit payment by certified check or money order for the fingerprints and for the actual costs of the record check at the time the fingerprints are submitted to the Colorado bureau of investigation. Upon receipt of fingerprints and receipt of the payment for costs, the Colorado bureau of investigation shall conduct a state and national fingerprint-

based criminal history record check utilizing records of the Colorado bureau of investigation and the federal bureau of investigation.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1587, § 1, effective July 1. **L. 2017:** Entire section amended, (SB 17-189), ch. 149, p. 498, § 3, effective August 9.

Editor's note: This section is similar to former § 12-22-803 as it existed prior to 2012.

12-42.5-305. Restrictions on transactions. (1) A wholesaler shall accept prescription drug returns or exchanges from a pharmacy or a chain pharmacy warehouse pursuant to the terms and conditions of the agreement between the wholesale distributor and the pharmacy or chain pharmacy warehouse. The receiving wholesale distributor shall distribute returns or exchanges of expired, damaged, recalled, or otherwise unsaleable pharmaceutical product only to the original manufacturer or to a third-party returns processor. The returns or exchanges of prescription drugs, saleable or unsaleable, including any redistribution by a receiving wholesaler, are not subject to the pedigree requirements of section 12-42.5-306, so long as the drugs are exempt from the pedigree requirement of the federal food and drug administration's currently applicable "Prescription Drug Marketing Act of 1987" guidance. The pharmacies, chain pharmacy warehouses, and pharmacy buying cooperative warehouses are responsible for ensuring that the prescription drugs returned are what they purport to be and shall ensure that those returned prescription drugs were stored under proper conditions since their receipt. Wholesalers are responsible for policing their returns process and helping to ensure that their operations are secure and do not permit the entry of adulterated or counterfeit product. A pharmacist shall not knowingly return a medication that is not what it purports to be.

(2) A manufacturer or wholesaler shall furnish prescription drugs only to a board-registered outlet or practitioner authorized by law to prescribe the drugs. Before furnishing prescription drugs to a person or entity not known to the manufacturer or wholesaler, the manufacturer or wholesaler shall affirmatively verify that the person or entity is legally authorized to receive the prescription drugs by contacting the board.

(3) A manufacturer or wholesaler may furnish prescription drugs to a hospital pharmacy receiving area if a pharmacist or authorized receiving agent signs, at the time of delivery, a receipt showing the type and quantity of the prescription drug received. The pharmacist or authorized receiving agent shall report any discrepancy between the receipt and the type and quantity of the prescription drug actually received to the delivering manufacturer or wholesaler by the next business day after the delivery to the pharmacy receiving area.

(4) A manufacturer or wholesaler shall not accept payment for, or allow the use of, a person's or entity's credit to establish an account for the purchase of prescription drugs from any person other than the owner of record, the chief executive officer, or the chief financial officer listed on the license of a person or entity legally authorized to receive prescription drugs. An account established for the purchase of prescription drugs must bear the name of the licensee. This subsection (4) does not apply to standard ordering and purchasing business practices between a chain pharmacy warehouse, a wholesaler, and a manufacturer.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1588, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-804 as it existed prior to 2012.

Cross references: For the "Prescription Drug Marketing Act of 1987", see Pub.L. 100-293.

12-42.5-306. Records - study - authentication - pedigree - rules. (1) A wholesaler shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of prescription drugs. The records must include the pedigree for each wholesale distribution of a prescription drug that occurs outside the normal distribution channel.

(2) A wholesaler in the possession of a pedigree for a prescription drug shall verify that each transaction on the pedigree has occurred prior to distributing the prescription drug.

(3) A pedigree shall include all necessary identifying information concerning each sale in the chain of distribution of the product from the manufacturer or the first authorized distributor of record through the acquisition and sale by a wholesaler until final sale to a pharmacy or other person dispensing or administering the prescription drug. The pedigree shall include, at a minimum:

(a) The name, address, telephone number, and, if available, the electronic mail address of each owner of the prescription drug and each wholesaler of the drug;

(b) The name and address of each location from which the prescription drug was shipped, if different from that of the owner;

(c) The transaction dates;

(d) Certification that each recipient has authenticated the pedigree;

(e) The name of the prescription drug;

(f) The dosage form and strength of the prescription drug;

(g) The size and number of containers;

(h) The lot number of the prescription drug; and

(i) The name of the manufacturer of the finished dosage form.

(4) A purchaser or wholesaler shall maintain each pedigree for three years after the date of the sale or transfer of the prescription drug and shall make the pedigree available for inspection or use within five business days upon the request of an authorized law enforcement officer or an authorized agent of the board.

(5) This section does not apply to a retail pharmacy or chain pharmacy warehouse if the retail pharmacy or chain pharmacy warehouse does not engage in the wholesale distribution of prescription drugs.

(6) The board shall adopt rules as necessary for the implementation of this part 3.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1589, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-805 as it existed prior to 2012.

12-42.5-307. Penalty. (1) A person who engages in the wholesale distribution of prescription drugs in violation of this part 3 is subject to a penalty of up to fifty thousand dollars.

(2) A person who knowingly engages in the wholesale distribution of prescription drugs in violation of this part 3 is subject to a penalty of up to five hundred thousand dollars.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1590, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-806 as it existed prior to 2012.

PART 4

ELECTRONIC MONITORING OF
PRESCRIPTION DRUGS

12-42.5-401. Legislative declaration. (1) The general assembly finds, determines, and declares that:

(a) Prescription drug misuse occurs in this country to an extent that exceeds or rivals the abuse of illicit drugs;

(b) Prescription drug misuse occurs at times due to the deception of the authorized practitioners where patients seek controlled substances for treatment and the practitioner is unaware of the patient's other medical providers and treatments;

(c) Electronic monitoring of prescriptions for controlled substances provides a mechanism whereby practitioners can discover the extent of each patient's requests for drugs and whether other providers have prescribed similar substances during a similar period of time;

(d) Electronic monitoring of prescriptions for controlled substances provides a mechanism for law enforcement officials and regulatory boards to efficiently investigate practitioner behavior that is potentially harmful to the public.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1590, § 1, effective July 1. **L. 2017:** (1)(a) and (1)(b) amended, (SB 17-242), ch. 263, p. 1286, § 86, effective May 25.

Editor's note: This section is similar to former § 12-22-701 as it existed prior to 2012.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-42.5-402. Definitions. As used in this part 4, unless the context otherwise requires:

(1) "Board" means the state board of pharmacy created in section 12-42.5-103.

(1.5) "Controlled substance" means any schedule II, III, IV, or V drug as listed in sections 18-18-204, 18-18-205, 18-18-206, and 18-18-207, C.R.S.

(2) "Division" means the division of professions and occupations in the department of regulatory agencies.

(3) "Drug abuse" or "abuse" means utilization of a controlled substance for nonmedical purposes or in a manner that does not meet generally accepted standards of medical practice.

(4) "Prescription drug outlet" or "pharmacy" means:

(a) Any resident or nonresident pharmacy outlet registered or licensed pursuant to this article where prescriptions are compounded and dispensed; and

(b) Any federally owned and operated pharmacy registered with the federal drug enforcement administration.

(5) "Program" means the electronic prescription drug monitoring program developed or procured by the board in accordance with section 12-42.5-403.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1590, § 1, effective July 1. **L. 2014:** (1) and (4) amended and (1.5) added, (HB 14-1283), ch. 239, p. 882, § 1, effective May 21.

Editor's note: This section is similar to former § 12-22-702 as it existed prior to 2012.

12-42.5-403. Prescription drug use monitoring program - registration required - rules. (1) The board shall develop or procure a prescription controlled substance electronic program to track information regarding prescriptions for controlled substances dispensed in Colorado, including the following information:

(a) The date the prescription was dispensed;

(b) The name of the patient and the practitioner;

(c) The name and amount of the controlled substance;

(d) The method of payment;

(e) The name of the dispensing pharmacy; and

(f) Any other data elements necessary to determine whether a patient is visiting multiple practitioners or pharmacies, or both, to receive the same or similar medication.

(1.5) (a) By January 1, 2015, or by an earlier date determined by the director of the division, every practitioner in this state who holds a current registration issued by the federal drug enforcement administration and every pharmacist shall register and maintain a user account with the program.

(b) When registering with the program or at any time thereafter, a practitioner or pharmacist may authorize up to three designees to access the program under section 12-42.5-404 (3)(b), (3)(c), or (3)(d), as applicable, on behalf of the practitioner or pharmacist if:

(I) (A) The authorized designee of the practitioner is employed by, or is under contract with, the same professional practice as the practitioner; or

(B) The authorized designee of the pharmacist is employed by, or is under contract with, the same prescription drug outlet as the pharmacist; and

(II) The practitioner or pharmacist takes reasonable steps to ensure that the designee is sufficiently competent in the use of the program; and

(III) The practitioner or pharmacist remains responsible for:

(A) Ensuring that access to the program by the practitioner's designee is limited to the purposes authorized in section 12-42.5-404 (3)(b) or (3)(c) or that access to the program by the pharmacist's designee is limited to the purposes authorized in section 12-42.5-404 (3)(d), as the

case may be, and that access to the program occurs in a manner that protects the confidentiality of the information obtained from the program; and

(B) Any negligent breach of confidentiality of information obtained from the program by the practitioner's or pharmacist's designee.

(c) A practitioner or pharmacist is subject to penalties pursuant to section 12-42.5-406 for violating the requirements of paragraph (b) of this subsection (1.5).

(d) Any individual authorized as a designee of a practitioner or pharmacist pursuant to paragraph (b) of this subsection (1.5) shall register as a designee of a practitioner or pharmacist with the program for program data access in accordance with section 12-42.5-404 (3)(b), (3)(c), or (3)(d), as applicable, and board rules.

(2) Each practitioner and each dispensing pharmacy shall disclose to a patient receiving a controlled substance that his or her identifying prescription information will be entered into the program database and may be accessed for limited purposes by specified individuals.

(3) The board shall establish a method and format for prescription drug outlets to convey the necessary information to the board or its designee. The method must not require more than a one-time entry of data per patient per prescription by a prescription drug outlet.

(4) The division may contract with any individual or public or private agency or organization in carrying out the data collection and processing duties required by this part 4.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1591, § 1, effective July 1. **L. 2014:** (1.5) added, (HB 14-1283), ch. 239, p. 882, § 2, effective May 21.

Editor's note: This section is similar to former § 12-22-704 as it existed prior to 2012.

12-42.5-404. Program operation - access - rules - definitions - repeal. (1) The board shall operate and maintain the program.

(2) The board shall adopt all rules necessary to implement the program.

(3) The program is available for query only to the following persons or groups of persons:

(a) Board staff responsible for administering the program;

(b) Any practitioner with the statutory authority to prescribe controlled substances, or an individual designated by the practitioner to act on his or her behalf in accordance with section 12-42.5-403 (1.5)(b), to the extent the query relates to a current patient of the practitioner. The practitioner or his or her designee shall identify his or her area of health care specialty or practice upon the initial query of the program.

(b.5) (I) Any veterinarian with statutory authority to prescribe controlled substances, to the extent the query relates to a current patient or to a client and if the veterinarian, in the exercise of professional judgment, has a reasonable basis to suspect the client has committed drug abuse or has mistreated an animal.

(II) As used in this subsection (3)(b.5):

(A) "Client" has the same meaning as set forth in section 12-64-103 (4.3).

(B) "Mistreat" has the same meaning as set forth in section 35-42-103 (9).

(C) "Patient" has the same meaning as set forth in section 12-64-103 (9.7).

(c) A practitioner, or an individual designated by the practitioner to act on his or her behalf in accordance with section 12-42.5-403 (1.5)(b), engaged in a legitimate program to monitor a patient's drug abuse;

(c.5) The medical director, or his or her designee, at a facility that treats substance use disorders with controlled substances, if an individual in treatment at the facility gives permission to the facility to access his or her program records;

(d) A pharmacist, an individual designated by a pharmacist in accordance with section 12-42.5-403 (1.5)(b) to act on his or her behalf, or a pharmacist licensed in another state, to the extent the information requested relates specifically to a current patient to whom the pharmacist is dispensing or considering dispensing a controlled substance or prescription drug or a patient to whom the pharmacist is currently providing clinical patient care services;

(e) Law enforcement officials so long as the information released is specific to an individual patient, pharmacy, or practitioner and is part of a bona fide investigation, and the request for information is accompanied by an official court order or subpoena;

(f) The individual who is the recipient of a controlled substance prescription so long as the information released is specific to the individual;

(g) State regulatory boards within the division and the director of the division so long as the information released is specific to an individual practitioner and is part of a bona fide investigation, and the request for information is accompanied by an official court order or subpoena;

(h) A resident physician with an active physician training license issued by the Colorado medical board pursuant to section 12-36-122 and under the supervision of a licensed physician.

(i) The department of public health and environment for purposes of population-level analysis, but any use of program data by the department is subject to the federal "Health Insurance Portability and Accountability Act of 1996", Pub.L. 104-191, as amended, and implementing federal regulations, including the requirement to remove any identifying data unless exempted from the requirement.

(3.6) (a) Each practitioner or his or her designee shall query the program prior to prescribing the second fill for an opioid unless the patient receiving the prescription:

(I) Is receiving the opioid in a hospital, skilled nursing facility, residential facility, or correctional facility;

(II) Has been diagnosed with cancer and is experiencing cancer-related pain;

(III) Is undergoing palliative care or hospice care;

(IV) Is experiencing post-surgical pain that, because of the nature of the procedure, is expected to last more than fourteen days;

(V) Is receiving treatment during a natural disaster or during an incident where mass casualties have taken place; or

(VI) Has received only a single dose to relieve pain for a single test or procedure.

(b) The program must use industry standards to allow providers or their designees direct access to data from within an electronic health record to the extent that the query relates to a current patient of the practitioner.

(c) A practitioner or his or her designee complies with this subsection (3.6) if he or she attempts to access the program prior to prescribing the second fill for an opioid, and the program is not available or is inaccessible due to technical failure.

(d) A violation of this subsection (3.6) does not create a private right of action or serve as the basis of a cause of action. A violation of this section does not constitute negligence per se or contributory negligence per se and does not alone establish a standard of care. Compliance with this section does not alone establish an absolute defense to any alleged breach of the standard of care.

(e) This subsection (3.6) is repealed, effective September 1, 2021.

(4) The board shall not charge a practitioner or pharmacy who transmits data in compliance with the operation and maintenance of the program a fee for the transmission of the data.

(5) The board, the department of public health and environment, or the department of health care policy and financing, pursuant to a written agreement that ensures compliance with this part 4, may provide data to qualified personnel of a public or private entity for the purpose of bona fide research or education so long as the data does not identify a recipient of, a practitioner who prescribed, or a prescription drug outlet that dispensed, a prescription drug.

(6) The board shall provide a means of sharing information about individuals whose information is recorded in the program with out-of-state health care practitioners and law enforcement officials that meet the requirements of paragraph (b), (c), or (e) of subsection (3) of this section.

(7) The board shall develop criteria for indicators of misuse, abuse, and diversion of controlled substances and, based on those criteria, provide unsolicited reports of dispensed controlled substances to prescribing practitioners and dispensing pharmacies for purposes of education and intervention to prevent and reduce occurrences of controlled substance misuse, abuse, and diversion. In developing the criteria, the board shall consult with the Colorado dental board, Colorado medical board, state board of nursing, state board of optometry, Colorado podiatry board, and state board of veterinary medicine.

(8) Reports generated by the program and provided to prescribing practitioners for purposes of information, education, and intervention to prevent and reduce occurrences of controlled substance misuse, abuse, and diversion are:

(a) Not public records under the "Colorado Open Records Act", part 2 of article 72 of title 24;

(b) Not discoverable in any criminal or administrative proceeding against a prescribing practitioner; and

(c) Not admissible in any civil, criminal, or administrative proceeding against a prescribing practitioner.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1592, § 1, effective July 1. **L. 2014:** (3)(b), (3) (c), (3) (d), (3)(e), (3)(g), and (5) amended and (3)(i) and (7) added, (HB 14-1283), ch. 239, p. 883, § 3, effective May 21; (3)(c.5) added, (HB 14-1173), ch. 291, p. 1192, § 4, effective May 31. **L. 2017:** (3)(b) and (3)(d) amended and (3)(b.5) added, (SB 17-146), ch. 111, p. 399, § 1, effective April 6; (3)(c.5) amended, (SB 17-242), ch. 263, p. 1286, § 87, effective May 25. **L. 2018:** (3)(b) amended and (3.6) and (8) added, (SB 18-022), ch. 221, p. 1405, § 6, effective May 21.

Editor's note: This section is similar to former § 12-22-705 as it existed prior to 2012.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-42.5-405. Prescription drug monitoring fund - creation - gifts, grants, and donations - fee. (1) The board may seek and accept funds from any public or private entity for the purposes of implementing and maintaining the program. The board shall transmit any funds it receives to the state treasurer, who shall credit the same to the prescription drug monitoring fund, which fund is hereby created. The moneys in the fund are subject to annual appropriation by the general assembly for the sole purpose of implementing and maintaining the program. The moneys in the fund must not be transferred to or revert to the general fund at the end of any fiscal year.

(2) After implementing the program, the board shall seek gifts, grants, and donations on an annual basis for the purpose of maintaining the program. The board shall report annually to the health and human services committee of the senate and the health and environment committee of the house of representatives, or any successor committees, regarding the gifts, grants, and donations requested, of whom they were requested, and the amounts received.

(3) If, based upon the appropriations for the direct and indirect costs of the program, there are insufficient funds to maintain the program, the division may collect an annual fee of no more than seventeen dollars and fifty cents for the fiscal years 2011-12 and 2012-13, twenty dollars for the fiscal years 2013-14 and 2014-15, and twenty-five dollars for each fiscal year thereafter, from an individual who holds a license from the division that authorizes him or her to prescribe a controlled substance, as defined in section 18-18-102 (5), C.R.S. The division shall set the fee pursuant to section 24-34-105, C.R.S., and shall collect the fee in conjunction with the license renewal fees collected pursuant to section 24-34-105, C.R.S. Moneys collected pursuant to this subsection (3) are credited to the prescription drug monitoring fund created in subsection (1) of this section.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1593, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-706 as it existed prior to 2012.

12-42.5-406. Violations - penalties. A person who knowingly releases, obtains, or attempts to obtain information from the program in violation of this part 4 shall be punished by a civil fine of not less than one thousand dollars and not more than ten thousand dollars for each violation. Fines paid shall be deposited in the general fund.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1593, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-707 as it existed prior to 2012.

12-42.5-407. Prescription drug outlets - prescribers - responsibilities - liability. (1) A prescription drug outlet shall submit information in the manner required by the board.

(2) A practitioner who has, in good faith, written a prescription for a controlled substance to a patient is not liable for information submitted to the program. A practitioner or prescription drug outlet who has, in good faith, submitted the required information to the program is not liable for participation in the program.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1593, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-708 as it existed prior to 2012.

12-42.5-408. Exemption - waiver. (1) A hospital licensed or certified pursuant to section 25-1.5-103, C.R.S., a prescription drug outlet located within the hospital that is dispensing a controlled substance for a chart order or dispensing less than or equal to a twenty-four-hour supply of a controlled substance, and emergency medical services personnel certified pursuant to section 25-3.5-203, C.R.S., are exempt from the reporting provisions of this part 4. A hospital prescription drug outlet licensed pursuant to section 12-42.5-112 shall comply with the provisions of this part 4 for controlled substances dispensed for outpatient care that have more than a twenty-four-hour supply.

(2) A prescription drug outlet that does not report controlled substance data to the program due to a lack of electronic automation of the outlet's business may apply to the board for a waiver from the reporting requirements.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1594, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-709 as it existed prior to 2012.

12-42.5-408.5. Examination and analysis of prescription drug monitoring program - recommendations to executive director. (1) The executive director of the department of regulatory agencies shall create a prescription drug monitoring program task force or consult with and request assistance from the Colorado team assembled by the governor's office to develop a strategic plan to reduce prescription drug misuse, or its successor group, in order to:

(a) Examine issues, opportunities, and weaknesses of the program, including how personal information is secured in the program and whether inclusion of personal identifying information in the program and access to that information is necessary; and

(b) Make recommendations to the executive director on ways to make the program a more effective tool for practitioners and pharmacists in order to reduce prescription drug misuse in this state.

(2) If the executive director convenes a task force or obtains assistance from the Colorado team, the applicable group shall submit annual reports to the executive director and the general assembly detailing its findings and recommendations. Notwithstanding section 24-1-136 (11), C.R.S., the requirement in this section to report to the general assembly continues indefinitely.

(3) If the executive director convenes a task force, the members of the task force serve on a voluntary basis and are not entitled to compensation or expense reimbursement.

Source: L. 2014: Entire section added, (HB 14-1283), ch. 239, p. 885, § 4, effective May 21. **L. 2017:** IP(1) and (1)(b) amended, (SB 17-242), ch. 263, p. 1286, § 88, effective May 25.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-42.5-409. Repeal of part. This part 4 is repealed, effective July 1, 2021. Prior to its repeal, the department of regulatory agencies shall review the functions of the board and the program under this part 4 as provided in section 24-34-104, C.R.S.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1594, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-710 as it existed prior to 2012.

PART 5

THERAPEUTIC INTERCHANGE AND
THERAPEUTICALLY EQUIVALENT SELECTIONS

12-42.5-501. Written guidelines and procedures for making therapeutic interchange and therapeutically equivalent selections. (1) If a nursing care facility or a long-term acute care hospital licensed under part 1 of article 3 of title 25, C.R.S., has a quality assessment and assurance committee that includes a pharmacist licensed under this article and is established in accordance with 42 CFR 483.75 (o), the quality assessment and assurance committee may establish a facility list with written guidelines and procedures for making therapeutic interchange and therapeutically equivalent selections from the list.

(2) If a nursing care facility or a long-term acute care hospital licensed under part 1 of article 3 of title 25, C.R.S., does not have a quality assessment and assurance committee that includes a pharmacist licensed under this article and is established in accordance with 42 CFR 483.75 (o), the facility may form such a committee to establish a facility list with written guidelines and procedures for making therapeutic interchange and therapeutically equivalent selections from the list.

Source: L. 2015: Entire part added, (SB 15-192), ch. 289, p. 1184, § 2, effective June 5.

12-42.5-502. Therapeutic interchange and therapeutically equivalent selections for nursing care facility or long-term acute care hospital patients - rules. (1) A pharmacy used by a nursing care facility or a long-term acute care hospital licensed under part 1 of article 3 of title 25, C.R.S., may make a therapeutic interchange or a therapeutically equivalent selection for a patient if, during the patient's stay at the facility, the selection has been approved for the patient:

(a) In accordance with written guidelines and procedures for making therapeutic interchange or therapeutically equivalent selections, as maintained in a current and readily available manner at the dispensing prescription drug outlet and as developed by a quality

assessment and assurance committee that includes a pharmacist licensed under this article and is formed by the facility in accordance with 42 CFR 483.75 (o); and

(b) By one of the following health care providers:

(I) A physician licensed under article 36 of this title;

(II) A physician assistant licensed under section 12-36-107.4, if the physician assistant is under the supervision of a licensed physician; or

(III) An advanced practice nurse prescriber licensed as a professional nurse under section 12-38-111, registered as an advanced practice nurse under section 12-38-111.5, and authorized to prescribe controlled substances or prescription drugs pursuant to section 12-38-111.6, if the advanced practice nurse prescriber has developed an articulated plan to maintain ongoing collaboration with physicians and other health care professionals.

(2) The board may adopt rules as necessary to implement this part 5.

Source: L. 2015: Entire part added, (SB 15-192), ch. 289, p. 1185, § 2, effective June 5.

PART 6

COLLABORATIVE PHARMACY PRACTICE

12-42.5-601. Definitions. As used in this part 6:

(1) (a) "Collaborative pharmacy practice agreement" means a written and signed agreement entered into voluntarily between one or more pharmacists licensed pursuant to this article and one or more physicians or advanced practice nurses licensed in this state, which statement grants authority to the pharmacist or pharmacists to provide evidence-based health care services to one or more patients pursuant to a specific treatment protocol delegated to a pharmacist or pharmacists by the physician or advanced practice nurse.

(b) A "collaborative pharmacy practice agreement" may also mean a statewide drug therapy protocol developed by the board, the Colorado medical board, and the state board of nursing in collaboration with the department of public health and environment for public health care services.

Source: L. 2016: Entire part added, (SB 16-135), ch. 239, p. 982, § 2, effective August 10.

12-42.5-602. Collaborative pharmacy practice agreements - pharmacist requirements. (1) A pharmacist may enter into a collaborative pharmacy practice agreement with one or more physicians if:

(a) The pharmacist holds a current license to practice in Colorado;

(b) The pharmacist is engaged in the practice of pharmacy;

(c) The pharmacist has earned a doctorate of pharmacy degree or completed at least five years of experience as a licensed pharmacist;

(d) The pharmacist carries adequate professional liability insurance as determined by the board;

(e) The pharmacist agrees to devote a portion of his or her practice to collaborative pharmacy practice; and

(f) There is a process in place for the physician or advanced practice nurse and the pharmacist to communicate and document changes to the patient's medical record.

(2) Unless a statewide protocol is in place, a pharmacist may not enter into a collaborative pharmacy practice agreement with a physician or advanced practice nurse if the physician or advanced practice nurse does not have an established relationship with the patient or patients who will be served by the pharmacist under the collaborative pharmacy practice agreement.

(3) For a pharmacist to provide health care services under a statewide protocol, a process must be in place for the pharmacist to communicate with a patient's primary care provider and document changes to the patient's medical record. If the patient does not have a primary care provider, or is unable to provide contact information for his or her primary care provider, the pharmacist shall provide the patient with a written record of the drugs or devices furnished and advise the patient to consult an appropriate health care professional of the patient's choice.

(4) A collaborative practice agreement between a physician and a pharmacist, as permitted by this article, does not change the employment status of any party to the agreement, does not create an employer-employee relationship under any circumstance, and may not be used to confer upon or deny to any person the status of a public employee as described in the "Colorado Governmental Immunity Act", created in article 10 of title 24, C.R.S.

(5) A pharmacist or pharmacy shall not employ a physician or advanced practice nurse for the sole purpose of forming a collaborative practice agreement.

Source: L. 2016: Entire part added, (SB 16-135), ch. 239, p. 982, § 2, effective August 10.

12-42.5-603. Rules. The board, in conjunction with the Colorado medical board created in section 12-36-103, and the state board of nursing created in section 12-38-104 shall promulgate rules to implement this section. The rules must include the health care services and any statewide protocols that are authorized to be part of the collaborative pharmacy practice agreements.

Source: L. 2016: Entire part added, (SB 16-135), ch. 239, p. 983, § 2, effective August 10.

ARTICLE 43

Mental Health

Editor's note: This article was numbered as article 1 of chapter 108, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1988, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1988, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Law reviews: For article, "Nailing Jello to the Wall: Colorado Regulates Psychotherapists", see 19 Colo. Law. 71 (1990); for article, "Litigating Disputes Involving the Medical Marijuana Industry", see 41 Colo. Law. 103 (Aug. 2012).

PART 1

LEGISLATIVE DECLARATION

12-43-101. Legislative declaration. The general assembly hereby finds and determines that, in order to safeguard the public health, safety, and welfare of the people of this state and in order to protect the people of this state against the unauthorized, unqualified, and improper application of psychology, social work, marriage and family therapy, professional counseling, psychotherapy, and addiction counseling, it is necessary that the proper regulatory authorities be established and adequately provided for. The general assembly therefore declares that there shall be established a state board of psychologist examiners, a state board of social work examiners, a state board of marriage and family therapist examiners, a state board of licensed professional counselor examiners, a state board of registered psychotherapists, and a state board of addiction counselor examiners with the authority to license, register, or certify, and take disciplinary actions or bring injunctive actions, or both, concerning licensed psychologists and psychologist candidates, licensed social workers, licensed marriage and family therapists and marriage and family therapist candidates, licensed professional counselors and licensed professional counselor candidates, registered psychotherapists, and licensed and certified addiction counselors, respectively, and mental health professionals who have been issued a provisional license pursuant to this article.

Source: L. 88: Entire article R&RE, p. 535, § 1, effective July 1. **L. 98:** Entire section amended, p. 1107, § 3, effective July 1. **L. 2005:** Entire section amended, p. 126, § 1, effective August 8. **L. 2008:** Entire section amended, p. 416, § 2, effective August 5. **L. 2011:** Entire section amended, (SB 11-187), ch. 285, p. 1292, § 17, effective July 1.

PART 2

GENERAL PROVISIONS

Editor's note: Sections 12-43-221 to 12-43-229 were added with relocations in 1998 containing provisions of some sections formerly located in part 7 of this article. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

12-43-201. Definitions. As used in this article 43, unless the context otherwise requires:

(1) "Board" includes the state board of psychologist examiners, the state board of social work examiners, the state board of licensed professional counselor examiners, the state board of marriage and family therapist examiners, the state board of registered psychotherapists, and the state board of addiction counselor examiners.

(1.3) "Certificate holder" means an addiction counselor certified pursuant to this article.

(1.5) "Certified addiction counselor" means a person who is an addiction counselor certified pursuant to this article.

(1.6) "Dementia diseases and related disabilities" has the same meaning set forth in section 25-1-502 (2.5).

(1.7) "Director" means the director of the division of professions and occupations in the department of regulatory agencies.

(1.8) "Division" means the division of professions and occupations in the department of regulatory agencies.

(2) (Deleted by amendment, L. 2000, p. 1841, § 17, effective August 2, 2000.)

(3) (Deleted by amendment, L. 2011, (SB 11-187), ch. 285, p. 1278, § 7, effective July 1, 2011.)

(3.5) "Licensed addiction counselor" means a person who is an addiction counselor licensed pursuant to this article.

(4) (Deleted by amendment, L. 98, p. 1107, § 4, effective July 1, 1998.)

(5) "Licensed professional counselor" means a person who is a professional counselor licensed pursuant to this article.

(5.5) "Licensed social worker" means a person who:

(a) Is a licensed social worker or licensed clinical social worker; and

(b) Is licensed pursuant to this article.

(6) "Licensee" means a psychologist, social worker, clinical social worker, marriage and family therapist, licensed professional counselor, or addiction counselor licensed pursuant to this article.

(7) "Marriage and family therapist" means a person who is a marriage and family therapist licensed pursuant to this article.

(7.5) "Professional relationship" means an interaction that is deliberately planned or directed, or both, by the licensee, registrant, or certificate holder toward obtaining specific objectives.

(7.7) (a) "Provisional license" means a license or certification issued pursuant to section 12-43-206.5.

(b) (Deleted by amendment, L. 2011, (SB 11-187), ch. 285, p. 1278, § 7, effective July 1, 2011.)

(7.8) (a) "Provisional licensee" means a person who holds a provisional license pursuant to section 12-43-206.5.

(b) (Deleted by amendment, L. 2011, (SB 11-187), ch. 285, p. 1278, § 7, effective July 1, 2011.)

(8) "Psychologist" means a person who is a psychologist licensed pursuant to this article.

(9) (a) "Psychotherapy" means the treatment, diagnosis, testing, assessment, or counseling in a professional relationship to assist individuals or groups to alleviate behavioral and mental health disorders, understand unconscious or conscious motivation, resolve emotional, relationship, or attitudinal conflicts, or modify behaviors that interfere with effective emotional, social, or intellectual functioning. Psychotherapy follows a planned procedure of intervention that takes place on a regular basis, over a period of time, or in the cases of testing, assessment, and brief psychotherapy, psychotherapy can be a single intervention.

(b) It is the intent of the general assembly that the definition of psychotherapy as used in this article be interpreted in its narrowest sense to regulate only those persons who clearly fall within the definition set forth in this subsection (9).

(9.1) (a) "Registered psychotherapist" means a person:

(I) Whose primary practice is psychotherapy or who holds himself or herself out to the public as being able to practice psychotherapy for compensation; and

(II) Who is registered with the state board of registered psychotherapists pursuant to section 12-43-702.5 to practice psychotherapy in this state.

(b) "Registered psychotherapist" also includes a person who:

(I) Is a licensed school psychologist licensed pursuant to section 22-60.5-210 (1)(b), C.R.S.;

(II) Is practicing outside of a school setting; and

(III) Is registered with the state board of registered psychotherapists pursuant to section 12-43-702.5.

(9.3) "Registrant" means a psychologist candidate, marriage and family therapist candidate, or licensed professional counselor candidate registered pursuant to section 12-43-304 (7), 12-43-504 (5), or 12-43-603 (5), respectively, or a registered psychotherapist.

(9.5) to (10) (Deleted by amendment, L. 2011, (SB 11-187), ch. 285, p. 1278, § 7, effective July 1, 2011.)

Source: L. 88: Entire article R&RE, p. 536, § 1, effective July 1. **L. 89:** (10) amended, p. 696, § 1, effective April 15. **L. 92:** (7.5) added and (9) amended, p. 2033, § 1, effective July 1. **L. 98:** (1), (4), (5), (6), (7), (8), and (10) amended and (5.5), (9.3), and (9.5) added, p. 1107, § 4, effective July 1. **L. 2000:** (2) and (10) amended and (9.7) added, p. 1841, § 17, effective August 2. **L. 2005:** (5.5)(a) and (9.3) amended, p. 126, § 2, effective August 8. **L. 2006:** (7.7) and (7.8) added, p. 1204, § 5, effective May 26. **L. 2008:** (1.5), (1.7), and (3.5) added and (6) amended, p. 416, § 3, effective August 5. **L. 2011:** IP, (1), (3), (6), (7.5), (7.7), (7.8)(b), (9), (9.3), (9.5), (9.7), and (10) amended and (1.3), (1.8), and (9.1) added, (SB 11-187), ch. 285, p. 1278, § 7, effective July 1. **L. 2017:** IP and (9)(a) amended, (SB 17-242), ch. 263, p. 1286, § 89, effective May 25. **L. 2018:** (1.6) added, (HB 18-1091), ch. 74, p. 645, § 12, effective August 8.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-43-202. Practice outside of or beyond professional training, experience, or competence - general scope of practice for licensure, registration, or certification. (1) Notwithstanding any other provision of this article, no licensee, registrant, or certificate holder is authorized to practice outside of or beyond his or her area of training, experience, or competence.

(2) The practice of psychotherapy is one area of practice for mental health professionals licensed, certified, or registered pursuant to this article but may not be the only or primary practice area of such professionals, other than persons registered as psychotherapists pursuant to part 7 of this article. The requirements for licensure, registration, or certification as a mental health professional pursuant to this article are contained in sections 12-43-303, 12-43-403, 12-43-503, 12-43-602.5, and 12-43-803, which define the practice of psychology, social work,

marriage and family therapy, licensed professional counseling, and addiction counseling, respectively.

Source: L. 88: Entire article R&RE, p. 536, § 1, effective July 1. **L. 98:** Entire section amended, p. 1108, § 5, effective July 1. **L. 2008:** Entire section amended, p. 417, § 4, effective August 5. **L. 2011:** Entire section amended, (SB 11-187), ch. 285, p. 1292, § 18, effective July 1.

12-43-203. Boards - meetings - duties - powers - removal of members - immunity. (1) In addition to all other powers and duties conferred or imposed upon each board by this article or by any other law, each board shall have the powers specified in this section.

(2) (a) (I) Each board shall annually hold a meeting and elect from its membership a chairperson and vice-chairperson. Each board shall meet at such times as it deems necessary or advisable or as deemed necessary and advisable by the chairperson or a majority of its members. Each board may conduct meetings by electronic means. Each board shall give reasonable notice of its meetings in the manner prescribed by law. A majority of each board constitutes a quorum at any meeting or hearing.

(II) All meetings are open to the public, except when:

(A) A board, or an administrative law judge acting on behalf of a board, specifically determines that the harm to a complainant or other recipient of services to keep such proceedings or related documents open to the public outweighs the public interest in observing the proceedings; or

(B) The licensee, registrant, or certificate holder is participating in good faith in a program approved by the board designed to end a substance use disorder and the licensee, registrant, or certificate holder has not violated the board's order regarding the person's participation in the treatment program.

(III) If the board determines that it is in the best interest of a complainant or other recipient of services to keep proceedings or related documents closed to the public, the final action of the board must be open to the public without disclosing the name of the client or other recipient. In all open meetings, the board shall take reasonable steps to keep the names of the recipients of services confidential.

(b) The proceedings of each board shall be conducted pursuant to article 4 of title 24, C.R.S.

(3) Each board is authorized to:

(a) Adopt, and from time to time revise, such rules and regulations as may be necessary to carry out its powers and duties;

(b) Adopt an examination;

(c) Examine for, deny, withhold, or approve the license of an applicant, and renew licenses pursuant to section 12-43-212;

(d) Appoint advisory committees to assist in the performance of its duties;

(e) Conduct hearings as necessary to carry out its powers and duties.

(3.5) In carrying out its duties related to the approval of applications for licensure, registration, or certification pursuant to this section, section 12-43-212, and this article, each board shall delegate the function of the preliminary review and approval of applications to the staff of the board, with approval of an application ratified by action of the board. Each board, in

its sole discretion, may individually review any application requiring board consideration prior to the approval of the application pursuant to section 12-43-212 and this article.

(4) Each board shall maintain current lists of the names of all licensees, registrants, and certificate holders and records of cases and decisions rendered by the board. In addition, each board shall keep an accurate record of the results of all examinations.

(5) Repealed.

(6) Publications of each board intended for circulation in quantity outside the board shall be issued in accordance with the provisions of section 24-1-136, C.R.S.

(7) (a) A member of a board or of a professional review committee authorized by a board, a member of staff to a board or committee, a person acting as a witness or consultant to a board or committee, a witness testifying in a proceeding authorized under this article, and a person who lodges a complaint pursuant to this article is immune from liability in a civil action brought against him or her for acts occurring while acting in his or her capacity as a board or committee member, staff, consultant, or witness, respectively, if the individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. A person participating in good faith in lodging a complaint or participating in an investigative or administrative proceeding pursuant to this article is immune from any civil or criminal liability that may result from such participation.

(b) A person participating in good faith in the making of a complaint or report or participating in any investigative or administrative proceeding before the board pursuant to this article is immune from any civil or criminal liability that might result by reason of the action.

(8) (Deleted by amendment, L. 98, p. 1108, § 6, effective July 1, 1998.)

(9) Any board member having an immediate personal, private, or financial interest in any matter pending before the board shall disclose the fact and shall not vote upon such matter.

(10) The governor may remove any board member for misconduct, incompetence, or neglect of duty. Actions constituting neglect of duty shall include, but not be limited to, the failure of board members to attend three consecutive meetings or at least three-quarters of the board's meetings in any one calendar year.

(11) (a) (I) Subject to the requirements of subparagraph (II) of this paragraph (a), a professional review committee may be established pursuant to this subsection (11) to investigate the quality of care being given by a person licensed, registered, or certified pursuant to this article. If a professional review committee is established, it must include in its membership at least three persons licensed, registered, or certified under this article, and such persons must be licensees, registrants, or certificate holders in the same profession as the licensee, registrant, or certificate holder who is the subject of a professional review proceeding.

(II) A professional review committee may be authorized to act only by a society or an association of persons licensed, registered, or certified pursuant to this article whose membership includes not less than one-third of the persons licensed, registered, or certified pursuant to this article residing in this state if the licensee, registrant, or certificate holder whose services are the subject of review is a member of the society or association.

(b) (Deleted by amendment, L. 2004, p. 1849, § 101, effective August 4, 2004.)

(12) The boards shall develop rules or policies to provide guidance to persons licensed, registered, or certified pursuant to this article to assist in determining whether a relationship with

a client or potential client is likely to impair his or her professional judgment or increase the risk of client exploitation in violation of section 12-43-222 (1)(i).

Source: L. 88: Entire article R&RE, p. 537, § 1, effective July 1. **L. 92:** (2)(a) amended and (3.5) added, p. 2034, § 2, effective July 1. **L. 96:** (5) repealed, p. 1226, § 34, effective August 7. **L. 98:** (2)(a), (3.5), (4), (8), and (11) amended, p. 1108, § 6, effective July 1. **L. 2004:** (2)(a) amended, p. 909, § 1, effective July 1; (7)(a) and (11)(b) amended, p. 1849, § 101, effective August 4. **L. 2008:** (4), (7), and (11)(a) amended, p. 417, § 5, effective August 5. **L. 2011:** (2)(a), (3.5), (4), (7), and (11)(a) amended and (12) added, (SB 11- 187), ch. 285, p. 1293, § 19, effective July 1. **L. 2017:** (2)(a)(II)(B) amended, (SB 17-242), ch. 263, p. 1287, § 90, effective May 25.

Cross references: (1) For the legislative declaration contained in the 1996 act repealing subsection (5), see section 1 of chapter 237, Session Laws of Colorado 1996.

(2) For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-43-203.5. Limitation on authority. The authority granted each board under the provisions of this article does not authorize a board to arbitrate or adjudicate fee disputes between licensees, registrants, or certificate holders, or between a licensee, registrant, or certificate holder and any other party.

Source: L. 89: Entire section added, p. 675, § 22, effective July 1. **L. 2011:** Entire section amended, (SB 11-187), ch. 285, p. 1295, § 20, effective July 1.

Cross references: For the legislative declaration contained in the 1989 act enacting this section, see section 1 of chapter 111, Session Laws of Colorado 1989.

12-43-204. Fees - renewal. (1) All fees collected pursuant to this article shall be determined, collected, and appropriated in the same manner as set forth in section 24-34-105, C.R.S.

(2) Each board may charge fees established pursuant to section 24-34-105, C.R.S., to all applicants for licensure, registration, or certification under this article.

(3) Every person licensed, registered, or certified to practice psychology, social work, marriage and family therapy, professional counseling, psychotherapy, or addiction counseling within the state shall renew his or her license, registration, or certification pursuant to a schedule established by the director, and licenses, registrations, and certifications shall be renewed pursuant to section 24-34-102 (8), C.R.S. The director may establish renewal fees and delinquency fees pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license, registration, or certification pursuant to the schedule established by the director, the license, registration, or certification expires. Any person whose license, registration, or certification expires is subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

(3.5) The director shall coordinate fee-setting pursuant to this section so that all licensees, registrants, and certificate holders pay fees as required by this section and section 12-43-702.5 (1).

(4) (Deleted by amendment, L. 2004, p. 1850, § 102, effective August 4, 2004.)

Source: L. 88: Entire article R&RE, p. 538, § 1, effective July 1. **L. 92:** (3.5) added, p. 2034, § 3, effective July 1. **L. 98:** (3), (3.5), and (4) amended, p. 1110, § 7, effective July 1. **L. 2004:** (3.5) amended, p. 910, § 2, effective July 1; (3) and (4) amended, p. 1850, § 102, effective August 4. **L. 2008:** (3) and (3.5) amended, p. 418, § 6, effective August 5. **L. 2011:** (1) to (3) and (3.5) amended, (SB 11-187), ch. 285, p. 1295, § 21, effective July 1.

12-43-205. Records. (1) Each board shall keep a record of proceedings and a register of all applications for licenses, registrations, or certifications, which must include:

(a) The name and age of each applicant;

(b) The date of the application;

(c) The mailing address of the applicant;

(d) A summary of the educational and other qualifications of each applicant;

(e) Whether or not an examination was required and, if required, proof that the applicant passed the examination;

(f) Whether licensure, registration, or certification was granted;

(g) The date of the action of the board;

(h) Other information the board deems necessary or advisable in aid of the requirements of this section.

Source: L. 88: Entire article R&RE, p. 539, § 1, effective July 1. **L. 2008:** IP(1), (1)(g), and (1)(h) amended, p. 418, § 7, effective August 5. **L. 2011:** IP(1), (1)(a), (1)(c), and (1)(e) to (1)(h) amended, (SB 11-187), ch. 285, p. 1296, § 22, effective July 1.

12-43-206. Licensure by endorsement - rules. A board may issue a license by endorsement to engage in the practice of psychology, social work, marriage and family therapy, professional counseling, or addiction counseling to an applicant who has a license, registration, or certification in good standing as a psychologist, social worker, marriage and family therapist, licensed professional counselor, or addiction counselor under the laws of another jurisdiction if the applicant presents proof satisfactory to the board that, at the time of application for a Colorado license by endorsement, the applicant possesses credentials and qualifications that are substantially equivalent to the requirements of section 12-43-304, 12-43-404, 12-43-504, 12-43-603, or 12-43-804, whichever is applicable. Each board shall promulgate rules setting forth the manner in which the board will review credentials and qualifications of an applicant.

Source: L. 88: Entire article R&RE, p. 539, § 1, effective July 1. **L. 98:** Entire section amended, p. 1111, § 8, effective July 1. **L. 2008:** Entire section amended, p. 418, § 8, effective August 5. **L. 2011:** Entire section amended, (SB 11-187), ch. 285, p. 1296, § 23, effective July 1.

12-43-206.5. Provisional license - fees. (1) (a) The board may issue a provisional license to an applicant who has completed a post-graduate degree that meets the educational

requirements for licensure in section 12-43-304, 12-43-403, 12-43-504, 12-43-603, or 12-43-804, as applicable, and who is working in a residential child care facility as defined in section 26-6-102 (33), C.R.S., under the supervision of a licensee.

(b) A provisional license issued pursuant to paragraph (a) of this subsection (1) terminates at the earliest of:

(I) Thirty days after termination of the provisional licensee's employment with a qualifying residential child care facility, unless the provisional licensee obtains and submits to the board proof of employment with another residential child care facility; or

(II) Thirty days after termination of the provisional licensee's supervision by a licensee unless the provisional licensee obtains and submits to the board proof of supervision by another licensee.

(c) A provisional licensee shall notify the board of any change in supervision within thirty days after the change.

(2) Each board may charge an application fee to an applicant for a provisional license. All fees collected pursuant to this subsection (2) shall be transmitted to the state treasurer, who shall credit the same to the division of professions and occupations cash fund pursuant to section 24-34-105, C.R.S. An application for a provisional license must identify the name, contact information, and license number of the licensee providing supervision of the provisional licensure applicant.

(3) (Deleted by amendment, L. 2011, (SB 11-187), ch. 285, p. 1278, § 6, effective July 1, 2011.)

Source: L. 2006: Entire section added, p. 1205, § 6, effective May 26. **L. 2008:** (1) and (2) amended, p. 419, § 9, effective August 5. **L. 2011:** Entire section amended, (SB 11-187), ch. 285, p. 1278, § 6, effective July 1. **L. 2016:** (1)(a) amended, (SB 16-189), ch. 210, p. 758, § 20, effective June 6.

12-43-207. License - issuance. Each board shall issue a license, registration, or certification, as appropriate, when an applicant successfully qualifies for licensure, registration, or certification as provided in this article.

Source: L. 88: Entire article R&RE, p. 539, § 1, effective July 1. **L. 2011:** Entire section amended, (SB 11-187), ch. 285, p. 1296, § 24, effective July 1.

12-43-208. Drugs - medicine. Nothing in this article permits psychologists, social workers, marriage and family therapists, licensed professional counselors, psychotherapists, and addiction counselors licensed, registered, or certified under this article to administer or prescribe drugs or in any manner engage in the practice of medicine as defined by the laws of this state.

Source: L. 88: Entire article R&RE, p. 539, § 1, effective July 1. **L. 98:** Entire section amended, p. 1111, § 9, effective July 1. **L. 2008:** Entire section amended, p. 419, § 10, effective August 5. **L. 2011:** Entire section amended, (SB 11-187), ch. 285, p. 1296, § 25, effective July 1.

12-43-209. Collaborate with physician. In order to provide for the diagnosis and treatment of medical problems, a licensee, registrant, or certificate holder shall collaborate with a

physician licensed under the laws of this state, except when practicing pursuant to section 12-43-201 (9). A licensee, registrant, or certificate holder shall not diagnose, prescribe for, treat, or advise a client with reference to medical problems.

Source: L. 88: Entire article R&RE, p. 540, § 1, effective July 1. **L. 98:** Entire section amended, p. 1111, § 10, effective July 1. **L. 2008:** Entire section amended, p. 420, § 11, effective August 5. **L. 2011:** Entire section amended, (SB 11-187), ch. 285, p. 1297, § 26, effective July 1.

12-43-210. Division of professions and occupations to supervise. Each board shall be under the supervision and control of the division of professions and occupations of the department of regulatory agencies as created by section 24-34-102, C.R.S.

Source: L. 88: Entire article R&RE, p. 540, § 1, effective July 1.

12-43-211. Professional service corporations for the practice of psychology, social work, marriage and family therapy, professional counseling, and addiction counseling - definitions. (1) Licensees, registrants, or certificate holders may form professional service corporations for the practice of psychology, social work, marriage and family therapy, professional counseling, psychotherapy, or addiction counseling under the "Colorado Business Corporation Act", articles 101 to 117 of title 7, C.R.S., if the corporations are organized and operated in accordance with this section. The articles of incorporation of a professional service corporation formed pursuant to this section must contain provisions complying with the following requirements:

(a) The name of the corporation shall contain the words "professional company" or "professional corporation" or abbreviations thereof.

(b) The corporation must be organized by licensees, registrants, or certificate holders for the purpose of conducting the practice of psychology, social work, marriage and family therapy, professional counseling, psychotherapy, or addiction counseling by the respective licensees, registrants, or certificate holders of those practices. The corporation may be organized with any other person, and any person may own shares in such corporation, if the following conditions are met:

(I) The practice of psychology, as defined in section 12-43-303, by the professional service corporation is performed by or under the supervision of a licensed psychologist, and any psychologist member of the professional service corporation remains individually responsible for his or her professional acts and conduct as provided elsewhere in this article;

(II) (Deleted by amendment, L. 98, p. 1111, 11, effective July 1, 1998.)

(III) The practice of social work, as defined in section 12-43-403, by the professional service corporation is performed by a licensed social worker acting independently or under the supervision of a person licensed pursuant to this article or a licensed social worker. Any licensed social worker member of the professional service corporation remains individually responsible for his or her professional acts and conduct as provided elsewhere in this article.

(IV) The practice of marriage and family therapy, as defined in section 12-43-503, by the professional service corporation is performed by a licensed marriage and family therapist acting independently or under the supervision of a person licensed pursuant to this article or a licensed marriage and family therapist. Any licensed marriage and family therapist member of

the professional service corporation remains individually responsible for his or her professional acts and conduct as provided elsewhere in this article.

(V) The practice of licensed professional counseling, as defined in section 12-43-602.5, by the professional service corporation is performed by a licensed professional counselor acting independently or under the supervision of a person licensed pursuant to this article or a licensed professional counselor. Any licensed professional counselor member of the professional service corporation remains individually responsible for his or her professional acts and conduct as provided elsewhere in this article.

(VI) The practice of addiction counseling, as defined in section 12-43-803, by the professional service corporation is performed by a licensed addiction counselor acting independently or under the supervision of a person licensed pursuant to this article or a licensed addiction counselor. Any licensed addiction counselor member of the professional service corporation remains individually responsible for his or her professional acts and conduct as provided in this article; or

(VII) The practice of psychotherapy, as defined in section 12-43-201, by the professional service corporation is performed by a registered psychotherapist acting independently or under the supervision of a person licensed pursuant to this article or a registered psychotherapist. Any registered psychotherapist member of the professional service corporation remains individually responsible for his or her professional acts and conduct as provided in this article.

(c) The corporation may exercise the powers and privileges conferred upon corporations by the laws of Colorado only in furtherance of and subject to its corporate purpose.

(d) and (e) Repealed.

(f) Lay directors and officers shall not exercise any authority whatsoever over professional matters.

(g) The articles of incorporation must provide, and all shareholders of the corporation must agree, that either all shareholders of the corporation are jointly and severally liable for all acts, errors, and omissions of the employees of the corporation or that all shareholders of the corporation are jointly and severally liable for all acts, errors, and omissions of the employees of the corporation except during periods when the corporation maintains professional liability insurance that meets the following minimum standards:

(I) The insurance insures the corporation against liability imposed upon the corporation by law for damages resulting from any claim made against the corporation arising out of the performance of professional services for others by those officers and employees of the corporation who are licensed, registered, or certified to practice under this article or by those employees who provide professional services under supervision.

(II) The insurance insures the corporation against liability imposed upon it by law for damages arising out of the acts, errors, and omissions of all nonprofessional employees.

(III) The insurance is in an amount for each claim of at least one hundred thousand dollars multiplied by the number of persons licensed, registered, or certified to practice under this article who are employed by the corporation. The policy may provide for an aggregate maximum limit of liability per year for all claims of three hundred thousand dollars also multiplied by the number of licensees, registrants, or certificate holders employed by the corporation, but no corporation is required to carry insurance in excess of three hundred thousand dollars for each claim with an aggregate maximum limit of liability for all claims during the year of nine hundred thousand dollars.

(IV) The insurance policy may provide that it does not apply to: Any dishonest, fraudulent, criminal, or malicious act or omission of the insured corporation or any stockholder or employee of the corporation; or the conduct of any business enterprise, as distinguished from the practice of licensees, registrants, or certificate holders, in which the insured corporation under this section is not permitted to engage but that nevertheless may be owned by the insured corporation or in which the insured corporation may be a partner or that may be controlled, operated, or managed by the insured corporation in its own or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith, when not resulting from breach of professional duty of, bodily injury to, or sickness, disease, or death of any person or to injury to or destruction of any tangible property, including the loss of use of tangible property.

(V) The insurance policy may contain reasonable provisions with respect to policy periods, territory, claims, conditions, and other usual matters.

(2) The corporation shall not act or fail to act in a manner that would violate section 12-43-222 (1). Any violation of this section by the corporation is grounds for a board to discipline any licensee, registrant, or certificate holder who is a member of or is employed by the corporation pursuant to section 12-43-224.

(3) Nothing in this section diminishes or changes the obligation of each licensee, registrant, or certificate holder employed by the corporation to conduct his or her practice in a manner that does not violate section 12-43-222 (1). Any licensee, registrant, or certificate holder who, by act or omission, causes the corporation to act or fail to act in a way that violates section 12-43-222 (1) or this section is personally responsible for the act or omission and is subject to discipline by the board.

(4) A professional service corporation may adopt a pension, profit sharing (whether cash or deferred), health and accident, insurance, or welfare plan for all of its employees, including lay employees, if such plan does not require or result in the sharing of specific or identifiable fees with lay employees and if any payments made to lay employees, or into any such plan in behalf of lay employees, are based upon their compensation or length of service, or both, rather than the amount of fees or income received.

(5) Nothing in this section shall be deemed to modify the privileges regarding confidential communications specified in sections 12-43-218 and 13-90-107 (1)(g), C.R.S.

(6) Nothing in this article limits persons licensed, registered, or certified under this article from forming a corporation with persons licensed, registered, or certified under this article.

(7) As used in this section, unless the context otherwise requires:

(a) "Articles of incorporation" includes operating agreements of limited liability companies and partnership agreements of registered limited liability partnerships.

(b) "Corporation" includes a limited liability company organized under the "Colorado Limited Liability Company Act", article 80 of title 7, C.R.S., and a limited liability partnership registered under section 7-60-144 or 7-64-1002, C.R.S.

(c) "Director" and "officer" of a corporation includes a member and a manager of a limited liability company and a partner in a registered limited liability partnership.

(d) "Employees" includes employees, members, and managers of a limited liability company and employees and partners of a registered limited liability partnership.

(e) "Share" includes a member's rights in a limited liability company and a partner's rights in a registered limited liability partnership.

(f) "Shareholder" includes a member of a limited liability company and a partner in a registered limited liability partnership.

Source: L. 88: Entire article R&RE, p. 540, § 1, effective July 1. **L. 89:** (1)(b) R&RE, (1)(d) and (1)(e) repealed, and (1)(f) amended, pp. 697, 700, 698, §§ 1, 7, 2, effective June 7. **L. 93:** IP(1) amended, p. 863, § 36, effective July 1, 1994. **L. 95:** (7) added, p. 815, § 36, effective May 24. **L. 97:** (7)(b) amended, p. 919, § 16, effective January 1, 1998. **L. 98:** IP(1), IP(1)(b), (1)(b)(II), (1)(b)(III), (2), and (3) amended, p. 1111, § 11, effective July 1. **L. 2008:** IP(1) and IP(1)(b) amended and (1)(b)(VI) added, p. 420, § 12, effective August 5; (1)(g)(I), (1)(g)(III), (1)(g)(IV), and (6) amended, p. 1881, § 16, effective August 5. **L. 2011:** IP(1), (1)(b), (1)(g), (2), (3), and (6) amended, (SB 11-187), ch. 285, p. 1297, § 27, effective July 1. **L. 2013:** (1)(b)(V) and (1)(b)(VI) amended, (HB 13-1300), ch. 316, p. 1669, § 24, effective August 7.

12-43-212. Denial of license, registration, or certification - reinstatement. (1) Each board is empowered to determine whether an applicant for licensure, registration, or certification, or for registry as a candidate for licensure, registration, or certification, possesses the qualifications required by this article.

(2) If a board determines that an applicant does not possess the applicable qualifications required by this article or, for a licensed clinical social worker, licensed social worker, licensed marriage and family therapist, licensed professional counselor, licensed addiction counselor, or level II or III certified addiction counselor, is unable to demonstrate his or her continued professional competence as required by section 12-43-411, 12-43-506, 12-43-605, or 12-43-805, respectively, the board may deny the applicant a license, registration, or certification or deny the reinstatement of a license, registration, or certification. If the application is denied, the board shall provide the applicant with a statement in writing setting forth the basis of the board's determination that the applicant does not possess the qualifications or professional competence required by this article. The applicant may request a hearing on the determination as provided in section 24-4-104 (9), C.R.S.

(3) If a board has any reason to believe that or receives any information that an applicant has committed any of the acts set forth in section 12-43-222 (1) as grounds for discipline, the board may deny a license, registration, or certification to the applicant if the board determines that there is a basis for the denial. The order of the board to grant or deny a license, registration, or certification constitutes final agency action.

(4) A board, on its own motion or upon application, at any time after the refusal to grant a license, registration, or certification, may reconsider its prior action and grant a license, registration, or certification. The board has sole discretion to determine whether to take further action on the application after it refuses to grant a license, registration, or certification.

Source: L. 88: Entire article R&RE, p. 542, § 1, effective July 1. **L. 98:** (3) amended, p. 1112, § 12, effective July 1. **L. 2009:** (2) amended, (HB 09-1086), ch. 304, p. 1641, § 1, effective August 5. **L. 2011:** Entire section amended, (SB 11-187), ch. 285, p. 1300, § 28, effective July 1.

12-43-213. Legislative intent - schools and colleges - examinations. It is the intent of the general assembly that the definition relating to full-time courses of study and institutions of higher education for graduation of persons who are qualified to take examinations for licensure under this article be liberally construed by each board under the board's rule-making powers to ensure the right to take the examinations. It is not the intent that technical barriers be used to deny the ability to take an examination.

Source: L. 88: Entire article R&RE, p. 542, § 1, effective July 1. **L. 2008:** Entire section amended, p. 420, § 13, effective August 5. **L. 2011:** Entire section amended, (SB 11-187), ch. 285, p. 1300, § 29, effective July 1.

12-43-214. Mandatory disclosure of information to clients. (1) Except as otherwise provided in subsection (4) of this section, every licensee, registrant, or certificate holder shall provide the following information in writing to each client during the initial client contact:

(a) The name, business address, and business phone number of the licensee, registrant, or certificate holder;

(b) (I) An explanation of the levels of regulation applicable to mental health professionals under this article and the differences between licensure, registration, and certification, including the educational, experience, and training requirements applicable to the particular level of regulation; and

(II) A listing of any degrees, credentials, certifications, registrations, and licenses held or completed by the licensee, registrant, or certificate holder, including the education, experience, and training the licensee, registrant, or certificate holder was required to satisfy in order to complete the degree, credential, certification, registration, or license;

(c) A statement indicating that the practice of licensed or registered persons in the field of psychotherapy is regulated by the division, and an address and telephone number for the board that regulates the licensee, registrant, or certificate holder;

(d) A statement indicating that:

(I) A client is entitled to receive information about the methods of therapy, the techniques used, the duration of therapy, if known, and the fee structure;

(II) The client may seek a second opinion from another therapist or may terminate therapy at any time;

(III) In a professional relationship, sexual intimacy is never appropriate and should be reported to the board that licenses, registers, or certifies the licensee, registrant, or certificate holder;

(IV) The information provided by the client during therapy sessions is legally confidential in the case of licensed marriage and family therapists, social workers, professional counselors, and psychologists; licensed or certified addiction counselors; and registered psychotherapists, except as provided in section 12-43-218 and except for certain legal exceptions that will be identified by the licensee, registrant, or certificate holder should any such situation arise during therapy; and

(e) If the mental health professional is a registered psychotherapist, a statement indicating that a registered psychotherapist is a psychotherapist listed in the state's database and is authorized by law to practice psychotherapy in Colorado but is not licensed by the state and is

not required to satisfy any standardized educational or testing requirements to obtain a registration from the state.

(2) If the client is a child who is consenting to mental health services pursuant to section 27-65-103, C.R.S., disclosure shall be made to the child. If the client is a child whose parent or legal guardian is consenting to mental health services, disclosure shall be made to the parent or legal guardian.

(3) In residential, institutional, or other settings where psychotherapy may be provided by multiple providers, disclosure shall be made by the primary therapist. The institution shall also provide a statement to the patient containing the information in paragraphs (c) and (d) of subsection (1) of this section and a statement that the patient is entitled to the information listed in paragraphs (a) and (b) of subsection (1) of this section concerning any psychotherapist in the employ of the institution who is providing psychotherapy services to the patient.

(4) The disclosure of information required by subsection (1) of this section is not required when psychotherapy is being administered in any of the following circumstances:

(a) In an emergency;

(b) Pursuant to a court order or involuntary procedures pursuant to sections 27-65-105 to 27-65-109, C.R.S.;

(c) The sole purpose of the professional relationship is for forensic evaluation;

(d) The client is in the physical custody of either the department of corrections or the department of human services and such department has developed an alternative program to provide similar information to such client and such program has been established through rule or regulation;

(e) The client is incapable of understanding such disclosure and has no guardian to whom disclosure can be made;

(f) By a social worker practicing in a hospital that is licensed or certified under section 25-1.5-103 (1)(a)(I) or (1)(a)(II), C.R.S.;

(g) By a person licensed or certified pursuant to this article, or by a registered psychotherapist practicing in a hospital that is licensed or certified under section 25-1.5-103 (1)(a)(I) or (1)(a)(II), C.R.S.

(5) If the client has no written language or is unable to read, an oral explanation shall accompany the written copy.

(6) Unless the client, parent, or guardian is unable to write, or refuses or objects, the client, parent, or guardian shall sign the disclosure form required by this section not later than the second visit with the psychotherapist.

Source: L. 88: Entire article R&RE, p. 543, § 1, effective July 1. **L. 89:** IP(1) amended and (4) and (5) added, p. 698, § 3, effective June 7. **L. 92:** (6) added, p. 2035, § 4, effective July 1. **L. 94:** (4)(d) amended, p. 2638, § 82, effective July 1. **L. 95:** (4)(f) added, p. 107, § 1, effective July 1. **L. 98:** IP(1), (1)(a), (1)(d)(III), and (1)(d)(IV) amended, p. 1113, § 13, effective July 1. **L. 2003:** (4)(f) amended, p. 703, § 20, effective July 1. **L. 2004:** (4)(g) added, p. 910, § 3, effective July 1. **L. 2008:** IP(1), (1)(a), (1)(b), (1)(d)(III), and (1)(d)(IV) amended, p. 420, § 14, effective August 5; (1)(c) amended, p. 1883, § 17, effective August 5. **L. 2010:** (2) and (4)(b) amended, (SB 10-175), ch. 188, p. 779, § 11, effective April 29. **L. 2011:** IP(1), (1)(a) to (1)(c), (1)(d)(III), (1)(d)(IV), (4)(d), and (4)(g) amended and (1)(e) added, (SB 11-187), ch. 285, p. 1301, § 30, effective July 1. **L. 2013:** IP(1) amended, (HB 13-1104), ch. 77, p. 246, § 1, effective

August 7. **L. 2016:** (1)(b)(II) amended, (HB 16-1103), ch. 98, p. 281, § 6, effective January 1, 2017.

12-43-215. Scope of article - exemptions. (1) Any person engaged in the practice of religious ministry shall not be required to comply with the provisions of this article; except that such person shall not hold himself or herself out to the public by any title incorporating the terms "psychologist", "social worker", "licensed social worker", "LSW", "licensed clinical social worker", "clinical social worker", "LCSW", "licensed marriage and family therapist", "LMFT", "licensed professional counselor", "LPC", "addiction counselor", "licensed addiction counselor", "LAC", "certified addiction counselor", or "CAC" unless that person has been licensed or certified pursuant to this article.

(2) The provisions of this article shall not apply to the practice of employment or rehabilitation counseling as performed in the private and public sectors; except that the provisions of this article shall apply to employment or rehabilitation counselors practicing psychotherapy in the field of mental health.

(3) The provisions of this article 43 do not apply to employees of the state department of human services, employees of county departments of human or social services, or personnel under the direct supervision and control of the state department of human services or any county department of human or social services for work undertaken as part of their employment.

(4) The provisions of this article shall not apply to persons who are licensed pursuant to section 22-60.5-210, C.R.S., and who are not licensed under this article for work undertaken as part of their employment by, or contractual agreement with, the public schools.

(5) Nothing in this section limits the applicability of section 18-3-405.5, C.R.S., which applies to any person while he or she is practicing psychotherapy as defined in this article.

(6) The provisions of this article shall not apply to mediators resolving judicial disputes pursuant to part 3 of article 22 of title 13, C.R.S.

(7) (Deleted by amendment, L. 2011, (SB 11-187), ch. 285, p. 1302, § 31, effective July 1, 2011.)

(8) The provisions of section 12-43-702.5 shall not apply to employees of community mental health centers or clinics as those centers or clinics are defined by section 27-66-101, C.R.S., but such persons practicing outside the scope of employment as employees of a facility defined by section 27-66-101, C.R.S., shall be subject to the provisions of section 12-43-702.5.

(9) The provisions of this article shall not apply to a person who resides in another state and who is currently licensed or certified as a psychologist, marriage and family therapist, clinical social worker, professional counselor, or addiction counselor in that state to the extent that the licensed or certified person performs activities or services in this state, if the activities and services are:

(a) Performed within the scope of the person's license or certification;

(b) Do not exceed twenty days per year in this state;

(c) Are not otherwise in violation of this article; and

(d) Disclosed to the public that the person is not licensed or certified in this state.

(10) The provisions of this article do not apply to a professional coach, including a life coach, executive coach, personal coach, or business coach, who has had coach-specific training and who serves clients exclusively as a coach, as long as the professional coach does not engage

in the practice of psychology, social work, marriage and family therapy, licensed professional counseling, psychotherapy, or addiction counseling, as those practices are defined in this article.

Source: L. 88: Entire article R&RE, p. 543, § 1, effective July 1. **L. 89:** (3) to (5) added, p. 699, § 4, effective June 7. **L. 92:** (6), (7), and (8) added, p. 2035, § 5, effective July 1. **L. 94:** (3) amended, p. 2639, § 83, effective July 1. **L. 95:** (8) amended, p. 1093, § 8, effective May 31. **L. 98:** (1) and (8) amended, p. 1113, § 14, effective July 1. **L. 2000:** (4) amended, p. 1842, § 18, effective August 2. **L. 2003:** (9) added, p. 1321, § 1, effective April 22. **L. 2004:** (1) and (7) amended and (10) added, p. 910, § 4, effective July 1. **L. 2008:** (1) amended, p. 421, § 15, effective August 5. **L. 2010:** (8) amended, (SB 10-175), ch. 188, p. 779, § 12, effective April 29. **L. 2011:** (5), (7), and (10) amended, (SB 11-187), ch. 285, p. 1302, § 31, effective July 1. **L. 2018:** (3) amended, (SB 18-092), ch. 38, p. 397, § 4, effective August 8.

Cross references: For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018.

12-43-216. Title use restrictions. A psychologist, social worker, marriage and family therapist, professional counselor, or addiction counselor may only use the title for which he or she is licensed, certified, or registered under this article. Except as provided in section 12-43-306 (3), no other person shall hold himself or herself out to the public by any title or description of services incorporating the terms "licensed clinical social worker", "clinical social worker", "LCSW", "licensed social worker", "LSW", "marriage and family therapist", "LMFT", "professional counselor", "LPC", "psychologist", "psychologist candidate", "psychology", "psychological", "addiction counselor", "licensed addiction counselor", "LAC", "certified addiction counselor", or "CAC", and no other person shall state or imply that he or she is licensed to practice social work, marriage and family therapy, professional counseling, psychology, or addiction counseling. Nothing in this section shall prohibit a person from stating or using the educational degrees that such person has obtained.

Source: L. 88: Entire article R&RE, p. 544, § 1, effective July 1. **L. 98:** Entire section amended, p. 1114, § 15, effective July 1. **L. 2005:** Entire section amended, p. 127, § 3, effective August 8. **L. 2008:** Entire section amended, p. 421, § 16, effective August 5.

12-43-217. Judicial review of final board actions and orders. Final actions and orders of a board appropriate for judicial review may be judicially reviewed in the court of appeals, and judicial proceedings for the enforcement of a board order may be instituted in accordance with section 24-4-106 (11), C.R.S.

Source: L. 88: Entire article R&RE, p. 544, § 1, effective July 1.

12-43-218. Disclosure of confidential communications - definitions. (1) A licensee, registrant, or certificate holder shall not disclose, without the consent of the client, any confidential communications made by the client, or advice given to the client, in the course of professional employment. A licensee's, registrant's, or certificate holder's employee or associate, whether clerical or professional, shall not disclose any knowledge of said communications

acquired in such capacity. Any person who has participated in any therapy conducted under the supervision of a licensee, registrant, or certificate holder, including group therapy sessions, shall not disclose any knowledge gained during the course of such therapy without the consent of the person to whom the knowledge relates.

(2) Subsection (1) of this section does not apply when:

(a) A client or the heirs, executors, or administrators of a client file suit or a complaint against a licensee, registrant, or certificate holder on any cause of action arising out of or connected with the care or treatment of the client by the licensee, registrant, or certificate holder;

(b) A licensee, registrant, or certificate holder was in consultation with a physician, registered professional nurse, licensee, registrant, or certificate holder against whom a suit or complaint was filed based on the case out of which said suit or complaint arises;

(c) A review of services of a licensee, registrant, or certificate holder is conducted by any of the following:

(I) A board or a person or group authorized by the board to make an investigation on its behalf;

(II) The governing board of a hospital licensed pursuant to part 1 of article 3 of title 25, C.R.S., where the licensee, registrant, or certificate holder practices or the medical staff of such hospital if the medical staff operates pursuant to written bylaws approved by the governing board of the hospital; or

(III) A professional review committee established pursuant to section 12-43-203 (11) if said person has signed a release authorizing such review;

(d) (I) A client, regardless of age:

(A) Makes an articulable and significant threat against a school or the occupants of a school; or

(B) Exhibits behaviors that, in the reasonable judgment of the licensee, registrant, or certificate holder, create an articulable and significant threat to the health or safety of students, teachers, administrators, or other school personnel.

(II) A licensee, registrant, or certificate holder who discloses information under this paragraph (d) shall limit the disclosure to appropriate school or school district personnel and law enforcement agencies. School or school district personnel to whom the information is disclosed shall maintain confidentiality of the disclosed information, regardless of whether the information constitutes an education record subject to FERPA, consistent with the requirements of FERPA and regulations and applicable guidelines adopted under FERPA, but may disclose information in accordance with section 1232g (b)(1) of FERPA and 34 CFR 99.36 if necessary to protect the health or safety of students or other persons.

(III) A licensee, registrant, or certificate holder who discloses or fails to disclose a confidential communication with a client in accordance with this paragraph (d) is not liable for damages in any civil action for disclosing or not disclosing the communication. This subparagraph (III) does not rescind any statutory duty to warn and protect specified in, and does not eliminate any potential civil liability for failure to comply with, section 13-21-117, C.R.S.

(IV) (A) This paragraph (d) does not apply to an education record that, under FERPA, is exempt from the HIPAA privacy rule.

(B) Notwithstanding subsection (6) of this section, this paragraph (d) applies to covered entities, as defined in HIPAA.

(V) As used in this subsection (2)(d):

(A) "Articulable and significant threat" means a threat to the health or safety of a person that, based on the totality of the circumstances, can be explained or articulated and that constitutes a threat of substantial bodily harm to a person.

(B) "FERPA" means the federal "Family Educational Rights and Privacy Act of 1974", 20 U.S.C. sec. 1232g.

(C) "HIPAA" means the federal "Health Insurance Portability and Accountability Act of 1996", as amended, Pub.L. 104-191.

(D) "School" means a public or private preschool; elementary, middle, junior high, or high school; or institution of postsecondary education described in title 23, C.R.S., including the Auraria higher education center created in article 70 of title 23, C.R.S.

(VI) Repealed.

(3) The records and information produced and used in the review provided for in paragraph (c) of subsection (2) of this section do not become public records solely by virtue of the use of the records and information. The identity of a client whose records are reviewed shall not be disclosed to any person not directly involved in the review process, and procedures shall be adopted by a board, hospital, association, or society to ensure that the identity of the client is concealed during the review process itself and to comply with section 12-43-224 (4).

(4) Subsection (1) of this section shall not apply to any delinquency or criminal proceeding, except as provided in section 13-90-107, C.R.S., regarding any delinquency or criminal proceeding involving a licensed psychologist.

(5) Nothing in this section shall be deemed to prohibit any other disclosures required by law.

(6) This section does not apply to covered entities, their business associates, or health oversight agencies, as each is defined in the federal "Health Insurance Portability and Accountability Act of 1996", as amended by the federal "Health Information Technology for Economic and Clinical Health Act", and the respective implementing regulations.

Source: L. 88: Entire article R&RE, p. 544, § 1, effective July 1. **L. 89:** (4) amended, p. 699, § 5, effective July 7. **L. 98:** (1), (2)(a), (2)(b), IP(2)(c), (2)(c)(I), (2)(c)(II), and (3) amended, p. 1114, § 16, effective July 7. **L. 2000:** (1), (2)(a), (2)(b), IP(2)(c), and (2)(c)(II) amended, p. 1842, § 19, effective August 2. **L. 2008:** (1), (2), and (3) amended, p. 422, § 17, effective August 5. **L. 2011:** (1), IP(2), (2)(a), (2)(b), IP(2)(c), (2)(c)(I), (2)(c)(II), and (3) amended and (6) added, (SB 11-187), ch. 285, p. 1302, § 32, effective July 1. **L. 2016:** (2)(d) added, (HB 16-1063), ch. 176, p. 605, § 1, effective May 18. **L. 2017:** (2)(d)(VI) repealed, (HB 17-1183), ch. 121, p. 425, § 2, effective April 6; IP(2)(d)(V) and (2)(d)(V)(B) amended, (SB 17-294), ch. 264, p. 1387, § 16, effective May 25.

Cross references: For the legislative declaration in HB 17-1183, see section 1 of chapter 121, Session Laws of Colorado 2017.

12-43-219. Article not to restrict other professions. (1) Nothing in this article shall be construed to prohibit any member of any other profession who is duly licensed or certified pursuant to the laws of this state from rendering service consistent with his or her training and professional ethics so long as the professional does not hold himself or herself out to the public

by any title or description to which such professional is not entitled pursuant to the provisions of this article.

(2) No person licensed pursuant to article 38 of this title shall be subject to the jurisdiction of a board created pursuant to this article to the extent such person is under the jurisdiction of the state board of nursing.

Source: L. 88: Entire article R&RE, p. 545, § 1, effective July 1. **L. 95:** Entire section amended, p. 1089, § 14, effective July 1.

12-43-220. Data base of licensed and unlicensed psychotherapists - violation - penalty - data collection - report to sunrise and sunset review committee - repeal. (Repealed)

Source: L. 92: Entire section added, p. 2035, § 6, effective July 1. **L. 98:** Entire section repealed, p. 1115, § 17, effective July 1.

Editor's note: This section was relocated to § 12-43-702.5 in 1998.

12-43-221. Powers and duties of the boards - rules. (1) In addition to all other powers and duties conferred and imposed upon the boards, as defined in section 12-43-201 (1), each board has the following powers and duties with respect to the licensing, registration, and certification of the persons licensed, registered, or certified by each individual board pursuant to this article:

(a) To annually elect one of its members as chairperson and one as vice-chairperson. Each board may meet at such times and adopt such rules for its government as it deems proper.

(b) (I) To make investigations, hold hearings, and take evidence in accordance with article 4 of title 24, C.R.S., and this article in all matters relating to the exercise and performance of the powers and duties vested in each board.

(II) Each board, or an administrative law judge acting on the board's behalf, may administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter before the board. Each board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the board pursuant to paragraph (e) of this subsection (1).

(III) Upon failure of a witness to comply with a subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the board; 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. The court may punish the failure to obey the order of the court as a contempt of court.

(c) To aid the several district attorneys of this state in the enforcement of this article and in the prosecution of all persons, firms, associations, or corporations charged with the violation

of any of its provisions and to report to the appropriate district attorney any violation of this article that it reasonably believes involves a criminal violation;

(d) To take disciplinary actions in conformity with this article;

(e) Through the department of regulatory agencies and subject to appropriations made to the department of regulatory agencies, to employ administrative law judges on a full-time or part-time basis to conduct any hearings required by this article. The administrative law judges shall be appointed pursuant to part 10 of article 30 of title 24, C.R.S.

(f) To notify the public of all disciplinary actions taken against licensees, registrants, or certificate holders pursuant to this article.

(2) Pursuant to this part 2 and article 4 of title 24, C.R.S., each board is authorized to adopt and revise rules as necessary to enable the board to carry out the provisions of this part 2 with respect to the regulation of the persons licensed, registered, or certified by each individual board pursuant to this article.

Source: L. 98: Entire section added with relocations, p. 1115, § 18, effective July 1. **L. 2004:** (1)(b) amended, p. 1851, § 103, effective August 4. **L. 2008:** IP(1), (1)(b)(I), (1)(b)(II), (1)(f), and (2) amended, p. 423, § 18, effective August 5. **L. 2011:** IP(1), (1)(b), (1)(f), and (2) amended, (SB 11-187), ch. 285, p. 1304, § 33, effective July 1.

Editor's note: This section is similar to former § 12-43-703 as it existed prior to 1998.

12-43-221.5. Confidential agreement to limit practice - violation grounds for discipline. (1) If a licensee, registrant, or certificate holder has a physical illness; a physical condition; or a behavioral or mental health disorder that renders the person unable to practice his or her mental health profession with reasonable skill and with safety to clients, the licensee, registrant, or certificate holder shall notify the board that regulates his or her profession of the physical illness; the physical condition; or the behavioral or mental health disorder in a manner and within a period determined by his or her oversight board. The applicable board may require the licensee, registrant, or certificate holder to submit to an examination or refer the licensee, registrant, or certificate holder to a peer health assistance program, if such program exists, to evaluate the extent of the physical illness; the physical condition; or the behavioral or mental health disorder and its impact on the licensee's, registrant's, or certificate holder's ability to practice with reasonable skill and with safety to clients.

(2) (a) Upon determining that a licensee, registrant, or certificate holder with a physical illness; a physical condition; or a behavioral or mental health disorder is able to render limited services with reasonable skill and with safety to clients, the applicable board may enter into a confidential agreement with the licensee, registrant, or certificate holder in which the licensee, registrant, or certificate holder agrees to limit his or her practice based on the restrictions imposed by the physical illness; the physical condition; or the behavioral or mental health disorder, as determined by the applicable board.

(b) As part of the agreement, the licensee, registrant, or certificate holder is subject to periodic reevaluations or monitoring as determined appropriate by the applicable board. The board may refer the licensee, registrant, or certificate holder to a peer assistance health program, if one exists, for reevaluation or monitoring.

(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 applicable board pursuant to this section to limit his or her practice, the licensee, registrant, or certificate holder is not engaging in activities prohibited pursuant to section 12-43-222. The agreement does not constitute a restriction or discipline by the applicable board. However, if the licensee, registrant, or certificate holder fails to comply with the terms of an agreement entered into pursuant to this section, the failure constitutes a prohibited activity pursuant to section 12-43-222 (1)(f), and the licensee, registrant, or certificate holder is subject to discipline in accordance with section 12-43-223.

(4) This section does not apply to a licensee, registrant, or certificate holder subject to discipline for prohibited activities as described in section 12-43-222 (1)(e).

Source: L. 2011: Entire section added, (SB 11-187), ch. 285, p. 1288, § 16, effective July 1. **L. 2017:** (1) and (2)(a) amended, (SB 17-242), ch. 263, p. 1287, § 91, effective May 25.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-43-222. Prohibited activities - related provisions. (1) A person licensed, registered, or certified under this article 43 violates this article 43 if he or she:

(a) Has been convicted of or pled guilty or nolo contendere to a felony or received a deferred sentence to a felony charge. A certified copy of the judgment of a court of competent jurisdiction of such conviction or plea is conclusive evidence of the conviction or plea. In considering the disciplinary action, each board is governed by section 24-5-101, C.R.S.

(b) Has violated or attempted to violate, directly or indirectly, or assisted or abetted the violation of, or conspired to violate any provision or term of this article or rule promulgated pursuant to this article or any order of a board established pursuant to this article;

(c) Has used advertising that is misleading, deceptive, or false;

(d) (I) Has committed abuse of health insurance pursuant to section 18-13-119, C.R.S.;

(II) Has advertised through newspapers, magazines, circulars, direct mail, directories, radio, television, or otherwise that the person will perform any act prohibited by section 18-13-119, C.R.S.;

(e) Habitually or excessively uses or abuses alcohol, a habit-forming drug, or a controlled substance, as defined in section 18-18-102 (5), C.R.S.;

(f) (I) Fails to notify the board that regulates his or her profession of a physical illness; a physical condition; or a behavioral, mental health, or substance use disorder that affects the person's ability to treat clients with reasonable skill and safety or that may endanger the health or safety of persons under his or her care;

(II) Fails to act within the limitations created by a physical illness; a physical condition; or a behavioral, mental health, or substance use disorder that renders the person unable to treat clients with reasonable skill and safety or that may endanger the health or safety of persons under his or her care; or

(III) Fails to comply with the limitations agreed to under a confidential agreement entered pursuant to section 12-43-221.5;

(g) (I) Has acted or failed to act in a manner that does not meet the generally accepted standards of the professional discipline under which the person practices. Generally accepted standards may include, at the board's discretion, the standards of practice generally recognized by state and national associations of practitioners in the field of the person's professional discipline.

(II) A certified copy of a malpractice judgment of a court of competent jurisdiction is conclusive evidence that the act or omission does not meet generally accepted standards of the professional discipline, but evidence of the act or omission is not limited to a malpractice judgment.

(h) Has performed services outside of such person's area of training, experience, or competence;

(i) Has maintained relationships with clients that are likely to impair such person's professional judgment or increase the risk of client exploitation, such as treating employees, supervisees, close colleagues, or relatives;

(j) Has exercised undue influence on the client, including the promotion of the sale of services, goods, property, or drugs in such a manner as to exploit the client for the financial gain of the practitioner or a third party;

(k) Has failed to terminate a relationship with a client when it was reasonably clear that the client was not benefitting from the relationship and is not likely to gain such benefit in the future;

(l) Has failed to refer a client to an appropriate practitioner when the problem of the client is beyond such person's training, experience, or competence;

(m) Has failed to obtain a consultation or perform a referral when such failure is not consistent with generally accepted standards of care;

(n) Has failed to render adequate professional supervision of persons practicing pursuant to this article under such person's supervision according to generally accepted standards of practice;

(o) Has accepted commissions or rebates or other forms of remuneration for referring clients to other professional persons;

(p) Has failed to comply with any of the requirements pertaining to mandatory disclosure of information to clients pursuant to section 12-43-214;

(q) Has offered or given commissions, rebates, or other forms of remuneration for the referral of clients; except that a licensee, registrant, or certificate holder may pay an independent advertising or marketing agent compensation for advertising or marketing services rendered on the person's behalf by such agent, including compensation that is paid for the results of performance of such services on a per-patient basis;

(r) Has engaged in sexual contact, sexual intrusion, or sexual penetration, as defined in section 18-3-401, C.R.S., with a client during the period of time in which a therapeutic relationship exists or for up to two years after the period in which such a relationship exists;

(s) Has resorted to fraud, misrepresentation, or deception in applying for or in securing licensure or taking any examination provided for in this article;

(t) Has engaged in any of the following activities and practices:

(I) Repeated ordering or performing demonstrably unnecessary laboratory tests or studies without clinical justification for the tests or studies;

(II) The administration, without clinical justification, of treatment that is demonstrably unnecessary;

(III) Ordering or performing any service or treatment that is contrary to the generally accepted standards of the person's practice and is without clinical justification;

(IV) Using or recommending rebirthing or any therapy technique that may be considered similar to rebirthing as a therapeutic treatment. "Rebirthing" means the reenactment of the birthing process through therapy techniques that involve any restraint that creates a situation in which a patient may suffer physical injury or death. For the purposes of this subparagraph (IV), a parent or legal guardian may not consent to physical, chemical, or mechanical restraint on behalf of a child or ward.

(u) Has falsified or repeatedly made incorrect essential entries or repeatedly failed to make essential entries on patient records;

(v) Has committed a fraudulent insurance act, as set forth in section 10-1-128, C.R.S.;

(w) Has sold or fraudulently obtained or furnished a license, registration, or certification to practice as a psychologist, social worker, marriage and family therapist, licensed professional counselor, psychotherapist, or addiction counselor or has aided or abetted in such activities; or

(x) Has failed to respond, in the manner required by the board, to a complaint filed with or by the board against the licensee, registrant, or certificate holder.

(2) A disciplinary action relating to a license, registration, or certification to practice a profession licensed, registered, or certified under this article or any related occupation in any other state, territory, or country for disciplinary reasons constitutes prima facie evidence of grounds for disciplinary action, including denial of licensure, registration, or certification, by a board. This subsection (2) applies only to disciplinary actions based upon acts or omissions in such other state, territory, or country substantially similar to those acts or omissions set out as grounds for disciplinary action pursuant to subsection (1) of this section.

Source: L. 98: Entire section added with relocations, p. 1116, § 18, effective July 1. **L. 2001:** (1)(t)(II) and (1)(t)(III) amended and (1)(t)(IV) added, p. 379, § 2, effective April 17. **L. 2003:** (1)(v) amended, p. 622, § 37, effective July 1. **L. 2004:** (1)(e) and (1)(r) amended, p. 911, § 5, effective July 1; (1)(e) amended, p. 1196, § 43, effective August 4. **L. 2006:** (1)(w) added, p. 93, § 51, effective August 7. **L. 2008:** IP(1), (1)(e), (1)(w), and (2) amended, p. 423, § 19, effective August 5. **L. 2011:** IP(1), (1)(a), (1)(e) to (1)(g), (1)(q), (1)(t)(I), (1)(t)(III), (1)(v), (1)(w), and (2) amended and (1)(x) added, (SB 11-187), ch. 285, p. 1286, § 14, effective July 1. **L. 2012:** (1)(e) amended, (HB 12-1311), ch. 281, p. 1616, § 30, effective July 1. **L. 2017:** IP(1), (1)(f)(I), and (1)(f)(II) amended, (SB 17-242), ch. 263, p. 1288, § 92, effective May 25.

Editor's note: (1) This section is similar to former § 12-43-704 as it existed prior to 1998.

(2) Amendments to subsection (1)(e) by House Bill 04-1251 and Senate Bill 04-239 were harmonized.

Cross references: (1) For the legislative declaration and the short title contained in the 2001 act amending subsections (1)(t)(II) and (1)(t)(III) and enacting subsection (1)(t)(IV), see section 1 of chapter 129, Session Laws of Colorado 2001.

(2) For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-43-223. Authority of boards - cease-and-desist orders - rules. (1) (a) If a licensee, registrant, or certificate holder violates any provision of section 12-43-222, the board that licenses, registers, or certifies the licensee, registrant, or certificate holder may:

(I) Deny, revoke, or suspend the person's license, registration, or certification;

(II) Deny, revoke, or suspend the listing of a registered psychotherapist in the state board of registered psychotherapists database;

(III) Issue a letter of admonition to a licensee, registrant, or certificate holder;

(IV) Issue a confidential letter of concern to a licensee, registrant, or certificate holder;

(V) Place a licensee, registrant, or certificate holder on probation; or

(VI) Apply for an injunction pursuant to section 12-43-227 to enjoin a licensee, registrant, or certificate holder from practicing the profession for which the person is licensed, registered, or certified under this article.

(b) When a licensee, registrant, or certificate holder violates an administrative requirement of this article, the board regulating the licensee, registrant, or certificate holder may impose an administrative fine on the licensee, registrant, or certificate holder, not to exceed five thousand dollars per violation. Each board shall adopt rules establishing a schedule of fines setting forth different levels of fines based on whether the licensee, registrant, or certificate holder has committed a single violation or subsequent violations of administrative requirements.

(2) (Deleted by amendment, L. 98, p. 1119, § 18, effective July 1, 1998.)

(3) (Deleted by amendment, L. 2011, (SB 11-187), ch. 285, p. 1287, § 15, effective July 1, 2011.)

(4) (a) If it appears to a board, based upon credible evidence as presented in a written complaint by any person, that a licensee or registrant 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 license or registration, the board may issue an order to cease and desist such activity. 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 unlicensed or unregistered practices immediately cease.

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

(5) (a) If it appears to a board, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this article, then, in addition to any specific powers granted pursuant to this article, the board may issue to such person an order to show cause as to why the board should not issue a final order directing such person to cease and desist from the unlawful act or unlicensed or unregistered practice.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (5) shall be promptly notified by the board of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the board for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against

whom such order is issued. Personal service or mailing of an order or document pursuant to this subsection (5) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the board as provided in paragraph (b) of this subsection (5). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (5) does not appear at the hearing, a board may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (5) and such other evidence related to the matter as the board deems appropriate. The board shall issue the order within ten days after such board's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If a board reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required license or registration, or has or is about to engage in acts or practices constituting violations of this article, a final cease-and-desist order may be issued, directing such person to cease and desist from further unlawful acts or unlicensed or unregistered practices.

(IV) A board shall provide notice, in the manner set forth in paragraph (b) of this subsection (5), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

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

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

(8) A person aggrieved by the final cease-and-desist order may seek judicial review of a board's determination or of a board's final order as provided in section 12-43-224 (5).

Source: L. 98: Entire section added with relocations, p. 1119, § 18, effective July 1. **L. 2006:** (4) amended and (5) to (8) added, p. 812, § 39, effective July 1. **L. 2011:** (1) and (3) amended, (SB 11-187), ch. 285, p. 1287, § 15, effective July 1.

Editor's note: This section is similar to former § 12-43-704.5 as it existed prior to 1998.

12-43-224. Disciplinary proceedings - judicial review - mental and physical examinations - multiple licenses. (1) (a) (I) A proceeding for discipline of a licensee, registrant, or certificate holder may be commenced when the board that licenses, registers, or certifies the licensee, registrant, or certificate holder has reasonable grounds to believe that the licensee, registrant, or certificate holder under the board's jurisdiction has committed any act or failed to act pursuant to the grounds established in section 12-43-222 or 12-43-226.

(II) (A) Any person who alleges that a licensee, registrant, or certificate holder violated a provision of this article 43 related to maintenance of records of a client eighteen years of age or older must file a complaint or other notice with the board within seven years after the person discovered or reasonably should have discovered the misconduct. A licensee, registrant, or certificate holder shall notify a client that the client's records may not be maintained after the seven-year period for filing a complaint pursuant to this section. The required notice must be provided to the client in writing no later than one hundred eighty days after the end of the client's treatment. The notice may be included with the licensee's disclosures pursuant to section 12-43-214 (1) or sent to the client's last-known mailing address. Consistent with all procedural requirements of this article 43, or otherwise required by law, the board must either take disciplinary action on the complaint or dismiss the complaint no later than two years after the date the complaint or notice was filed with the board.

(B) The seven-year limitation period specified in subsection (1)(a)(II)(A) of this section does not apply to the filing of a complaint or other notice with the board for any other violation of this article 43, including the acts described in section 12-43-222 or 12-43-226.

(b) A licensee, registrant, or certificate holder who holds more than one license, registration, or certification pursuant to this article, who has committed any act or failed to act pursuant to the grounds established in section 12-43-222 or 12-43-226, is subject to disciplinary action by all boards that license, register, or certify the person pursuant to this article. The findings, conclusions, and final agency order of the first board to take disciplinary action pursuant to this section against the licensee, registrant, or certificate holder, or any disciplinary action taken by the state grievance board as it existed prior to July 1, 1998, is prima facie evidence against the person in any subsequent disciplinary action taken by another board concerning the same act or series of acts.

(c) If a licensee, registrant, or certificate holder who applies for a license, registration, or certification pursuant to this article has been disciplined by any board created pursuant to this article, or the state grievance board as it existed prior to July 1, 1998, the findings, conclusions, and final agency order of the first board to take disciplinary action pursuant to this section against the licensee, registrant, or certificate holder is prima facie evidence against the person in any subsequent application made for a license, registration, or certification to any other board created pursuant to this article.

(2) (a) Disciplinary proceedings shall be conducted in the manner prescribed by the "State Administrative Procedure Act", article 4 of title 24, C.R.S.

(b) Each board, through the department of regulatory agencies, may employ administrative law judges, on a full-time or part-time basis, to conduct hearings as provided by this article or on any matter within the board's jurisdiction upon such conditions and terms as such board may determine. A board may elect to refer a case for formal hearing to an administrative law judge, with or without an assigned advisor from such board. If a board so elects to refer a case with an assigned advisor and such advisor is a member of the board, the

advisor shall be excluded from such board's review of the decision of the administrative law judge. The advisor shall assist the administrative law judge in obtaining and interpreting data pertinent to the hearing.

(c) (I) Except as provided in subparagraph (II) of this paragraph (c), a board shall not deny, revoke, or suspend a licensee's, registrant's, or certificate holder's right to use a title and shall not place a licensee, registrant, or certificate holder on probation pursuant to the grounds established in sections 12-43-222 and 12-43-226 until a hearing has been conducted if required pursuant to section 24-4-105, C.R.S.

(II) The board that licenses, registers, or certifies a licensee, registrant, or certificate holder pursuant to this article 43 may summarily suspend the person's license, registration, or certification, subject to the limitation of section 24-4-104, under the following circumstances:

(A) In emergency situations, as provided for by section 24-4-104, C.R.S.;

(B) The licensee, registrant, or certificate holder has been adjudicated by a court of competent jurisdiction as a person who is gravely disabled, a person who is mentally incompetent, or a person who is insane; is a person who has a mental health disorder; or is a person who has an intellectual and developmental disability; or

(C) The licensee, registrant, or certificate holder violates paragraph (e) of this subsection (2).

(d) If a board has reasonable cause to believe that a licensee, registrant, or certificate holder whom the board licenses, registers, or certifies pursuant to this article is unable to practice with reasonable skill and safety to patients, the board may require the licensee, registrant, or certificate holder to submit to mental or physical examinations designated by the board. Upon the failure of the licensee, registrant, or certificate holder to submit to a mental or physical examination, and unless the person shows good cause for such failure, the board may act pursuant to paragraph (c) of this subsection (2) or enjoin a licensee, registrant, or certificate holder pursuant to section 12-43-227 until the person submits to the required examinations.

(e) Every licensee, registrant, or certificate holder is deemed to have consented to submit to mental or physical examinations when directed in writing by the board that licenses, registers, or certifies the licensee, registrant, or certificate holder pursuant to this article and to have waived all objections to the admissibility of the examiner's testimony or examination reports on the ground of privileged communication.

(f) The results of any mental or physical examination ordered by a board may be used as evidence in any proceeding initiated by a board or within that board's jurisdiction in any forum.

(3) Disciplinary actions may consist of the following:

(a) **Revocation of a license, registration, or certification.** (I) Revocation of a license, registration, or certification by a board means that the licensee, registrant, or certificate holder shall surrender his or her license, registration, or certification.

(II) Any person whose license, registration, or certification to practice is revoked is ineligible to apply for any license, registration, or certification issued under this article for at least three years after the date of surrender of the license, registration, or certification. Any reapplication after such three-year period is treated as a new application.

(b) **Suspension of a license, registration, or certification.** Suspension of a license, registration, or certification by the board that licenses, registers, or certifies such licensee, registrant, or certificate holder pursuant to this article is for a period to be determined by the applicable board.

(c) **Probationary status.** A board may impose probationary status on a licensee, registrant, or certificate holder. If a board places a licensee, registrant, or certificate holder on probation, it may include conditions for continued practice that the board deems appropriate to assure that the licensee, registrant, or certificate holder is physically, mentally, and otherwise qualified to practice in accordance with generally accepted professional standards of practice, including any of the following:

(I) Submission by the licensee, registrant, or certificate holder to examinations a board may order to determine the person's physical or mental condition or professional qualifications;

(II) Participation in therapy or courses of training or education the board determines necessary to correct deficiencies found either in the hearing or by such examinations;

(III) Review or supervision of the person's practice as may be necessary to determine the quality of, and correct any deficiencies in, that practice; and

(IV) The imposition of restrictions upon the nature of the person's practice to assure that he or she does not practice beyond the limits of his or her capabilities.

(d) **Issuance of letters of admonition.** (I) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the board, does not warrant formal action by the board but that should not be dismissed as being without merit, a letter of admonition may be issued and sent, by certified mail, to the licensee, registrant, or certificate holder.

(II) When a letter of admonition is sent by the board, by certified mail, to a licensee, registrant, or certificate holder, the letter also must advise the person that he or she has the right to request, in writing within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(III) If the request for adjudication is timely made, the letter of admonition is vacated and the matter shall be processed by means of formal disciplinary proceedings.

(e) **Issuance of confidential letters of concern.** When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the board but indicates to the board conduct by the licensee, registrant, or certificate holder that could lead to serious consequences if not corrected, the board may issue and send to the licensee, registrant, or certificate holder a confidential letter of concern. The letter must advise the licensee, registrant, or certificate holder that the board is concerned about a complaint it received about the licensee, registrant, or certificate holder and must specify what action, if any, the licensee, registrant, or certificate holder should take to assuage the board's concern. Confidential letters of concern are confidential, and the board shall not disclose the existence of such a letter or its contents to members of the public or in any court action unless the board is a party to the action.

(f) **Deferred settlement or judgment.** When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(4) (a) Except as provided in paragraph (b) of this subsection (4), if a complaint is dismissed, records of investigations, examinations, hearings, meetings, and other proceedings of the board conducted pursuant to this section are exempt from the open records law, article 72 of title 24, C.R.S.

(b) The exemption from the open records law specified in paragraph (a) of this subsection (4) does not apply:

(I) When a decision to proceed with a disciplinary action has been agreed upon by a majority of the members of the applicable board and a notice of formal complaint is drafted and served on the licensee, registrant, or certificate holder by first-class mail; or

(II) Upon final agency action.

(c) In any final agency action or formal complaint, the board, when it deems necessary, shall redact all names of clients or other recipients of services to protect such persons' confidentiality.

(5) Final board actions and orders appropriate for judicial review may be judicially reviewed in the court of appeals, and judicial proceedings for the enforcement of a board order may be instituted in accordance with section 24-4-106 (11), C.R.S.

(6) (Deleted by amendment, L. 98, p. 1120, § 18, effective July 1, 1998.)

(7) Any board member having an immediate personal, private, or financial interest in any matter pending before the board shall disclose the fact to the board and shall not vote upon such matter.

(8) Any licensee, registrant, or certificate holder against whom a malpractice claim is settled or a judgment rendered in a court of competent jurisdiction shall notify the board that licenses, registers, or certifies the licensee, registrant, or certificate holder pursuant to this article of the judgment or settlement within sixty days after the disposition.

(9) Any licensee, registrant, or certificate holder who has direct knowledge that a licensee, registrant, or certificate holder has violated section 12-43-222 or 12-43-226 has a duty to report the violation to the board that licenses, registers, or certifies the licensee, registrant, or certificate holder pursuant to this article unless reporting the violation would violate the prohibition against disclosure of confidential information without client consent pursuant to section 12-43-218.

Source: L. 98: Entire section added with relocations, p. 1120, § 18, effective July 1. **L. 2000:** (4) amended, p. 267, § 1, effective February 1, 2001. **L. 2004:** (3)(d) amended and (3)(f) added, p. 1852, § 104, effective August 4. **L. 2005:** (3)(a)(I) and (3)(b) amended, p. 127, § 4, effective August 8. **L. 2006:** (2)(c) amended, p. 1395, § 34, effective August 7. **L. 2011:** (1), (2)(c) to (2)(e), (3), (4), (8), and (9) amended, (SB 11-187), ch. 285, p. 1304, § 34, effective July 1. **L. 2017:** IP(2)(c)(II) and (2)(c)(II)(B) amended, (HB 17-1046), ch. 50, p. 155, § 2, effective March 16; (2)(c)(II)(B) amended, (SB 17-242), ch. 263, p. 1288, § 93, effective May 25; (1)(a) amended, (HB 17-1011), ch. 41, p. 121, § 1, effective July 1.

Editor's note: (1) This section is similar to former § 12-43-705 as it existed prior to 1998.

(2) Although the amending clause in Senate Bill 11-187 indicated that all of subsection (3) was amended, only subsections (3)(a) through (3)(e) appeared in the final act.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-43-225. Reconsideration and review of action of a board. A board, on its own motion or upon application, at any time after the imposition of any discipline as provided in section 12-43-224, may reconsider its prior action and reinstate or restore such license,

registration, or certification; terminate probation; or reduce the severity of its prior disciplinary action. The board has sole discretion to determine whether to take further action or hold a hearing with respect to its prior disciplinary action.

Source: L. 98: Entire section added with relocations, p. 1124, § 18, effective July 1. **L. 2011:** Entire section amended, (SB 11-187), ch. 285, p. 1309, § 35, effective July 1.

Editor's note: This section is similar to former § 12-43-706 as it existed prior to 1998.

12-43-226. Unauthorized practice - penalties.

(1) Repealed.

(2) Any person who practices or offers or attempts to practice as a psychologist, social worker, marriage and family therapist, licensed professional counselor, psychotherapist, or addiction counselor without an active license, registration, or certification 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. Any person who commits a second or any subsequent offense commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(3) Repealed.

(4) No action may be maintained for the breach of a contract involving the unlawful practice of psychology, social work, professional counseling, marriage and family therapy, addiction counseling, or psychotherapy or for the recovery of compensation for services rendered under such a contract.

(5) When an individual has been the recipient of services prohibited by this article, whether or not such person knew that the rendition of the services were unlawful:

(a) Such person or such person's personal representative is entitled to recover the amount of any fee paid for the services; and

(b) Damages for injury or death occurring as a result of the services may be recovered in an appropriate action without any showing of negligence.

Source: L. 98: Entire section added with relocations, p. 1124, § 18, effective July 1. **L. 2001:** (1)(a) amended, p. 380, § 3, effective April 17. **L. 2002:** (2) amended, p. 1481, § 88, effective October 1. **L. 2005:** (1)(b) amended, p. 127, § 5, effective August 8. **L. 2006:** (1) and (3) repealed and (2) amended, p. 94, §§ 53, 52, effective August 7. **L. 2008:** (2) and (4) amended, p. 424, § 20, effective August 5. **L. 2011:** (2) amended, (SB 11-187), ch. 285, p. 1309, § 36, effective July 1.

Editor's note: This section is similar to former § 12-43-707 as it existed prior to 1998.

Cross references: For the legislative declaration and short title contained in the 2001 act amending subsection (1)(a), see section 1 of chapter 129, Session Laws of Colorado 2001; for the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-43-226.5. Licensee duties relating to assistance animals - definitions. (1) A licensee who is approached by a patient seeking an assistance animal as a reasonable accommodation in housing shall either:

(a) Make a written finding regarding whether the patient has a disability and, if a disability is found, a separate written finding regarding whether the need for the animal is related to that disability; or

(b) Make a written finding that there is insufficient information available to make a finding regarding disability or the disability-related need for the animal.

(2) This section does not:

(a) Change any laws or procedures related to a service animal under Title II and Title III of the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq.;

(b) Affect in any way the right of pet ownership in public housing established in 42 U.S.C. sec. 1437z-3, as amended; or

(c) Limit the means by which a person with a disability may demonstrate, pursuant to state or federal law, that the person has a disability or that the person has a disability-related need for an assistance animal.

(3) A licensee shall not make a determination related to subsection (1) of this section unless the licensee:

(a) Has met with the patient in person;

(b) Is sufficiently familiar with the patient and the disability; and

(c) Is legally and professionally qualified to make the determination.

(4) For purposes of this section:

(a) "Assistance animal" means an animal that qualifies as a reasonable accommodation under the federal "Fair Housing Act", 42 U.S.C. sec. 3601 et seq., as amended, or section 504 of the federal "Rehabilitation Act of 1973", 29 U.S.C. sec. 794, as amended.

(b) "Disability" has the same meaning as set forth in the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq., and its related amendments and implementing regulations and includes a handicap as that term is defined in the federal "Fair Housing Act", 42 U.S.C. sec. 3601 et seq., as amended, and 24 CFR 100.201.

(c) "Service animal" has the same meaning as set forth in the implementing regulations of Title II and Title III of the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq.

Source: L. 2016: Entire section added, (HB 16-1426), ch. 309, p. 1245, § 4, effective January 1, 2017.

Cross references: For the legislative declaration in HB 16-1426, see section 1 of chapter 309, Session Laws of Colorado 2016.

12-43-227. Injunctive proceedings. (1) A board may, in the name of the people of the state of Colorado, through the attorney general of the state of Colorado, apply for an injunction in any court of competent jurisdiction:

(a) To enjoin any person licensed, registered, or certified by that board pursuant to this article from committing any act prohibited by this article;

(b) To enjoin a licensee, registrant, or certificate holder regulated by that board from practicing the profession for which the person is licensed, registered, or certified under this article if the person has violated section 12-43-224 (2)(d) or 12-43-222.

(c) (Deleted by amendment, L. 2011, (SB 11-187), ch. 285, p. 1309, § 37, effective July 1, 2011.)

(2) If the board demonstrates that the defendant has been or is committing any act prohibited by this article, the court shall enter a decree perpetually enjoining the defendant from further committing the act or from practicing any profession licensed, registered, or certified pursuant to this article.

(3) Injunctive proceedings are in addition to, and not in lieu of, penalties and other remedies provided in this article.

(4) When seeking an injunction under this section, a board is not required to allege or prove either that an adequate remedy at law does not exist or that substantial or irreparable damage would result from a continued violation.

Source: L. 98: Entire section added with relocations, p. 1125, § 18, effective July 1. **L. 2005:** IP(1) and (1)(b) amended, p. 128, § 6, effective August 8. **L. 2011:** Entire section amended, (SB 11-187), ch. 285, p. 1309, § 37, effective July 1.

Editor's note: This section is similar to former § 12-43-708 as it existed prior to 1998.

12-43-227.5. Mental health professional peer health assistance program - fees - administration - rules. (1) (a) On and after July 1, 2012, as a condition of licensure, registration, or certification and renewal in this state, every person applying for a new license, registration, or certification or to renew his or her license, registration, or certification shall pay a fee, for use by the administering entity selected by the director pursuant to this subsection (1), in an amount not to exceed twenty-five dollars per application for a new or to renew a license, registration, or certification. The director shall annually review the fee and program usage level and adjust the fee amount based on program usage, but the director shall not adjust the fee to an amount in excess of twenty-five dollars. The division shall forward the fee to the chosen administering entity for use in supporting designated providers selected to provide assistance to licensees, registrants, or certificate holders needing help in dealing with physical, emotional, or psychological conditions that may be detrimental to their ability to practice their mental health profession.

(b) By January 31, 2014, the director, in consultation with the boards before making a selection, shall select one or more designated providers to provide the peer health assistance program. For purposes of selecting designated providers, the director shall use a competitive bidding process that encourages participation from interested vendors. To be eligible for designation, a peer health assistance program must:

(I) Provide for the education of mental health professionals with respect to the recognition and prevention of physical, emotional, and psychological conditions and provide for intervention when necessary or under circumstances established by the board by rule;

(II) Offer assistance to a mental health professional in identifying physical, emotional, or psychological conditions;

(III) Evaluate the extent of physical, emotional, or psychological conditions and refer the mental health professional for appropriate treatment, taking into consideration the cost of the treatment, whether the cost is prohibitive for or will pose an undue financial hardship on the mental health professional, and, if so, referring the mental health professional to alternative treatment or to a provider or treatment program that offers discounted fees based on ability to pay;

(IV) Monitor the status of a mental health professional who has been referred for treatment;

(V) Provide counseling and support for the mental health professional and for the family of any mental health professional referred for treatment;

(VI) Agree to receive referrals from the board;

(VII) Agree to make its services available to all licensed, registered, or certified mental health professionals; and

(VIII) Notify the appropriate board when a mental health professional has successfully completed the peer health assistance program.

(c) The director may select an entity to administer the mental health professional peer assistance program. An administering entity must be a nonprofit private foundation that is qualified under section 501 (c)(3) of the federal "Internal Revenue Code of 1986", as amended, and that is dedicated to providing support for charitable, benevolent, educational, and scientific purposes that may be related to mental health professions, mental health professional education, mental health research and science, and other mental health charitable purposes.

(d) The administering entity shall:

(I) Distribute the moneys collected by the division, less expenses, to the designated provider, as directed by the director;

(II) Provide an annual accounting to the division of all amounts collected, expenses incurred, and amounts disbursed; and

(III) Post a surety performance bond in an amount specified by the director to secure performance under the requirements of this section. The administering entity may recover the actual administrative costs incurred in performing its duties under this section in an amount not to exceed ten percent of the total amount collected.

(e) The division shall collect the required annual payments payable to the administering entity for the benefit of the administering entity and shall transfer all such payments to the administering entity. All required annual payments collected or due for each fiscal year are custodial funds that are not subject to appropriation by the general assembly, and the distribution of payments to the administering entity or expenditure of the payments by the administering entity does not constitute state fiscal year spending for purposes of section 20 of article X of the state constitution.

(2) (a) Any mental health professional who is referred by the applicable board to a peer health assistance program shall enter into a stipulation with the board pursuant to section 12-43-223 (6) before participating in the program. The agreement must contain specific requirements and goals to be met by the participant, including the conditions under which the program will be successfully completed or terminated, and a provision that a failure to comply with the requirements and goals is to be promptly reported to the board and that such failure will result in disciplinary action by the board. Upon notice from the peer health assistance program that a

mental health professional has successfully completed the program, the board that regulates the professional shall reinstate the professional's license, registration, or certification.

(b) Notwithstanding sections 12-43-223, 12-43-224, and 24-4-104, C.R.S., the applicable board may immediately suspend the license of any mental health professional who is referred to a peer health assistance program by the board and who fails to attend or to complete the program. If the mental health professional objects to the suspension, he or she may submit a written request to the board for a formal hearing on the suspension within ten days after receiving notice of the suspension, and the board shall grant the request. In the hearing, the mental health professional bears the burden of proving that his or her license, registration, or certification should not be suspended.

(c) Any mental health professional who self-refers and is accepted into a peer health assistance program shall affirm that, to the best of his or her knowledge, information, and belief, he or she knows of no instance in which he or she has violated this article or the rules of the board, except in those instances affected by the mental health professional's physical, emotional, or psychological conditions.

(3) Nothing in this section creates any liability on the director, division, or state of Colorado for their actions in making grants to peer assistance programs, and no civil action may be brought or maintained against the board, director, division, or state for an injury alleged to have been the result of the activities of any state-funded peer assistance program or the result of an act or omission of a mental health professional participating in or referred by a state-funded peer assistance program. However, the state remains liable under the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S., if an injury alleged to have been the result of an act or omission of a mental health professional participating in or referred by a state-funded peer assistance program occurred while such mental health professional was performing duties as an employee of the state.

(4) The boards may promulgate rules necessary to implement this section. The boards and the director shall seek and obtain input from representatives of associations representing each type of mental health professional regulated under this article in the development of the peer health assistance program and related rules and shall not select a designated provider until that input is obtained.

(5) As used in this section, "mental health professional" means a psychologist, social worker, marriage and family therapist, licensed professional counselor, psychotherapist, or addiction counselor regulated under this article.

Source: L. 2011: Entire section added, (SB 11-187), ch. 285, p. 1288, § 16, effective July 1. **L. 2013:** (1)(a), IP(1)(b), (1)(b)(III), (1)(b)(VI), (1)(b)(VII), (1)(c), (2)(a), and (4) amended and (1)(b)(VIII) added, (HB 13-1104), ch. 77, p. 246, § 2, effective August 7.

12-43-228. Minimum standards for testing. (1) Every person licensed, registered, or certified under this article 43 must meet the minimum professional preparation standards set forth in this section to engage in the administration, scoring, or interpretation of the following levels of psychometric or electrodiagnostic testing:

(a) **General use.** There is no educational or experience minimum necessary for a licensee, registrant, or certificate holder to administer standardized personnel selection, achievement, general aptitude, or proficiency tests.

(b) **Technical use.** A master's degree in anthropology, psychology, counseling, marriage and family therapy, social work, or sociology from a regionally accredited university or college certified by the accrediting agency or body to award graduate degrees and completion of at least one graduate level course each in statistics, psychometric measurement, theories of personality, individual and group test administration and interpretation, and psychopathology is required in order to administer, score, or interpret tests that require technical knowledge of test construction and use or require the application of scientific and psychophysiological knowledge. Such tests include, but are not limited to, tests of general intelligence, special aptitudes, temperament, values, interests, and personality inventories.

(c) **Advanced use.** A licensee, registrant, or certificate holder must meet all the requirements of subsection (1)(b) of this section and, in addition, completion, at a regionally accredited university or college certified by the accrediting agency or body to award graduate degrees, of at least one graduate-level course in six of the following areas: Cognition, emotion, attention, sensory-perceptual function, psychopathology, learning, encephalopathy, neuropsychology, psychophysiology, personality, growth and development, projective testing, and neuropsychological testing and completion of one year of experience in advanced use practice under the supervision of a person fully qualified under this subsection (1)(c) in order to practice projective testing, neuropsychological testing, or use of a battery of three or more tests to:

(I) Determine the presence, nature, causation, or extent of psychosis, dementia diseases and related disabilities, amnesia, cognitive impairment, influence of deficits on competence, and ability to function adaptively;

(II) Determine the etiology or causative factors contributing to psychological dysfunction, criminal behavior, vocational disability, neurocognitive dysfunction, or competence; or

(III) Predict the psychological responses to specific medical, surgical, and behavioral interventions.

(2) The board licensing, registering, or certifying any person violating this section may bring disciplinary proceedings or injunctive proceedings against the person pursuant to section 12-43-224 or 12-43-227.

(3) (Deleted by amendment, L. 2011, (SB 11-187), ch. 285, p. 1310, § 38, effective July 1, 2011.)

Source: L. 98: Entire section added with relocations, p. 1126, § 18, effective July 1. **L. 2011:** IP(1), (1)(a), IP(1)(c), (2), and (3) amended, (SB 11-187), ch. 285, p. 1310, § 38, effective July 1. **L. 2018:** IP(1), IP(1)(c), and (1)(c)(I) amended, (HB 18-1091), ch. 74, p. 645, § 13, effective August 8.

12-43-228.5. Auricular acudetox by mental health professionals - training - definition. (1) A mental health care professional who has provided documentation that he or she has been trained to perform auricular acudetox in accordance with subsection (4) of this section may perform auricular acudetox if the auricular acudetox is performed under the mental health care professional's current scope of practice, and the mental health professional is:

(a) Licensed pursuant to this article 43;

(b) Certified as a level III addiction counselor pursuant to part 8 of this article 43; or

(c) Registered as a psychotherapist pursuant to part 7 of this article 43.

(2) A mental health care professional performing auricular acudetox pursuant to subsection (1) of this section shall not use the title "acupuncturist" or otherwise claim to be a person qualified to perform acupuncture beyond the scope of this section.

(3) As used in this section "auricular acudetox" means the subcutaneous insertion of sterile, disposable acupuncture needles in the following five consistent, predetermined bilateral locations:

(a) Sympathetic;

(b) Shen men;

(c) Kidney;

(d) Liver; and

(e) Lung.

(4) In order to perform auricular acudetox pursuant to subsection (1) of this section, a mental health care professional must successfully complete a training program in auricular acudetox for the treatment of substance use disorders that meets or exceeds standards of training established by the national acupuncture detoxification association or another organization approved by the director.

Source: L. 2013: Entire section added, (SB 13-207), ch. 416, p. 2463, § 2, effective July 1. **L. 2017:** (4) amended, (SB 17-242), ch. 263, p. 1288, § 94, effective May 25. **L. 2018:** (1) amended, (SB 18-020), ch. 52, p. 494, § 2, effective August 8.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-43-229. Repeal of article. (1) This article is repealed, effective September 1, 2020. Prior to such repeal, all of the boards relating to the licensing, registration, or certification of and grievances against any person licensed, registered, or certified pursuant to this article shall be reviewed as provided for in section 24-34-104, C.R.S.

(2) (Deleted by amendment, L. 2011, (SB 11-187), ch. 285, p. 1274, § 1, effective July 1, 2011.)

Source: L. 98: Entire section added with relocations, p. 1127, § 18, effective July 1. **L. 2004:** Entire section amended, p. 911, § 6, effective July 1. **L. 2008:** Entire section amended, p. 424, § 21, effective August 5. **L. 2011:** Entire section amended, (SB 11-187), ch. 285, p. 1274, § 1, effective July 1.

Editor's note: This section is similar to former § 12-43-712 as it existed prior to 1998.

PART 3

PSYCHOLOGISTS

Editor's note: This article was repealed and reenacted in 1988, and this part 3 was subsequently repealed and reenacted in 1998, resulting in the addition, relocation, and

elimination of sections as well as subject matter. For amendments to this part 3 prior to 1998, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume and the editor's note following the article heading.

12-43-301. Definitions. As used in this part 3, unless the context otherwise requires:

(1) "Adverse action" means any action taken by the board that finds a violation of a statute or regulation that is identified by the board as discipline and is a matter of public record.

(1.5) "Approved school" means any university or other institution of higher education offering a full-time graduate course of study in psychology and having programs approved by the American psychological association or the board.

(2) "Board" means the state board of psychologist examiners created by section 12-43-302 (1).

(3) Repealed.

(4) "License" means a certificate of licensure as a licensed psychologist.

(5) Repealed.

(6) "Licensed psychologist" means a person licensed under this part 3.

(7) Repealed.

(8) "Professional psychological training program" means a doctoral training program that:

(a) Is a planned program of study that reflects an integration of the science and practice of psychology; and

(b) For applicants receiving their terminal degrees after 1990, is designated as a doctoral program in psychology by the association of state and provincial psychology boards or the national register of health service providers in psychology, or is accredited by the American psychological association or Canadian psychological association.

(9) "Telepsychology" means the provision of psychological services using telecommunications technologies.

Source: L. 98: Entire part R&RE, p. 1128, § 19, effective July 1. **L. 2011:** (3), (5), and (7) repealed, (SB 11-187), ch. 285, p. 1311, § 39, effective July 1. **L. 2018:** (1) amended and (1.5) and (9) added, (HB 18-1017), ch. 133, p. 884, § 2, effective August 8.

12-43-302. State board of psychologist examiners. (1) There is hereby created a state board of psychologist examiners under the supervision and control of the division of professions and occupations of the department of regulatory agencies, created in section 24-1-122 (2)(g), C.R.S.

(2) The board consists of seven members who are citizens of the United States and residents of the state of Colorado as follows:

(a) Four board members must be licensed psychologists, at least two of whom shall be engaged in the direct practice of psychology; except that, if, after a good-faith attempt, the governor determines that an applicant for membership on the board pursuant to this paragraph (a) who is engaged in the direct practice of psychology is not available to serve on the board for a particular term, the governor may appoint a licensed psychologist who is not engaged in the direct practice of psychology.

(b) Three board members must be representatives of the general public, one of whom may be a mental health consumer or family member of a mental health consumer. These individuals must have never been psychologists, applicants or former applicants for licensure as psychologists, members of another mental health profession, or members of households that include psychologists or members of another mental health profession or otherwise have conflicts of interest or the appearance of such conflicts with their duties as board members.

(3) (Deleted by amendment, L. 2007, p. 130, § 1, effective August 3, 2007.)

(4) (a) Each board member shall hold office until the expiration of such member's appointed term or until a successor is duly appointed. Except as specified in paragraph (b) of this subsection (4), the term of each member shall be four years, and no board member shall serve more than two full consecutive terms. Any vacancy occurring in board membership other than by expiration of a term shall be filled by the governor by appointment for the unexpired term of such member.

(b) The terms of office of the members on the board are modified as follows in order to ensure staggered terms of office:

(I) The second term of office of the licensed psychologist board member and one of the two board members representing the general public, whose second term would otherwise expire on June 30, 2010, shall expire on May 31, 2008, and the governor shall appoint one new licensed psychologist and one new representative of the general public to serve terms as described in paragraph (a) of this subsection (4) commencing on June 1, 2008.

(II) The initial term of office of the one board member representing the general public whose initial term would otherwise expire on June 30, 2009, shall expire on May 31, 2009, and the board member is eligible to serve one additional four-year term commencing on June 1, 2009, and expiring on May 31, 2013. On and after the expiration of this board member's term or a vacancy in this position, the governor shall appoint a licensed psychologist to this position on the board, who is eligible to serve terms as described in paragraph (a) of this subsection (4) commencing on June 1 of the applicable year.

(III) The initial term of office of one of the two licensed psychologist board members whose initial term would otherwise expire on June 30, 2010, shall expire on May 31, 2009. This board member shall be eligible to serve one additional four-year term, commencing on June 1, 2009, and expiring on May 31, 2013. On and after the expiration of this board member's term, persons appointed to this position on the board shall serve terms as described in paragraph (a) of this subsection (4) commencing on June 1 of the applicable year.

(IV) The initial terms of office of the remaining licensed psychologist board member and the other board member representing the general public, whose initial terms would otherwise expire on June 30, 2010, shall expire on May 31, 2010. Each of these board members shall be eligible to serve one additional four-year term commencing on June 1, 2010, and expiring on May 31, 2014. On and after the expiration of these board members' terms, persons appointed to these positions on the board shall serve terms as described in paragraph (a) of this subsection (4) commencing on June 1 of the applicable year.

(V) The second term of office of the remaining board member representing the general public whose second term would otherwise expire on June 30, 2010, shall expire on May 31, 2010. The governor shall appoint one new representative of the general public to serve terms as described in paragraph (a) of this subsection (4) commencing on June 1, 2010.

(5) The governor may remove any board member for misconduct, incompetence, or neglect of duty after giving the board member a written statement of the charges and an opportunity to be heard thereon. Actions constituting neglect of duty shall include, but not be limited to, the failure of board members to attend three consecutive meetings or at least three quarters of the total meetings in any calendar year.

(6) Each board member shall receive a certificate of appointment from the governor.

Source: L. 98: Entire part R&RE, p. 1128, § 19, effective July 1. **L. 2004:** (4) and (6) amended, p. 911, § 7, effective July 1. **L. 2007:** (2), (3), and (4) amended, p. 130, § 1, effective August 3. **L. 2011:** (2), IP(4)(b), and (4)(b)(II) amended, (SB 11-187), ch. 285, p. 1311, § 40, effective July 1.

12-43-303. Practice of psychology defined. (1) For the purposes of this part 3, the "practice of psychology" means the observation, description, evaluation, interpretation, or modification of human behavior by the application of psychological principles, methods, or procedures, for the purpose of:

(a) Preventing, eliminating, evaluating, assessing, or predicting symptomatic, maladaptive, or undesired behavior;

(b) Evaluating, assessing, or facilitating the enhancement of individual, group, or organizational effectiveness, including personal effectiveness, adaptive behavior, interpersonal relationships, work and life adjustment, health, and individual, group, or organizational performance; or

(c) Providing clinical information to be utilized in legal proceedings.

(2) The practice of psychology includes:

(a) Psychological testing and the evaluation or assessment of personal characteristics such as intelligence; personality; cognitive, physical, or emotional abilities; skills; interests; aptitudes; and neuropsychological functioning;

(b) Counseling, psychoanalysis, psychotherapy, hypnosis, biofeedback, and behavior analysis and therapy;

(c) Diagnosis, treatment, and management of behavioral, mental, or emotional health disorders or disabilities; substance use disorders; and disorders of habit or conduct, as well as of the psychological aspects of physical illness, accident, injury, or disability;

(d) Psychoeducational evaluation, therapy, and remediation;

(e) Consultation with physicians, other health care professionals, and patients regarding all available treatment options with respect to provision of care for a specific patient or client;

(f) The provision of direct services to individuals or groups for the purpose of enhancing individual and thereby organizational effectiveness, using psychological principles, methods, or procedures to assess and evaluate individuals on personal characteristics for individual development or behavior change or for making decisions about the individual, such as selection; and

(g) The supervision of any of the practices described in this subsection (2).

(h) to (l) (Deleted by amendment, L. 2011, (SB 11-187), ch. 285, p. 1311, § 41, effective July 1, 2011.)

(3) Psychological services may be rendered to individuals, families, groups, organizations, institutions, the public, and the courts.

(4) The practice of psychology shall be construed within the meaning of this definition without regard to whether payment is received for services rendered.

Source: L. 98: Entire part R&RE, p. 1129, § 19, effective July 1. **L. 2011:** (1) and (2) amended, (SB 11-187), ch. 285, p. 1311, § 41, effective July 1. **L. 2017:** (2)(c) amended, (SB 17-242), ch. 263, p. 1288, § 95, effective May 25.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-43-304. Qualifications - examinations - licensure. (1) The board shall issue a license as a psychologist to each applicant who files an application in a form and manner required by the board, submits the fee required by the board pursuant to section 12-43-204, and furnishes evidence satisfactory to the board that he or she:

(a) Is at least twenty-one years of age;

(b) Is not in violation of any provision of this article or any rules promulgated by the board;

(c) Has completed a doctorate degree with a major in psychology, or the equivalent to such major as determined by the board, from an approved school;

(d) Has had at least one year of postdoctoral experience practicing psychology under supervision approved by the board; and

(e) Demonstrates professional competence by passing a single, written examination in psychology as prescribed by the board and a jurisprudence examination administered by the division.

(1.5) (a) The examination by the board described in paragraph (e) of subsection (1) of this section shall be given not less than twice per year at such time and place and under such supervision as the board may determine.

(b) The examination shall test for knowledge of the following three areas:

(I) General psychology;

(II) Clinical and counseling psychology; and

(III) Application of the practice of clinical and counseling psychology, including knowledge of appropriate statutes and professional ethics.

(c) The board or its designated representatives shall administer and determine the pass or fail status of the examination and take any actions necessary to ensure impartiality. The board shall determine the passing score for the examination based upon a level of minimum competency to engage in the practice of psychology.

(2) to (6) (Deleted by amendment, L. 2007, p. 137, § 1, effective July 1, 2007.)

(7) (a) The board shall register as a psychologist candidate a person who files an application for registration, accompanied by the fee required by section 12-43-204, and who:

(I) Submits evidence satisfactory to the board that he or she has met the requirements of paragraphs (a), (b), and (c) of subsection (1) of this section; and

(II) Has not been previously registered as a psychologist candidate by the board.

(b) A psychologist candidate registered pursuant to this subsection (7) is under the jurisdiction of the state board of psychologist examiners. The psychologist candidate may, but is not required to, register with the database of registered psychotherapists pursuant to section 12-

43-702.5. If the requirements of paragraphs (d) and (e) of subsection (1) of this section are not met within four years, the registration of the psychologist candidate expires and is not renewable unless the board, in its discretion, grants the candidate an extension. A person whose psychologist candidate registration expires is not precluded from applying for licensure or registration with any other mental health board for which the person is qualified.

Source: L. 98: Entire part R&RE, p. 1131, § 19, effective July 1. **L. 2004:** (1)(e) amended and (7) added, p. 912, §§ 8, 9, effective July 1. **L. 2007:** (1.5) added and (2) to (6) amended, p. 137, § 1, effective July 1. **L. 2011:** IP(1), (1)(b), (1)(e), (1.5)(c), and (7) amended, (SB 11-187), ch. 285, p. 1284, § 12, effective July 1. **L. 2016:** (1)(c) and (7)(b) amended, (HB 16-1103), ch. 98, pp. 281, 280 §§ 7, 1, effective January 1, 2017.

12-43-305. Rights and privileges of licensure. (1) Any person who possesses a valid, unsuspended, and unrevoked license as a licensed psychologist has the right to:

(a) Engage in the private, independent practice of psychology;

(b) Practice and supervise psychology practice; and

(c) Use the title "psychologist" and the terms "psychology" and "psychological". No other person may assume these titles or use these terms on any work or letter, sign, figure, or device to indicate that the person using such title or terms is a licensed psychologist.

(2) Any person duly licensed as a psychologist shall not be required to obtain any other license or certification to practice psychology as defined in section 12-43-303 unless otherwise required by the board.

Source: L. 98: Entire part R&RE, p. 1132, § 19, effective July 1.

12-43-306. Exemptions. (1) Nothing in this part 3 shall be construed to prevent the teaching of psychology, or the conduct of psychological research, if the teaching or research does not involve the delivery or supervision of direct psychological services to individuals who are themselves, rather than a third party, the intended beneficiaries of the services without regard to the source or extent of payment for services rendered. Nothing in this part 3 prevents the provision of expert testimony by psychologists who are exempted by this part 3. A person who has completed an earned doctoral degree in psychology from an approved school may use the title "psychologist" in conjunction with the activities permitted in this subsection (1).

(2) Nothing in this part 3 shall be construed to prevent members of other professions licensed under the laws of this state from rendering services within the scope of practice as set out in the statutes regulating their professional practices so long as they do not represent themselves to be psychologists or their services as psychological.

(3) The use of the title "psychologist" may be continued by an unlicensed person who, as of July 1, 1982, is employed by a state, county, or municipal agency or by other political subdivisions or any educational institution chartered by the state, but only so long as such person remains in the employment of the same institution or agency and only in the course of conducting duties for such agency or institution.

(4) Nothing in this part 3 shall be construed to limit the use of an official title on the part of any doctoral level graduate of a research psychology program or an industrial or organizational psychology program from a regionally accredited university while engaged in the

conduct of psychological research or the provision of psychological consultation to organizations or institutions if such services do not include the clinical practice of psychology.

(5) Nothing in this part 3 shall be construed to require the new regulation of any occupational or professional group that is not currently subject to regulation under state law.

(6) Nothing in this part 3 prevents the practice of psychotherapy by persons registered with the state board of registered psychotherapists pursuant to section 12-43-702.5.

(7) No person may engage in the practice of psychology as a psychologist, or refer to himself or herself as a psychologist, unless such person is licensed pursuant to this part 3.

Source: L. 98: Entire part R&RE, p. 1132, § 19, effective July 1. **L. 2011:** (6) amended, (SB 11-187), ch. 285, p. 1313, § 42, effective July 1. **L. 2016:** (1) amended, (HB 16-1103), ch. 98, p. 282, § 8, effective January 1, 2017.

12-43-307. Continuing professional development - rules. (1) In accordance with section 12-43-304, the board issues a license to practice as a psychologist based on whether the applicant satisfies minimum educational and experience requirements that demonstrate competency to practice as a psychologist. After a license is issued to an applicant, the licensed psychologist shall complete continuing professional development and educational hours to maintain his or her license as a psychologist.

(2) The board shall adopt rules establishing a continuing professional development program that includes, at a minimum, the following elements:

(a) The development, execution, and documentation of a learning plan;

(b) A requirement that, every two years, a licensed psychologist complete at least forty hours of continuing professional development, including one or more of the following activities, in any combination, chosen by the licensed psychologist:

(I) (A) Attending workshops; seminars; symposia; colloquia; invited speaker sessions; postdoctoral institutes; or scientific or professional programs offered at meetings of local, state, regional, national, or international professional or scientific organizations. The activities completed pursuant to this subparagraph (I) may include online continuing education but must qualify as continuing education units or continuing medical education credit approved by the American Psychological Association, state medical association, or Accreditation Council for Continuing Medical Education or by a regionally accredited institution of higher education; except that up to five of the continuing professional development hours completed pursuant to this subparagraph (I) may come from attendance at nonaccredited programming that meets the other requirements of this subparagraph (I).

(B) A licensed psychologist must retain a transcript or a certificate of attendance, including a statement of the credits earned, provided at the end of the workshop, seminar, symposium, colloquium, invited speaker session, postdoctoral institute, or scientific or professional program offered at a meeting of a local, state, regional, national, or international professional or scientific organization as documentation of completion.

(II) Satisfactorily completing an ethics course offered by the American Psychological Association, state medical association, or Accreditation Council for Continuing Medical Education, or a regionally accredited institution of higher education. A licensed psychologist must retain a certificate of attendance or a transcript as documentation of completion. One continuing education hour is equivalent to one professional development hour.

(III) Developing and teaching an academic course in psychology at an institution accredited by a regional accrediting association. Credit is given for the first time within a given licensure cycle that the licensed psychologist teaches the course, as documented by the dean or head of the department of the institution in which the course was taught, and is based on the number of credit hours, units, or hours assigned by the institution. One academic credit, unit, or hour is equivalent to ten continuing professional development hours.

(IV) Satisfactorily completing a graduate course in psychology offered by an institution accredited by a regional accrediting association and documented by an academic transcript showing the graduate credits earned. One academic credit, unit, or hour is equivalent to ten continuing professional development hours.

(V) Developing and presenting for the first time within a given licensure cycle a workshop, seminar, symposium, colloquium, or invited speaking session at a meeting of a professional or scientific organization or a postdoctoral institute, documented by a printed program or agenda. One hour of workshop, seminar, symposium, colloquial presentation, or invited speaking session is equivalent to three continuing professional development hours.

(VI) Authoring or editing a psychology publication documented by a cover sheet, masthead, or table of contents from the publication. The maximum hours may be earned as follows:

(A) Authoring a professional or scientific book is equivalent to forty hours of continuing professional development hours;

(B) Authoring a professional or scientific book chapter or journal article is equivalent to twenty hours of continuing professional development hours;

(C) Editing a professional or scientific book or journal is equivalent to thirty hours of continuing professional development hours.

(D) Repealed.

(VII) Providing editorial review of a professional psychological or scientific journal article at the request of the journal's editorial staff. Such a review, as documented by acknowledgment of the completed review by the editorial staff, is equivalent to one continuing professional development hour.

(c) A requirement that each licensed psychologist maintain all documentation for his or her continuing professional development hours.

(3) A licensed psychologist is not required to receive preapproval from the board or other entity prior to the completion of a continuing professional development activity in order to receive credit for the continuing professional development hours.

(4) The board may audit up to five percent of licensed psychologists each two-year cycle to determine compliance with continuing professional development requirements.

(5) (a) Records of assessments or other documentation developed or submitted in connection with the continuing professional development program are confidential and not subject to inspection by the public or discovery in connection with a civil action against a licensed psychologist. The records or documents shall be used only by the board for the purpose of determining whether a licensed psychologist is maintaining continuing professional development necessary to engage in the profession.

(b) Subject to the requirements of paragraph (a) of this subsection (5), nothing in this section shall be construed to restrict the discovery of information or documents that are

otherwise discoverable under the Colorado rules of civil procedure in connection with a civil action against a licensed psychologist.

Source: L. 2015: Entire section added, (HB 15-1067), ch. 82, p. 237, § 2, effective August 5. **L. 2016:** IP(2)(b), (2)(b)(I), (2)(b)(III), (2)(b)(V), and IP(2)(b)(VI) amended, (2)(b)(VI)(D) repealed, and (2)(b)(VII) added, (HB 16-1379), ch. 144, p. 426, § 1, effective August 10.

Cross references: For the legislative declaration in HB 15-1067, see section 1 of chapter 82, Session Laws of Colorado 2015.

12-43-308. Psychology interjurisdictional compact act - powers and duties of the board - rules - definition. (1) For purposes of this section, "compact" means the psychology interjurisdictional compact authorized in part 39 of article 60 of title 24. With regard to the compact, the board has the following powers and duties:

(a) To facilitate Colorado's participation in the compact;

(b) To promulgate rules necessary for the implementation, administration, and enforcement of the compact. The board shall promulgate rules in accordance with article 4 of title 24.

(c) To appoint a person to serve as a commissioner on the psychology interjurisdictional compact commission;

(d) To regulate telepsychology in accordance with the compact;

(e) To regulate psychologist temporary authorization to practice in accordance with the compact;

(f) To notify the psychology interjurisdictional compact commission of any adverse action regarding a licensed psychologist;

(g) To provide uniform data to a coordinated license information system consistent with the rules of the psychology interjurisdictional compact commission;

(h) To approve payment of assessments levied by the psychology interjurisdictional compact commission to cover the cost of the operations and activities of the commission and its staff.

Source: L. 2018: Entire section added, (HB 18-1017), ch. 133, p. 884, § 3, effective August 8.

PART 4

SOCIAL WORKERS

Editor's note: (1) Provisions relating to social workers were contained in article 63.5 of this title prior to its repeal in 1988.

(2) This article was repealed and reenacted in 1988, and this part 4 was subsequently repealed and reenacted in 1998, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 4 prior to 1998, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and

supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume and the editor's note following the article heading.

12-43-401. Definitions. As used in this part 4, unless the context otherwise requires:

(1) "Approved school" means any university or other institution of higher education offering a full-time undergraduate course of study in social work approved by the council on social work education or its predecessor organization.

(2) "Board" means the state board of social work examiners, created in section 12-43-402.

(3) Repealed.

(4) "Clinical social work practice" shall have the same meaning as "social work practice" as defined in section 12-43-403.

(5) "Graduate school of social work" means any university or other institution of higher education offering a full-time graduate course of study in social work approved by the council on social work education or its predecessor organization.

(5.5) "Independent practice" means practicing independent of supervision.

(6) "Independent private practice" means a practice charging a fee in a setting other than under the auspices of a public or private nonprofit agency exempt from federal income tax under section 501 (c)(3) of the federal "Internal Revenue Code of 1986", as amended.

(7) "Licensed clinical social worker" means any person licensed under the provisions of this part 4 as a clinical social worker.

(8) "Licensed social worker" means a person licensed under this part 4 as a licensed social worker.

(9) Repealed.

(10) (Deleted by amendment, L. 2004, p. 912, § 10, effective July 1, 2004.)

(11) "Social worker" means a person who has completed an earned master's or bachelor's degree in social work from a social work education program accredited by the council on social work education, or a doctoral degree in social work from a doctoral program within a social work education program accredited by the council on social work education, and who is practicing within the scope of section 12-43-403.

Source: L. 98: Entire part R&RE, p. 1133, § 19, effective July 1. **L. 2000:** (6) amended, p. 1843, § 20, effective August 2. **L. 2004:** (5.5) and (11) added and (8) to (10) amended, p. 912, § 10, effective July 1. **L. 2005:** (3) amended, p. 128, § 7, effective August 8. **L. 2009:** (4) amended, (HB 09-1339), ch. 427, p. 2382, § 1, effective July 1. **L. 2011:** (3) and (9) repealed and (8) amended, (SB 11-187), ch. 285, pp. 1311, 1313, §§ 39, 43, effective July 1. **L. 2016:** (11) amended, (HB 16-1103), ch. 98, p. 282, § 9, effective January 1, 2017.

Cross references: For the federal "Internal Revenue Code of 1986", see title 26 of the United States Code.

12-43-402. State board of social work examiners. (1) There is hereby created under the supervision and control of the division of professions and occupations of the department of regulatory agencies the state board of social work examiners, which shall consist of seven members who are citizens of the United States and residents of the state of Colorado.

(2) (a) Four board members shall be licensed clinical social workers, at least two of whom shall be engaged in direct social work practice; except that, if, after a good-faith attempt, the governor determines that an applicant for membership on the board pursuant to this paragraph (a) who is engaged in direct social work practice is not available to serve on the board for a particular term, the governor may appoint a licensed clinical social worker who is not engaged in direct social work practice.

(b) Three board members shall be representatives of the general public. These individuals shall have never been a social worker, an applicant or former applicant for licensure as a social worker, a member of another mental health profession, or a member of a household that includes a social worker or a member of another mental health profession or otherwise have conflicts of interest or the appearance of such conflicts with his or her duties as a board member.

(3) (a) Each board member shall hold office until the expiration of such member's appointed term or until a successor is duly appointed. Except as specified in paragraph (b) of this subsection (3), the term of each member shall be four years, and no board member shall serve more than two full consecutive terms. Any vacancy occurring in board membership other than by expiration of a term shall be filled by the governor by appointment for the remainder of the unexpired term of such member.

(b) The terms of office of the members on the board are modified as follows in order to ensure staggered terms of office:

(I) The second term of office of one of the two licensed clinical social worker board members who, as of July 25, 2010, would have served two four-year terms shall expire on June 30, 2008, and the governor shall appoint a new licensed clinical social worker to serve terms as described in paragraph (a) of this subsection (3) commencing on July 1, 2008.

(II) The initial term of office of one of the board members representing the general public whose initial term would otherwise expire on July 25, 2010, expires on June 30, 2008, and the board member is eligible to serve one additional four-year term commencing on July 1, 2008, and expiring on June 30, 2012. On and after the expiration of this board member's term or a vacancy in this position, the governor shall appoint a licensed clinical social worker to this position on the board, who is eligible to serve terms as described in paragraph (a) of this subsection (3) commencing on July 1 of the applicable year.

(III) The term of office of the one member representing the general public who, as of July 25, 2009, would have served one full four-year term and one partial four-year term shall expire on June 30, 2009, and the member shall be eligible to serve one additional four-year term commencing on July 1, 2009, and expiring on June 30, 2013. On and after the expiration of this board member's term, persons appointed to this position on the board shall serve terms as described in paragraph (a) of this subsection (3) commencing on July 1 of the applicable year.

(IV) The term of office of the one licensed clinical social worker board member who, as of July 25, 2010, would have served one full four-year term and one partial four-year term shall expire on June 30, 2009, and the board member shall be eligible to serve one additional four-year term commencing on July 1, 2009, and expiring on June 30, 2013. On and after the expiration of this board member's term, persons appointed to this position on the board shall serve terms as described in paragraph (a) of this subsection (3) commencing on July 1 of the applicable year.

(V) The initial terms of office of the one remaining licensed clinical social worker board member and the two remaining board members representing the general public whose initial

terms would otherwise expire on July 25, 2010, shall expire on June 30, 2010, and each of these board members shall be eligible to serve one additional four-year term, commencing on July 1, 2010, and expiring on June 30, 2014. On and after the expiration of these board members' terms, persons appointed to these positions on the board shall serve terms as described in paragraph (a) of this subsection (3) commencing on July 1 of the applicable year.

(4) (Deleted by amendment, L. 2007, p. 132, § 2, effective August 3, 2007.)

(5) The governor may remove any board member for misconduct, incompetence, or neglect of duty after giving the board member a written statement of the charges and an opportunity to be heard thereon. Actions constituting neglect of duty shall include, but not be limited to, the failure of board members to attend three consecutive meetings or at least three quarters of the total meetings in any calendar year.

(6) Each board member shall receive a certificate of appointment from the governor.

(7) When professional judgment specific to clinical practice is required in the review of alleged violations of section 12-43-222, the board may appoint an advisory committee of clinical practitioners to review and make recommendations to the board.

Source: L. 98: Entire part R&RE, p. 1134, § 19, effective July 1. **L. 2004:** (2)(a), (3), and (6) amended, p. 913, § 11, effective July 1. **L. 2007:** (2)(a), (3), and (4) amended, p. 132, § 2, effective August 3. **L. 2011:** (2), IP(3)(b), and (3)(b)(II) amended and (7) added, (SB 11-187), ch. 285, p. 1313, § 44, effective July 1.

12-43-403. Social work practice defined. (1) For the purposes of this part 4, "social work practice" means the professional application of social work theory and methods by a person who has completed a master's degree in social work or a doctoral degree in social work or a bachelor's degree in social work from an accredited social work program, for the purpose of prevention, assessment, diagnosis, and intervention with individual, family, group, organizational, and societal problems, including substance use disorders and domestic violence, based on the promotion of biopsychosocial developmental processes, person-in environment transactions, and empowerment of the client system. Social work theory and methods are based on known accepted principles that are taught in professional schools of social work in colleges or universities accredited by the council on social work education.

(2) Professional social work practice may include, but is not limited to:

(a) Assessment;

(b) Differential diagnosis;

(c) Treatment planning and evaluation;

(d) Measurement of psychosocial functioning;

(e) Crisis intervention, out-reach, short- and long-term treatment;

(f) Therapeutic, individual, marital, and family interventions;

(g) Client education;

(h) Case management;

(i) Mediation;

(j) Advocacy;

(k) Discharge, referral, and continuity of care planning and implementation;

(l) Consultation;

(m) Supervision;

(n) Research;
(o) Management and administration;
(p) Program evaluation and education;
(q) Social group work;
(r) Community organization and development;
(s) Social policy analysis and development;
(t) Psychotherapy;
(u) Consultation, supervision, and teaching in higher education; and
(v) Counseling.

(3) Social work practice may take place in a public or private agency or institutional, educational, or independent setting.

(4) Social work practice is directly based upon an advanced educational program that teaches the practitioner to analyze, intervene, and evaluate in ways that are highly differentiated, discriminating, and self-critical. A practitioner must be able to synthesize and apply a broad range of knowledge as well as practice with a high degree of autonomy and skill. A practitioner must be able to refine and advance the quality of his or her practice as well as that of the larger social work profession. These advanced competencies must be appropriately integrated and reflected in all aspects of a social work practice, including the ability to:

(a) Apply critical thinking skills within professional contexts, including synthesizing and applying appropriate theories and knowledge to practice interventions;

(b) Practice within the values and ethics of the social work profession and with an understanding of, and respect for, the positive value of diversity;

(c) Demonstrate the professional use of self;

(d) Understand the forms and mechanisms of oppression and discrimination and the strategies and skills of change that advance social and economic justice;

(e) Understand and interpret the history of the social work profession and its current structure and issues;

(f) Apply the knowledge and skills of a generalist social work perspective to practice with systems of all sizes;

(g) Apply the knowledge and skills of advanced social work practice in an area of concentration;

(h) Critically analyze and apply knowledge of biopsychosocial variables that affect an individual's development and behavior and use theoretical frameworks to understand the interactions among and between individuals and social systems;

(i) Analyze the impact of social policies on client systems, workers, and agencies and demonstrate skills for influencing policy formulation and change;

(j) Evaluate relevant research studies and apply findings to practice, and demonstrate skills in quantitative research design, data analysis, and knowledge dissemination;

(k) Conduct empirical evaluations of their own practice interventions and those of other relevant systems; and

(l) Use communication skills differentially with a variety of client populations, colleagues, and members of the community.

Source: L. 98: Entire part R&RE, p. 1135, § 19, effective July 1. **L. 2004:** (2)(u) added, p. 913, § 12, effective July 1. **L. 2011:** (1), (2)(t), and (2)(u) amended and (2)(v) added, (SB 11-

187), ch. 285, p. 1314, § 45, effective July 1. **L. 2016:** (1) amended, (HB 16-1103), ch. 98, p. 282, § 10, effective January 1, 2017. **L. 2017:** (1) amended, (SB 17-242), ch. 263, p. 1289, § 96, effective May 25.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-43-404. Qualifications - examination - licensure and registration. (1) The board shall license as a licensed social worker a person who files an application in a form and manner required by the board, submits the fee required by the board pursuant to section 12-43-204, and submits evidence satisfactory to the board that he or she:

(a) Is at least twenty-one years of age;

(b) Has completed a master's degree from a graduate school of social work; and

(c) Demonstrates professional competence by satisfactorily passing an examination in social work as prescribed by the board and a jurisprudence examination administered by the division.

(2) The board shall license as a licensed clinical social worker a person who files an application, in a form and manner required by the board, submits the fee required by the board pursuant to section 12-43-204, and submits evidence satisfactory to the board that he or she:

(a) Is at least twenty-one years of age;

(b) Has completed a master's or doctorate degree from a graduate school of social work;

(c) Has practiced social work for at least two years under the supervision of a licensed clinical social worker, which practice includes training and work experience in the area of clinical social work practice; and

(d) Demonstrates professional competence by satisfactorily passing an examination in social work as prescribed by the board and a jurisprudence examination administered by the division.

(2.5) (a) The board or its designated representative shall give the examination described in paragraph (c) of subsection (1) of this section and in paragraph (d) of subsection (2) of this section at least twice per year at a time and place and under the supervision determined by the board.

(b) The board or its designated representatives shall administer and determine the pass or fail status of the examination and take any actions necessary to ensure impartiality. The board shall determine the passing score for the examination based upon a level of minimum competency to engage in social work practice.

(3) (Deleted by amendment, L. 2004, p. 914, § 13, effective July 1, 2004.)

(4) to (6) (Deleted by amendment, L. 2007, p. 138, § 2, effective July 1, 2007.)

(7) (Deleted by amendment, L. 2004, p. 914, § 13, effective July 1, 2004.)

(8) A person licensed as a licensed social worker pursuant to subsection (1) of this section may, but is not required to, register with the database of registered psychotherapists pursuant to section 12-43-702.5.

Source: L. 98: Entire part R&RE, p. 1137, § 19, effective July 1. **L. 2004:** (1)(c), (2) to (4), (6), and (7) amended, p. 914, § 13, effective July 1. **L. 2007:** (2)(d), (4), (5), and (6) amended and (2.5) added, p. 138, § 2, effective July 1. **L. 2011:** IP(1), (1)(c), IP(2), (2)(c),

(2)(d), and (2.5) amended, (SB 11-187), ch. 285, p. 1285, § 13, effective July 1. **L. 2016:** IP(1), (1)(b), IP(2), and (2)(b) amended and (8) added, (HB 16-1103), ch. 98, pp. 282, 280, § 11, 2, effective January 1, 2017.

12-43-405. Rights and privileges of licensure and a social work degree. (1) Any person who possesses a valid, unsuspended, and unrevoked license as a social worker that was issued pursuant to section 12-43-404 has the right to practice social work under supervision and use the title "licensed social worker", "social worker", and the abbreviation "LSW". No other person shall assume these titles or use these abbreviations on any work or letter, sign, figure, or device to indicate that the person using the same is a licensed social worker or a social worker.

(2) Any person who possesses a valid, unsuspended, and unrevoked license as a clinical social worker that was granted pursuant to section 12-43-404 is entitled to engage in the private, independent practice of clinical social work and has the right to practice and supervise clinical social work practice and use the title "licensed clinical social worker", "clinical social worker", "social worker", or "licensed social worker", and the abbreviation "LCSW". No other person shall assume these titles or use these abbreviations on any work or letter, sign, figure, or device to indicate that the person using the same is a licensed clinical social worker or social worker.

(3) (a) (Deleted by amendment, L. 2005, p. 128, § 8, effective August 8, 2005.)

(b) Any person engaged in providing medically related social services in skilled nursing or nursing care facilities shall not be subject to the requirements of this article so long as that person meets the qualifications of, and provides services in accordance with, the federal regulations governing the medicare and medicaid program participation of these facilities and the Colorado department of public health and environment's regulations for the licensing of these facilities.

(4) Any person duly licensed as a licensed clinical social worker or any person under the supervision of a licensed clinical social worker shall not be required to obtain any other license or certification to practice social work, as defined in section 12-43-403, unless otherwise required by the board of social work examiners.

(5) Any person who has completed an earned master's or bachelor's degree in social work from a social work education program accredited by the council on social work education, or a doctoral degree in social work from a doctoral program within a social work education program accredited by the council on social work education, has the right to practice social work and to use the title "social worker". Only a person licensed as a clinical social worker or practicing under the supervision of a licensed clinical social worker may assert that he or she is practicing clinical social work or use the title of "clinical social worker".

Source: L. 98: Entire part R&RE, p. 1139, § 19, effective July 1. **L. 2004:** (5) added, p. 915, § 14, effective July 1. **L. 2005:** (1), (3)(a), and (4) amended, p. 128, § 8, effective August 8. **L. 2011:** (1) and (2) amended, (SB 11-187), ch. 285, p. 1315, § 46, effective July 1. **L. 2016:** (5) amended, (HB 16-1103), ch. 98, p. 283, § 12, effective January 1, 2017.

12-43-406. Scope of part. (1) The practice of social work includes, but is not limited to, the following professional services: Assessment; differential diagnosis; treatment planning and evaluation; measurement of psychosocial functioning; crisis intervention; out-reach; short- and long-term treatment; psychotherapy; therapeutic intervention; client education; case

management; mediation; advocacy; discharge, referral, and continuity of care planning; consultation; supervision; research; administration; education; social-group work; community organization; and social policy analysis and development. Social work practice also may encompass other current or developing modalities and techniques that are consistent with this scope.

(2) A person may not state that he or she is engaged in the practice of social work as a social worker, or refer to himself or herself as a social worker, unless the person is licensed pursuant to this part 4 or has completed an earned social work degree, as defined in section 12-43-401 (11). A person may not practice as a clinical social worker unless licensed pursuant to section 12-43-404 (2) or licensed to practice social work and supervised pursuant to section 12-43-404 (1) or (2).

(3) No person may supervise the practice of social work for the purpose of licensure compliance or disciplinary proceedings unless licensed pursuant to section 12-43-404; except that, in cases where no LCSW is available for supervision for licensure, the licensee may apply to the board for approval to be supervised by a person with equivalent experience as determined by the board.

(4) Nothing in this part 4 shall be construed to prevent members of other professions licensed under the laws of this state from rendering services within the scope of practice so long as they do not represent themselves to be social workers or their services as social work.

(5) Nothing in this part 4 prevents the practice of psychotherapy by persons registered with the state board of registered psychotherapists pursuant to section 12-43-702.5.

Source: L. 98: Entire part R&RE, p. 1140, § 19, effective July 1. **L. 2004:** (2) and (3) amended, p. 915, § 15, effective July 1. **L. 2011:** (2) and (5) amended, (SB 11-187), ch. 285, p. 1315, § 47, effective July 1. **L. 2016:** (2) amended, (HB 16-1103), ch. 98, p. 283, § 13, effective January 1, 2017.

12-43-407. Exemptions. Nothing in this part 4 shall be construed to prevent the teaching of social work, or the conduct of social work research, if the teaching or research does not involve the delivery or supervision of direct social work services to individuals who are themselves, rather than a third party, the intended beneficiaries of the services without regard to the source or extent of payment for services rendered. Nothing in this part 4 prevents the provision of expert testimony by social workers who are exempted by this part 4. A person who has completed an earned doctoral degree in social work from an approved school may use the title "social worker" in conjunction with activities permitted in this section.

Source: L. 98: Entire part R&RE, p. 1141, § 19, effective July 1. **L. 2016:** Entire section amended, (HB 16-1103), ch. 98, p. 283, § 14, effective January 1, 2017.

12-43-408. School social workers. (Repealed)

Source: L. 98: Entire part R&RE, p. 1141, § 19, effective July 1. **L. 2005:** (2) repealed, p. 129, § 9, effective August 8. **L. 2011:** (1) repealed, (SB 11-187), ch. 285, p. 1315, § 48, effective July 1.

12-43-409. Clinical social work practice of psychotherapy. For the purpose of licensure, the practice, under this part 4, of psychotherapy and other clinical activities within the definition of social work practice in section 12-43-403 is limited to licensed clinical social workers or licensed social workers supervised by licensed clinical social workers.

Source: L. 98: Entire part R&RE, p. 1141, § 19, effective July 1. **L. 2011:** Entire section amended, (SB 11-187), ch. 285, p. 1315, § 49, effective July 1.

12-43-410. Employees of social services. (1) Notwithstanding the exemption in section 12-43-215 (3), an employee of the state department of human services, employee of a county department of human or social services, or personnel under the direct control or supervision of those departments, shall not state that he or she is engaged in the practice of social work as a social worker or refer to himself or herself as a social worker unless the person is licensed pursuant to this part 4 or has completed an earned social work degree, as defined in section 12-43-401 (11).

(2) Notwithstanding the exemption in section 12-43-215 (3), any employee licensed pursuant to this article 43 who is terminated from employment by the state department of human services or a county department of human or social services is subject to review and disciplinary action by the board that licenses or regulates the employee.

(3) An employee of the state department of human services or a county department of human or social services who has completed a bachelor's or master's degree in social work may apply to the board, for purposes related to licensure under this part 4, for approval for supervision by a person other than a licensed clinical social worker. The board shall consider input from representatives of the state department of human services and the county departments of human or social services when promulgating the rule concerning what qualifications or experience a person is required to possess in order to supervise an employee pursuant to this subsection (3).

Source: L. 98: Entire part R&RE, p. 1142, § 19, effective July 1. **L. 2004:** (1) amended, p. 916, § 16, effective July 1. **L. 2005:** (3) amended, p. 129, § 10, effective August 8. **L. 2011:** Entire section amended, (SB 11-187), ch. 285, p. 1316, § 50, effective July 1. **L. 2016:** (1) and (3) amended, (HB 16-1103), ch. 98, p. 283, § 15, effective January 1, 2017. **L. 2018:** (1) and (2) amended, (SB 18-092), ch. 38, p. 397, § 5, effective August 8.

Cross references: For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018.

12-43-411. Continuing professional competency - board rules. (1) (a) In accordance with section 12-43-404, the board issues a license to practice as a clinical social worker or a social worker based on whether the applicant satisfies minimum educational and experience requirements that demonstrate professional competency to practice as a licensed clinical social worker or a licensed social worker, respectively. After a license is issued to an applicant, the licensed clinical social worker or licensed social worker shall maintain continuing professional competency to practice as a licensed clinical social worker or licensed social worker, respectively.

(b) The board shall adopt rules establishing a continuing professional competency program that includes, at a minimum, the following elements:

(I) A self-assessment of the knowledge and skills of a licensed clinical social worker or licensed social worker seeking to renew or reinstate a license;

(II) Development, execution, and documentation of a learning plan based on the assessment; and

(III) Periodic demonstration of knowledge and skills through documentation of activities necessary to ensure at least minimal ability to safely practice the profession. Nothing in this subparagraph (III) shall require a licensed clinical social worker or a licensed social worker to retake any examination required pursuant to section 12-43-404 in connection with initial licensure.

(c) The board shall establish that a licensed clinical social worker or licensed social worker is deemed to satisfy the continuing competency requirements of this section if the licensed clinical social worker or licensed social worker meets the continued professional competence requirements of one of the following entities:

(I) A state department, including continued professional competence requirements imposed through a contractual arrangement with a provider;

(II) An accrediting body recognized by the board; or

(III) An entity approved by the board.

(d) (I) After the program is established, licensed clinical social workers and licensed social workers shall satisfy the requirements of the program in order to renew or reinstate a license to practice as a licensed clinical social worker or as a licensed social worker in Colorado.

(II) The requirements of this section apply to individual licensed clinical social workers or licensed social workers who are licensed pursuant to this part 4, and nothing in this section shall be construed to require a person who employs or contracts with a licensed clinical social worker or licensed social worker to comply with the requirements of this section.

(2) (a) Records of assessments or other documentation developed or submitted in connection with the continuing professional competency program are confidential and not subject to inspection by the public or discovery in connection with a civil action against a licensed clinical social worker or a licensed social worker. The records or documents shall be used only by the board for purposes of determining whether a licensed clinical social worker or licensed social worker is maintaining continuing professional competency to engage in the profession.

(b) Subject to the requirements of paragraph (a) of this subsection (2), nothing in this section shall be construed to restrict the discovery of information or documents that are otherwise discoverable under the Colorado rules of civil procedure in connection with a civil action against a licensed clinical social worker or licensed social worker.

(3) As used in this section, "continuing professional competency" means the ongoing ability of a licensee to learn, integrate, and apply the knowledge, skill, and judgment to practice as a licensed clinical social worker or as a licensed social worker, as applicable, according to generally accepted industry standards and professional ethical standards in a designated role and setting.

(4) Repealed.

Source: L. 2009: Entire section added, (HB 09-1086), ch. 304, p. 1641, § 2, effective August 5. **L. 2013:** (4) repealed, (HB 13-1104), ch. 77, p. 248, § 3, effective August 7.

PART 5

MARRIAGE AND FAMILY THERAPISTS

Editor's note: This article was repealed and reenacted in 1988, and this part 5 was subsequently repealed and reenacted in 1998, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 5 prior to 1998, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume and the editor's note following the article heading. Former C.R.S. section numbers prior to 1998 are shown in editor's notes following those sections that were relocated.

12-43-501. Definitions. As used in this part 5, unless the context otherwise requires:

(1) "Approved school" means any university or other institution of higher education offering a full-time graduate course of study in marriage and family therapy accredited by the commission on accreditation for marriage and family therapy education, a nationally recognized accrediting agency as determined by the board, or a substantially equivalent program approved by the board.

(2) "Board" means the state board of marriage and family therapist examiners created in section 12-43-502.

(3) Repealed.

(4) "Licensed marriage and family therapist" means a person licensed under the provisions of this part 5.

(5) Repealed.

Source: L. 98: Entire part R&RE, p. 1142, § 19, effective July 1. **L. 2011:** (3) and (5) repealed, (SB 11-187), ch. 285, p. 1311, § 39, effective July 1.

Editor's note: This section is similar to former § 12-43-501 as it existed prior to 1998.

12-43-502. State board of marriage and family therapist examiners. (1) There is hereby created under the supervision and control of the division of professions and occupations of the department of regulatory agencies, created in section 24-1-122 (2)(g), C.R.S., the state board of marriage and family therapist examiners, which shall consist of seven members who are citizens of the United States and residents of the state of Colorado.

(2) (a) The members of the board shall be appointed by the governor as follows:

(I) Three members of the general public who are not regulated by this article; and

(II) Four marriage and family therapists.

(b) The public members shall have never been a marriage and family therapist, an applicant or former applicant for licensure as a marriage and family therapist, a member of another mental health profession, or a member of a household that includes a marriage and

family therapist or a member of another mental health profession or otherwise have conflicts of interest or the appearance of such conflicts with his or her duties as a board member.

(c) (Deleted by amendment, L. 2004, p. 916, § 17, effective July 1, 2004.)

(3) (Deleted by amendment, L. 2007, p. 133, § 3, effective August 3, 2007.)

(4) (a) Each board member shall hold office until the expiration of his or her appointed term or until a successor is duly appointed. Except as specified in paragraph (b) of this subsection (4), members shall serve terms of four years, and no member shall serve more than two full consecutive terms. When the term of each board member expires, the governor shall appoint his or her successor for a term of four years. Any vacancy occurring in the board membership other than by the expiration of a term shall be filled by the governor by appointment for the remainder of the unexpired term of such member.

(b) The terms of office of the members on the board are modified as follows in order to ensure staggered terms of office:

(I) The second term of office of one of the board members representing the general public whose second term would otherwise expire on August 12, 2010, shall expire on July 31, 2008. On and after the expiration of this board member's term, persons appointed to this position on the board shall serve terms as described in paragraph (a) of this subsection (4) commencing on August 1 of the applicable year.

(II) The initial term of office of one of the marriage and family therapist board members whose initial term would otherwise expire on August 12, 2010, shall expire on July 31, 2008, and the board member shall be eligible to serve one additional four-year term commencing on August 1, 2008, and expiring on July 31, 2012. On and after the expiration of this board member's term, persons appointed to this position on the board shall serve terms as described in paragraph (a) of this subsection (4) commencing on August 1 of the applicable year.

(III) The term of office of the one board member representing the general public who, as of August 12, 2009, would have served one full four-year term and one partial four-year term expires on July 31, 2009. This board member is eligible to serve one additional four-year term commencing on August 1, 2009, and expiring on July 31, 2013. On and after the expiration of this board member's term or a vacancy in this position, the governor shall appoint a marriage and family therapist to this position on the board, who is eligible to serve terms as described in paragraph (a) of this subsection (4) commencing on August 1 of the applicable year.

(IV) The initial term of office of one of the marriage and family therapist board members whose initial term would otherwise expire on August 12, 2010, shall expire on July 31, 2009, and the board member shall be eligible to serve one additional four-year term commencing August 1, 2009, and expiring on July 31, 2013. On and after the expiration of this board member's term, persons appointed to this position on the board shall serve terms as described in paragraph (a) of this subsection (4) commencing on August 1 of the applicable year.

(V) The initial term of office of one of the marriage and family therapist board members whose initial term of office would otherwise expire on August 12, 2010, shall expire on July 31, 2010, and the board member shall be eligible to serve one additional four-year term commencing on August 1, 2010, and expiring on July 31, 2014. On and after the expiration of this board member's term, persons appointed to this position on the board shall serve terms as described in paragraph (a) of this subsection (4) commencing on August 1 of the applicable year.

(VI) The second term of office of one of the board members representing the general public whose second term would otherwise expire on August 12, 2010, shall expire on July 31,

2010, and the governor shall appoint one new representative of the general public to serve terms as described in paragraph (a) of this subsection (4) commencing on August 1, 2010.

(VII) The term of office of the one board member representing the general public who, as of August 12, 2010, would have served one full four-year term and one partial four-year term shall expire on July 31, 2010. This board member shall be eligible to serve one additional four-year term commencing on August 1, 2010, and expiring on July 31, 2014. On and after the expiration of this board member's term, persons appointed to this position on the board shall serve terms as described in paragraph (a) of this subsection (4) commencing on August 1 of the applicable year.

(5) The governor may remove any board member for misconduct, incompetence, or neglect of duty after giving the board member a written statement of the charges and an opportunity to be heard thereon. Actions constituting neglect of duty shall include, but not be limited to, the failure of board members to attend three consecutive meetings or at least three quarters of the total meetings in any calendar year.

(6) Each board member shall receive a certificate of appointment from the governor.

Source: L. 98: Entire part R&RE, p. 1143, § 19, effective July 1. **L. 2004:** (2)(c), (4), and (6) amended, p. 916, § 17, effective July 1. **L. 2007:** (3) and (4) amended, p. 133, § 3, effective August 3. **L. 2011:** (2)(a), IP(4)(b), and (4)(b)(III) amended, (SB 11-187), ch. 285, p. 1316, § 51, effective July 1.

Editor's note: This section is similar to former § 12-43-502 as it existed prior to 1998.

12-43-503. Marriage and family therapy practice defined. (1) For the purposes of this part 5, "marriage and family therapy practice" means the rendering of professional marriage and family therapy services to individuals, couples, and families, singly or in groups, whether such services are offered directly to the general public or through organizations, either public or private, for a monetary fee. Marriage and family therapy utilizes established principles that recognize the interrelated nature of individual problems and dysfunctions to assess, understand, diagnose, and treat emotional problems; behavioral, mental health, and substance use disorders; and domestic violence, and modify intrapersonal and interpersonal dysfunctions.

(2) Professional marriage and family therapy practice may include, but is not limited to:

(a) Assessment and testing;

(b) Diagnosis;

(c) Treatment planning and evaluation;

(d) Therapeutic individual, marital, family, group, or organizational interventions;

(e) Psychotherapy;

(f) Client education;

(g) Consultation; and

(h) Supervision.

(3) Professional marriage and family therapy practice includes practicing within the values and ethics of the marriage and family therapy profession.

(4) This definition is to be interpreted in a manner that does not impinge upon or otherwise limit the scope of practice of other psychotherapists licensed under this article.

Source: L. 98: Entire part R&RE, p. 1144, § 19, effective July 1. **L. 2017:** (1) amended, (SB 17-242), ch. 263, p. 1289, § 97, effective May 25.

Editor's note: This section is similar to former § 12-43-501 (4) as it existed prior to 1998.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-43-504. Qualifications - examination - licensure and registration. (1) The board shall issue a license as a marriage and family therapist to each applicant who files an application in a form and manner required by the board, submits the fee required by the board pursuant to section 12-43-204, and furnishes evidence satisfactory to the board that he or she:

(a) Is at least twenty-one years of age;

(b) Is not in violation of any provision of this article or any rule adopted under this article;

(c) Has completed a master's or doctoral degree from an accredited school or college in marriage and family therapy or its equivalent as determined by the board, and the degree includes a practicum or internship in the principles and practice of marriage and family therapy;

(d) Subsequent to completing his or her master's or doctoral degree, has had at least two years of post-master's or one year postdoctoral practice in individual and marriage and family therapy, including at least one thousand five hundred hours of face-to-face direct client contact as determined by the board for the purpose of assessment and intervention under board-approved supervision; and

(e) Demonstrates professional competence by passing an examination in marriage and family therapy prescribed by the board and a jurisprudence examination administered by the division.

(2) (Deleted by amendment, L. 2007, p. 139, § 3, effective July 1, 2007.)

(3) The examination by the board described in paragraph (e) of subsection (1) of this section shall be given not less than twice per year at such time and place and under such supervision as the board may determine.

(4) The board or its designated representatives shall administer and determine the pass or fail status of the examination and take any actions necessary to ensure impartiality. The board shall determine the passing score for the examination based upon a level of minimum competency to engage in marriage and family therapy practice.

(5) (a) The board shall register as a marriage and family therapist candidate a person who:

(I) Files an application for registration, accompanied by the fee as required by section 12-43-204;

(II) Submits evidence satisfactory to the board that he or she meets the requirements of paragraphs (a), (b), and (c) of subsection (1) of this section; and

(III) Has not been previously registered as a marriage and family therapist candidate by the board.

(b) A marriage and family therapist candidate who registers with the board pursuant to this subsection (5) is under the jurisdiction of the board and may, but is not required to, register with the database of registered psychotherapists pursuant to section 12-43-702.5.

(c) If a candidate does not meet the requirements of paragraphs (d) and (e) of subsection (1) of this section within four years after initial registration, the candidate's registration expires and is not renewable, unless the board, in its discretion, grants the candidate an extension. A person whose marriage and family therapist candidate registration expires is not precluded from applying to this board or to any other board for licensure or registration in a mental health profession for which the person is qualified.

Source: L. 98: Entire part R&RE, p. 1144, § 19, effective July 1. **L. 2004:** (1)(e) amended, p. 916, § 18, effective July 1. **L. 2006:** IP(1) and (1)(d) amended, p. 527, § 1, effective January 1, 2007. **L. 2007:** (2), (3), and (4) amended, p. 139, § 3, effective July 1. **L. 2011:** IP(1), (1)(b), (1)(e), and (4) amended and (5) added, (SB 11-187), ch. 285, p. 1280, § 8, effective July 1. **L. 2016:** (1)(c), (1)(d), and (5)(b) amended, (HB 16-1103), ch. 98, pp. 284, 280, §§ 16, 3, effective January 1, 2017.

Editor's note: This section is similar to former § 12-43-503 as it existed prior to 1998.

12-43-505. Rights and privileges of licensure and registration. (1) Any person who possesses a valid, unsuspended, and unrevoked license as a licensed marriage and family therapist pursuant to section 12-43-504 has the right to engage in the private, independent practice of marriage and family therapy and has the right to practice and supervise marriage and family therapy practice and use the title "licensed marriage and family therapist" and the abbreviation "LMFT". No other person shall assume these titles or use these abbreviations on any work or letter, sign, figure, or device to indicate that the person using the same is a licensed marriage and family therapist.

(2) No person may engage in the practice of marriage and family therapy unless such person is licensed pursuant to this part 5.

(3) Any person duly licensed as a licensed marriage and family therapist shall not be required to obtain any other license or certification to practice marriage and family therapy as defined in section 12-43-503 unless otherwise required by the board of marriage and family therapist examiners.

(4) Nothing in this part 5 shall be construed to prevent members of other professions licensed under the laws of this state from rendering services within the scope of practice as set out in the statutes regulating their professional practices, provided that they do not represent themselves to be marriage and family therapists, or their services as marriage and family therapy.

(5) Nothing in this part 5 prevents the practice of psychotherapy by persons registered with the state board of registered psychotherapists pursuant to section 12-43-702.5.

Source: L. 98: Entire part R&RE, p. 1145, § 19, effective July 1. **L. 2011:** (5) amended, (SB 11-187), ch. 285, p. 1317, § 52, effective July 1.

Editor's note: This section is similar to former § 12-43-504 as it existed prior to 1998.

12-43-506. Continuing professional competency - board rules. (1) (a) In accordance with section 12-43-504, the board issues a license to practice marriage and family therapy based on whether the applicant satisfies minimum educational and experience requirements that demonstrate professional competency to practice marriage and family therapy. After a license is issued to an applicant, the licensed marriage and family therapist shall maintain continuing professional competency to practice marriage and family therapy.

(b) The board shall adopt rules establishing a continuing professional competency program that includes, at a minimum, the following elements:

(I) A self-assessment of the knowledge and skills of a licensed marriage and family therapist seeking to renew or reinstate a license;

(II) Development, execution, and documentation of a learning plan based on the assessment; and

(III) Periodic demonstration of knowledge and skills through documentation of activities necessary to ensure at least minimal ability to safely practice the profession. Nothing in this subparagraph (III) shall require a licensed marriage and family therapist to retake any examination required pursuant to section 12-43-504 in connection with initial licensure.

(c) The board shall establish that a licensed marriage and family therapist is deemed to satisfy the continuing competency requirements of this section if the licensed marriage and family therapist meets the continued professional competence requirements of one of the following entities:

(I) A state department, including continued professional competence requirements imposed through a contractual arrangement with a provider;

(II) An accrediting body recognized by the board; or

(III) An entity approved by the board.

(d) (I) After the program is established, a licensed marriage and family therapist shall satisfy the requirements of the program in order to renew or reinstate a license to practice marriage and family therapy in Colorado.

(II) The requirements of this section apply to individual marriage and family therapists who are licensed pursuant to this part 5, and nothing in this section shall be construed to require a person who employs or contracts with a licensed marriage and family therapist to comply with the requirements of this section.

(2) (a) Records of assessments or other documentation developed or submitted in connection with the continuing professional competency program are confidential and not subject to inspection by the public or discovery in connection with a civil action against a licensed marriage and family therapist. The records or documents shall be used only by the board for purposes of determining whether a licensed marriage and family therapist is maintaining continuing professional competency to engage in the profession.

(b) Subject to the requirements of paragraph (a) of this subsection (2), nothing in this section shall be construed to restrict the discovery of information or documents that are otherwise discoverable under the Colorado rules of civil procedure in connection with a civil action against a licensed marriage and family therapist.

(3) As used in this section, "continuing professional competency" means the ongoing ability of a licensee to learn, integrate, and apply the knowledge, skill, and judgment to practice as a marriage and family therapist according to generally accepted industry standards and professional ethical standards in a designated role and setting.

(4) Repealed.

Source: L. 2009: Entire section added, (HB 09-1086), ch. 304, p. 1643, § 3, effective August 5. **L. 2013:** (4) repealed, (HB 13-1104), ch. 77, p. 248, § 3, effective August 7.

PART 6

LICENSED PROFESSIONAL COUNSELORS

Editor's note: This article was repealed and reenacted in 1988, and this part 6 was subsequently repealed and reenacted in 1998, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 6 prior to 1998, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume and the editor's note following the article heading. Former C.R.S. section numbers prior to 1998 are shown in editor's notes following those sections that were relocated.

12-43-601. Definitions. As used in this part 6, unless the context otherwise requires:

(1) "Board" means the state board of licensed professional counselor examiners, created in section 12-43-602.

(2) (Deleted by amendment, L. 2011, (SB 11-187), ch. 285, p. 1317, § 53, effective July 1, 2011.)

(3) Repealed.

(4) "Licensed professional counselor" means a professional counselor who practices professional counseling and who is licensed pursuant to this part 6.

(5) (Deleted by amendment, L. 2011, (SB 11-187), ch. 285, p. 1317, § 53, effective July 1, 2011.)

(6) "School or college" means any university or other institution of higher education offering a full-time graduate course of study in professional counseling approved by appropriate national organizations accrediting professional counselor education programs or a substantially equivalent program approved by the board.

Source: L. 98: Entire part R&RE, p. 1146, § 19, effective July 1. **L. 2011:** (2), (4), and (5) amended and (3) repealed, (SB 11-187), ch. 285, pp. 1317, 1311, §§ 53, 39, effective July 1.

Editor's note: This section is similar to former § 12-43-601 as it existed prior to 1998.

12-43-602. State board of licensed professional counselor examiners. (1) There is hereby created the state board of licensed professional counselor examiners under the supervision and control of the division of professions and occupations of the department of regulatory agencies, created in section 24-1-122 (2)(g), C.R.S. The board shall consist of seven members who are citizens of the United States and residents of the state of Colorado.

(2) (a) The members of the board shall be appointed by the governor as follows:

(I) Three members of the general public who are not regulated under this article; and

(II) Four licensed professional counselors.

(b) The public members shall have never been a licensed professional counselor, an applicant or former applicant for licensure as a licensed professional counselor, a member of another mental health profession, or a member of a household that includes a licensed professional counselor or a member of another mental health profession or otherwise have conflicts of interest or the appearance of such conflicts with his or her duties as a board member.

(c) (Deleted by amendment, L. 2004, p. 917, § 19, effective July 1, 2004.)

(3) (Deleted by amendment, L. 2007, p. 135, § 4, effective August 3, 2007.)

(4) (a) Each member shall hold office until the expiration of his or her appointed term or until a successor is duly appointed. Except as specified in paragraph (b) of this subsection (4), members shall serve terms of four years, and no member shall serve more than two full consecutive terms. When the term of each board member expires, the governor shall appoint his or her successor for a term of four years. Any vacancy occurring in the board membership other than by the expiration of a term shall be filled by the governor by appointment for the unexpired term of such member.

(b) The terms of office of the members on the board are modified as follows in order to ensure staggered terms of office:

(I) The terms of office of the one licensed professional counselor board member and one of the board members representing the general public who, as of September 12, 2010, would have served one full four-year term and one partial four-year term shall expire on August 31, 2008. Each of these board members shall be eligible to serve one additional four-year term, commencing on September 1, 2008, and expiring on August 31, 2012. On and after the expiration of these board members' terms, persons appointed to these positions on the board shall serve terms as described in paragraph (a) of this subsection (4) commencing on September 1 of the applicable year.

(II) The term of office of the one board member representing the public whose initial term would otherwise expire on September 12, 2009, expires on August 31, 2009, and the board member is eligible to serve one additional four-year term, commencing on September 1, 2009, and expiring on August 31, 2013. On and after the expiration of this board member's term or a vacancy in this position, the governor shall appoint a licensed professional counselor to this position on the board, who is eligible to serve terms as described in paragraph (a) of this subsection (4) commencing on September 1 of the applicable year.

(III) The initial term of office of one of the two licensed professional counselor board members whose initial term of office would otherwise expire on September 12, 2010, shall expire on August 31, 2009. This board member shall be eligible to serve one additional four-year term commencing on September 1, 2009, and expiring on August 31, 2013. On and after the expiration of this board member's term, persons appointed to this position on the board shall serve terms as described in paragraph (a) of this subsection (4) commencing on September 1 of the applicable year.

(IV) The initial terms of office of the two remaining board members representing the general public and the one remaining licensed professional counselor whose initial terms would otherwise expire on September 12, 2010, shall expire on August 31, 2010. Each of these board members shall be eligible to serve one additional four-year term commencing on September 1, 2010, and expiring on August 31, 2014. On and after the expiration of these board members' terms, persons appointed to these positions on the board shall serve terms as described in paragraph (a) of this subsection (4) commencing on September 1 of the applicable year.

(5) The governor may remove any board member for misconduct, incompetence, or neglect of duty after giving the board member a written statement of the charges and an opportunity to be heard thereon. Actions constituting neglect of duty shall include, but not be limited to, the failure of board members to attend three consecutive meetings or at least three quarters of the total meetings in any calendar year.

(6) Each board member shall receive a certificate of appointment from the governor.

Source: L. 98: Entire part R&RE, p. 1147, § 19, effective July 1. **L. 2004:** (2)(c), (4), and (6) amended, p. 917, § 19, effective July 1. **L. 2007:** (3) and (4) amended, p. 135, § 4, effective August 3. **L. 2011:** (2)(a), IP(4)(b), and (4)(b)(II) amended, (SB 11-187), ch. 285, p. 1318, § 54, effective July 1.

Editor's note: This section is similar to former § 12-43-602 as it existed prior to 1998.

12-43-602.5. Practice of licensed professional counseling defined. (1) For purposes of this part 6, "practice of licensed professional counseling" means the application of mental health, psychological, or human development principles through cognitive, affective, behavioral, or systematic intervention strategies that address wellness, personal growth, or career development, as well as pathology. A licensed professional counselor may render the application of these principles to individuals, couples, families, or groups.

(2) The practice of professional counseling may include:

(a) Evaluation;

(b) Assessment;

(c) Testing;

(d) Diagnosis;

(e) Treatment or intervention;

(f) Planning;

(g) Consultation;

(h) Case management;

(i) Education;

(j) Supervision;

(k) Psychotherapy;

(l) Research;

(m) Referral; and

(n) Crisis intervention.

Source: L. 2011: Entire section added, (SB 11-187), ch. 285, p. 1318, § 55, effective July 1.

12-43-603. Licensure - examination - licensed professional counselors. (1) The board shall issue a license as a licensed professional counselor to each applicant who files an application in a form and manner required by the board, submits the fee required by the board pursuant to section 12-43-204, and furnishes evidence satisfactory to the board that he or she:

(a) Is at least twenty-one years of age;

(b) Is not in violation of any provision of this article or any rule adopted under this article;

(c) Has completed a master's or doctoral degree in professional counseling from an accredited school or college or an equivalent program as determined by the board. The degree or program must include a practicum or internship in the principles and the practice of professional counseling.

(d) Has at least two years of post-master's practice or one year of postdoctoral practice in licensed professional counseling under supervision approved by the board; and

(e) Demonstrates professional competence by passing an examination in professional counseling demonstrating special knowledge and skill in licensed professional counseling as prescribed by the board and a jurisprudence examination administered by the division.

(2) (Deleted by amendment, L. 2007, p. 140, § 4, effective July 1, 2007.)

(3) The examination by the board described in paragraph (e) of subsection (1) of this section shall be given not less than twice per year at such time and place and under such supervision as the board may determine.

(4) The board or its designated representatives shall administer and determine the pass or fail status of the examination and take any actions necessary to ensure impartiality. The board shall determine the passing score for the examination based upon a level of minimum competency to engage in the practice of licensed professional counseling.

(5) (a) The board shall register as a licensed professional counselor candidate a person who:

(I) Files an application for registration, accompanied by the fee as required by section 12-43-204;

(II) Submits evidence satisfactory to the board that he or she meets the requirements of paragraphs (a), (b), and (c) of subsection (1) of this section; and

(III) Has not been previously registered as a licensed professional counselor candidate by the board.

(b) A licensed professional counselor candidate who registers with the state board of licensed professional counselor examiners pursuant to this subsection (5) is under the jurisdiction of the board and may, but is not required to, register with the database of registered psychotherapists pursuant to section 12-43-702.5.

(c) If a candidate does not meet the requirements of paragraphs (d) and (e) of subsection (1) of this section within four years after initial registration, the candidate's registration expires and is not renewable, unless the board, in its discretion, grants the candidate an extension. A person whose licensed professional counselor candidate registration expires is not precluded from applying to this board or to any other board for licensure or registration in a mental health profession for which the person is qualified.

Source: L. 98: Entire part R&RE, p. 1149, § 19, effective July 1. **L. 2004:** (1)(e) amended, p. 917, § 20, effective July 1. **L. 2007:** (2), (3), and (4) amended, p. 140, § 4, effective July 1. **L. 2011:** IP(1), (1)(b), (1)(d), (1)(e), and (4) amended and (5) added, (SB 11-187), ch. 285, p. 1281, § 9, effective July 1. **L. 2016:** (1)(c) and (5)(b) amended, (HB 16-1103), ch. 98, pp. 284, 281, §§ 17, 4, effective January 1, 2017.

Editor's note: This section is similar to former § 12-43-603 as it existed prior to 1998.

12-43-604. Rights and privileges of licensure. (1) Any person who possesses a valid, unsuspended, and unrevoked license as a licensed professional counselor has the right to use the title for which he or she is licensed pursuant to section 12-43-603. A licensed professional counselor licensed pursuant to section 12-43-603 has the right to use the abbreviation "LPC". No other person shall assume this title or use this abbreviation on any work or letter, sign, figure, or device to indicate that the person using the same is a licensed professional counselor.

(2) Any person duly licensed as a licensed professional counselor is not required to obtain any other license or certification to practice professional counseling unless otherwise required by the board of licensed professional counselor examiners.

(3) Nothing in this act shall be construed to prevent members of other professions licensed under the laws of this state from rendering services within the scope of practice as set out in the statutes regulating their professional practices, provided that they do not represent themselves to be professional counselors, or their services as professional counseling.

(4) Nothing in this part 6 prevents the practice of psychotherapy by persons registered with the state board of registered psychotherapists pursuant to section 12-43-702.5.

Source: L. 98: Entire part R&RE, p. 1150, § 19, effective July 1. **L. 2011:** (1), (2), and (4) amended, (SB 11-187), ch. 285, p. 1319, § 56, effective July 1.

Editor's note: This section is similar to former § 12-43-604 as it existed prior to 1998.

12-43-605. Continuing professional competency - board rules. (1) (a) In accordance with section 12-43-603, the board issues a license to practice professional counseling based on whether the applicant satisfies minimum educational and experience requirements that demonstrate professional competency to practice professional counseling. After a license is issued to an applicant, the licensed professional counselor shall maintain continuing professional competency to practice professional counseling.

(b) The board shall adopt rules establishing a continuing professional competency program that includes, at a minimum, the following elements:

(I) A self-assessment of the knowledge and skills of a licensed professional counselor seeking to renew or reinstate a license;

(II) Development, execution, and documentation of a learning plan based on the assessment; and

(III) Periodic demonstration of knowledge and skills through documentation of activities necessary to ensure at least minimal ability to safely practice the profession. Nothing in this subparagraph (III) shall require a licensed professional counselor to retake any examination required pursuant to section 12-43-603 in connection with initial licensure.

(c) The board shall establish that a licensed professional counselor is deemed to satisfy the continuing competency requirements of this section if the licensed professional counselor meets the continued professional competence requirements of one of the following entities:

(I) A state department, including continued professional competence requirements imposed through a contractual arrangement with a provider;

(II) An accrediting body recognized by the board; or

(III) An entity approved by the board.

(d) (I) After the program is established, a licensed professional counselor shall satisfy the requirements of the program in order to renew or reinstate a license to practice professional counseling in Colorado.

(II) The requirements of this section apply to individual professional counselors who are licensed pursuant to this part 6, and nothing in this section shall be construed to require a person who employs or contracts with a licensed professional counselor to comply with the requirements of this section.

(2) (a) Records of assessments or other documentation developed or submitted in connection with the continuing professional competency program are confidential and not subject to inspection by the public or discovery in connection with a civil action against a licensed professional counselor. The records or documents shall be used only by the board for purposes of determining whether a licensed professional counselor is maintaining continuing professional competency to engage in the profession.

(b) Subject to the requirements of paragraph (a) of this subsection (2), nothing in this section shall be construed to restrict the discovery of information or documents that are otherwise discoverable under the Colorado rules of civil procedure in connection with a civil action against a licensed professional counselor.

(3) As used in this section, "continuing professional competency" means the ongoing ability of a licensee to learn, integrate, and apply the knowledge, skill, and judgment to practice as a professional counselor according to generally accepted industry standards and professional ethical standards in a designated role and setting.

(4) Repealed.

Source: L. 2009: Entire section added, (HB 09-1086), ch. 304, p. 1645, § 4, effective August 5. **L. 2013:** (4) repealed, (HB 13-1104), ch. 77, p. 248, § 3, effective August 7.

PART 7

STATE BOARD OF REGISTERED PSYCHOTHERAPISTS

12-43-701. Definitions. As used in this part 7, unless the context otherwise requires:

(1) "Board" means the state board of registered psychotherapists created by section 12-43-702.

(2) Repealed.

(3) and (4) (Deleted by amendment, L. 2011, (SB 11-187), ch. 285, p. 1282, § 10, effective July 1, 2011.)

Source: L. 88: Entire article R&RE, p. 557, § 1, effective July 1. **L. 89:** (10) amended, p. 696, § 2, effective April 15. **L. 92:** (8.5) added and (9) amended, p. 2037, § 7, effective July 1. **L. 98:** Entire section amended, p. 1150, § 20, effective July 1. **L. 2000:** (4) amended, p. 1843, § 21, effective August 2. **L. 2011:** (1), (3), and (4) amended and (2) repealed, (SB 11-187), ch. 285, pp. 1282, 1311, §§ 10, 39, effective July 1.

12-43-702. State board of registered psychotherapists - creation - membership. (1) There is hereby created the state board of registered psychotherapists, which shall be under the supervision and control of the division of professions and occupations as provided in section 24-34-102, C.R.S. The board shall consist of seven members who are residents of the state of Colorado.

(2) Three members of the board shall be appointed by the governor from the general public who are not regulated by this article with a good-faith effort to achieve broad-based geographical representation. Such members are eligible to serve terms of four years. A member must not have any direct involvement or interest in the provision of psychotherapy; except that such member may be or may have been a consumer of such services.

(3) Four members of the board must be registered psychotherapists. The governor shall appoint members to the board to serve terms of four years.

(4) (Deleted by amendment, L. 2004, p. 917, § 21, effective July 1, 2004.)

(5) Members of the state board of registered psychotherapists appointed under subsection (2) or (3) of this section may serve two full consecutive terms.

(6) (a) Each member is eligible to hold office until the expiration of his or her appointed term or until a successor is duly appointed. When the term of each board member expires, the governor shall appoint his or her successor for a term of four years. Any vacancy occurring in the board membership other than by the expiration of a term shall be filled by the governor by appointment for the unexpired term of such member.

(b) For purposes of appointments to the board made on or after July 1, 2011, upon the occurrence of a vacancy in a position held by a member representing the public or upon the expiration of the second term of office of a member representing the public, whichever occurs first, the governor shall appoint a regulated psychotherapist to that position on the board, who is eligible to serve terms as described in subsections (3) and (5) of this section.

(c) The governor may remove any board member for misconduct, incompetence, or neglect of duty. Actions constituting neglect of duty shall include, but not be limited to, the failure of board members to attend three consecutive meetings or at least three-quarters of the board's meetings in any one calendar year.

(7) A majority of the board shall constitute a quorum for the transaction of all business.

Source: L. 88: Entire article R&RE, p. 558, § 1, effective July 1. **L. 89:** (6)(b) amended, p. 701, § 2, effective March 15. **L. 92:** Entire section amended, p. 2037, § 8, effective July 1. **L. 98:** Entire section amended, p. 1151, § 21, effective July 1. **L. 2004:** (2) to (4) amended, p. 917, § 21, effective July 1. **L. 2011:** (1) to (3) and (5) to (7) amended, (SB 11-187), ch. 285, p. 1319, § 57, effective July 1.

12-43-702.5. Database of registered psychotherapists - unauthorized practice - penalties - data collection. (1) The state board of registered psychotherapists shall maintain a database of all registered psychotherapists. The board shall charge a fee in the same manner as authorized in section 24-34-105, C.R.S., for recording information in the database as required by this section. Information in the database maintained pursuant to this section is open to public inspection at all times.

(1.5) A person who is licensed pursuant to part 3, 4, 5, 6, or 8 of this article; is registered as a psychologist candidate, licensed social worker, marriage and family therapist candidate, or

professional counselor candidate; or is enrolled in a professional training program at an approved school and actively working toward acquiring and demonstrating the necessary qualifications for licensure set forth in section 12-43-304, 12-43-404, 12-43-504, 12-43-603, or 12-43-804 may, but is not required to, register with the database of registered psychotherapists.

(2) Any person not otherwise licensed, registered, or certified pursuant to this article who is practicing psychotherapy in this state shall register with the board by submitting his or her name, current address, educational qualifications, disclosure statements, therapeutic orientation or methodology, or both, and years of experience in each specialty area. Upon receipt and review of the required information, the board may approve the psychotherapist for registration in the database required by subsection (1) of this section. A registered psychotherapist shall update this information upon renewal of his or her registration and at other times and under conditions specified by the board by rule. At the time of recording the information required by this section, the registered psychotherapist shall indicate whether he or she has been convicted of, or entered a plea of guilty or nolo contendere to, any felony or misdemeanor.

(3) An unlicensed person whose primary practice is psychotherapy or who holds himself or herself out to the public as able to practice psychotherapy for compensation shall not practice psychotherapy unless the person is registered with the board and included in the database required by this section. Notwithstanding the requirements of this section, a registered psychotherapist shall not use the term "licensed", "certified", "clinical", "state-approved", or any other term or abbreviation that would falsely give the impression that the psychotherapist or the service that is being provided is recommended by the state, based solely on inclusion in the database.

(4) The state board of registered psychotherapists shall not register a person pursuant to this section unless the person has successfully completed a jurisprudence examination developed and approved by the division.

(5) Any unlicensed person who practices psychotherapy without first complying with the registration requirements of this section 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 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: L. 98: Entire section added with relocations, p. 1154, § 22, effective July 1. **L. 2002:** (3) amended, p. 1481, § 89, effective October 1. **L. 2004:** (3) and (4) amended, p. 918, § 22, effective July 1. **L. 2006:** (3) amended and (5) added, p. 94, § 54, effective August 7. **L. 2011:** Entire section amended, (SB 11-187), ch. 285, p. 1283, § 11, effective July 1. **L. 2016:** (1.5) added, (HB 16-1103), ch. 98, p. 281, § 5, effective January 1, 2017.

Editor's note: This section is similar to former § 12-43-220 as it existed prior to 1998.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (3), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-43-703. Powers and duties of the grievance board. (Repealed)

Source: L. 88: Entire article R&RE, p. 559, § 1, effective July 1. **L. 98:** Entire section repealed, p. 1155, § 23, effective July 1.

Editor's note: This section was relocated to § 12-43-221 in 1998.

12-43-704. Prohibited activities - related provisions. (Repealed)

Source: L. 88: Entire article R&RE, p. 560, § 1, effective July 1. **L. 89:** (1)(b) amended, p. 703, § 1, effective March 21; (1)(l) amended and (1)(s) to (1)(u) added, p. 675, § 23, effective July 1. **L. 92:** (1)(e), (1)(k), and (1)(l) amended and (1)(l.5) added, p. 2040, § 10, effective July 1. **L. 98:** Entire section repealed, p. 1155, § 23, effective July 1.

Editor's note: This section was relocated to § 12-43-222 in 1998.

12-43-704.5. Authority of grievance board - cease-and-desist orders. (Repealed)

Source: L. 88: Entire article R&RE, p. 562, § 1, effective July 1. **L. 92:** (3) amended and (4) added, p. 2040, § 11, effective July 1. **L. 98:** Entire section repealed, p. 1155, § 23, effective July 1.

Editor's note: This section was relocated to § 12-43-223 in 1998.

12-43-705. Disciplinary proceedings - judicial review - mental and physical examinations. (Repealed)

Source: L. 88: Entire article R&RE, p. 562, § 1, effective July 1. **L. 92:** (2)(f) amended, p. 2041, § 12, effective July 1. **L. 98:** Entire section repealed, p. 1155, § 23, effective July 1.

Editor's note: This section was relocated to § 12-43-224 in 1998.

12-43-706. Reconsideration and review of action of grievance board. (Repealed)

Source: L. 88: Entire article R&RE, p. 565, § 1, effective July 1. **L. 98:** Entire section repealed, p. 1155, § 23, effective July 1.

Editor's note: This section was relocated to § 12-43-225 in 1998.

12-43-707. Unlawful acts. (Repealed)

Source: L. 88: Entire article R&RE, p. 565, § 1, effective July 1. **L. 98:** Entire section repealed, p. 1155, §, effective July 1.

Editor's note: This section was relocated to § 12-43-226 in 1998.

12-43-708. Injunctive proceedings. (Repealed)

Source: L. 88: Entire article R&RE, p. 566, § 1, effective July 1. **L. 98:** Entire section repealed, p. 1155, § 23, effective July 1.

Editor's note: This section was relocated to § 12-43-227 in 1998.

12-43-709. Expenses of the board. All reasonable expenses of the board shall be paid as determined by the director of the division of professions and occupations from the fees collected pursuant to section 12-43-204 as provided by law.

Source: L. 88: Entire article R&RE, p. 567, § 1, effective July 1. **L. 2011:** Entire section amended, (SB 11-187), ch. 285, p. 1320, § 58, effective July 1.

12-43-710. Jurisdiction. If the licensee, registrant, or certificate holder is regulated by more than one board, the investigation or case being adjudicated shall be referred to the board determined appropriate by the director for final adjudication.

Source: L. 88: Entire article R&RE, p. 567, § 1, effective July 1. **L. 98:** Entire section amended, p. 1155, § 24, effective July 1. **L. 2004:** Entire section amended, p. 918, § 23, effective July 1. **L. 2011:** Entire section amended, (SB 11-187), ch. 285, p. 1320, § 59, effective July 1.

12-43-711. Records. (Repealed)

Source: L. 88: Entire article R&RE, p. 567, § 1, effective July 1. **L. 2011:** Entire section repealed, (SB 11-187), ch. 285, p. 1321, § 60, effective July 1.

12-43-712. Repeal of article. (Repealed)

Source: L. 91: Entire section added, p. 683, § 32, effective April 20. **L. 92:** Entire section amended, p. 2041, § 13, effective July 1. **L. 98:** Entire section repealed, p. 1155, § 23, effective July 1.

Editor's note: This section was relocated to § 12-43-229 in 1998.

PART 8

ADDICTION COUNSELORS

Editor's note: This part 8 was added with relocations in 2008. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

12-43-801. Definitions. As used in this part 8, unless the context otherwise requires:

(1) "Addiction" means a persistent, compulsive dependence on a behavior or substance, including mood-altering behaviors or activities known as process addictions.

(2) "Administrative supervision" means oversight of treatment agency operations, organization of people and resources, and implementation of policies and procedures in a way that directs activities towards agency goals and objectives.

(3) "Approved school, college, or university" means any accredited institution of higher education offering a full-time graduate or undergraduate course of study in behavioral health sciences, such as addiction counseling, human services, psychology, rehabilitation, social work, or other behavioral health sciences, that is recognized by an appropriate national organization or is approved by the board.

(4) "Behavioral health disorders" includes behavioral, mental health, and substance use disorders.

(5) "Board" means the state board of addiction counselor examiners created in section 12-43-802.

(6) "Certified" means certified as an addiction counselor certified at level I, II, or III.

(7) "Certified addiction counselor" means an individual who has a certificate issued by the board authorizing the individual to practice addiction counseling commensurate with his or her certification level and scope of practice.

(8) "Clinical supervision" means:

(a) The evaluation and modification or approval by a supervisor of the clinical practice of the person being supervised; and

(b) A source of knowledge, expertise, and more advanced skills made available to the person being supervised.

(9) "Co-occurring disorders" means the existence of one or more substance use disorders, addictive behavioral disorders, or behavioral or mental health disorders presenting concurrently. At the individual level, co-occurring disorders exist when at least one disorder can be established independent of the other, and the disorders are not simply a cluster of symptoms resulting from a single disorder.

(10) "License" means a license issued by the board pursuant to this part 8 to engage in the practice of a licensed addiction counselor.

(11) "Licensed addiction counselor" means a person licensed by the board to provide professional behavioral health disorder treatment.

Source: L. 2008: Entire part added, p. 412, § 1, effective August 5. **L. 2011:** Entire section amended, (SB 11-187), ch. 285, p. 1275, § 4, effective July 1. **L. 2017:** (4) and (9) amended, (SB 17-242), ch. 263, p. 1289, § 98, effective May 25.

Editor's note: This section is similar to the former introductory portion to § 24-34-102 (14)(d) and § 24-34-102 (14)(d)(II) and (14)(d)(III) as they existed prior to 2008.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-43-802. State board of addiction counselor examiners. (1) There is hereby created a state board of addiction counselor examiners under the supervision and control of the division of professions and occupations in the department of regulatory agencies. Once the governor appoints the board members and the board adopts necessary rules, the board is responsible for

regulating addiction counselors pursuant to this part 8 and this article. The director retains the authority to regulate addiction counselors for three months after the date on which all members of the board have been appointed, and the director's rules adopted pursuant to this part 8 remain in effect until the director repeals the rules.

(2) The board consists of seven members who are citizens of the United States and residents of the state of Colorado. By November 30, 2011, the governor shall appoint the members of the board as follows:

(a) (I) Four board members must be licensed or certified addiction counselors, and except as provided in subparagraph (II) of this paragraph (a), at least two of these four members must be engaged in the direct practice of addiction counseling. The four board members appointed pursuant to this paragraph (a) must include at least one licensed addiction counselor and at least one certified addiction counselor.

(II) If, after a good-faith attempt, the governor determines that a licensed or certified addiction counselor who is engaged in the direct practice of addiction counseling is not available to serve on the board for a particular term, the governor may appoint a licensed or certified addiction counselor who is not engaged in the direct practice of addiction counseling to serve on the board pursuant to this paragraph (a).

(b) Three board members must be representatives of the general public, one of whom may be an addiction counseling consumer or family member of an addiction counseling consumer. These individuals must have never been addiction counselors, applicants, or former applicants for licensure or certification as an addiction counselor, members of another mental health profession, members of households that include addiction counselors or any other mental health professional, or otherwise have conflicts of interest or the appearance of a conflict with their duties as board members.

(3) (a) Each board member shall hold office until the expiration of the member's appointed term or until a successor is duly appointed. Except as specified in paragraph (b) of this subsection (3), the term of each member is four years, and a board member shall not serve more than two full consecutive terms. The governor shall fill a vacancy occurring in board membership, other than by expiration of a term, by appointment for the unexpired term of the member.

(b) The initial terms of office of the members appointed to the board as of January 1, 2012, are modified as follows in order to ensure staggered terms of office:

(I) The initial term of office of one of the board members representing the general public, whose initial term would otherwise expire on December 31, 2015, expires on December 31, 2013, and this board member is eligible to serve one additional four-year term commencing on January 1, 2014, and expiring on December 31, 2017. On and after the expiration of the board member's term, the term of a person appointed to this member's position on the board is as described in paragraph (a) of this subsection (3) commencing on January 1 of the applicable year.

(II) The initial terms of office of two of the licensed or certified addiction counselor board members, whose initial terms would otherwise expire on December 31, 2015, expire on December 31, 2013. These board members are eligible to serve one additional four-year term, commencing on January 1, 2014, and expiring on December 31, 2017. On and after the expiration of these board members' terms, the terms of persons appointed to the members'

positions on the board are as described in paragraph (a) of this subsection (3) commencing on January 1 of the applicable year.

(4) The governor may remove any board member for misconduct, incompetence, or neglect of duty. Actions constituting neglect of duty include the failure of board members to attend three consecutive meetings or at least three-fourths of the total meetings in any calendar year.

Source: L. 2008: Entire part added, p. 412, § 1, effective August 5. **L. 2011:** Entire section R&RE, (SB 11-187), ch. 285, p. 1276, § 5, effective July 1.

Editor's note: This section is similar to former § 24-34-102 (14)(d)(I) as it existed prior to 2008.

12-43-803. Practice of addiction counseling defined - scope of practice. (1) For the purposes of this part 8, "addiction counseling" means the application of general counseling theories and treatment methods adapted specifically for working with addictive and other behavioral health disorders. Addiction counselors work in a broad variety of disciplines but share an understanding of the addictive process. An addiction counselor identifies a variety of helping strategies that can be tailored to meet the needs of the client. Addiction counseling relies on the use of evidence-based practices that have been shown to be effective in treating addictive disorders.

(2) The scope of practice of addiction counseling focuses on the following four transdisciplinary foundations that underlie the work of all addiction counselors:

(a) **Understanding addiction:** Includes knowledge of models and theories of addiction, including alcohol and substance use disorders; recognition of social, political, economic, and cultural contexts within which addiction exists; understanding the behavioral, psychological, physical health, and social effects of using addictive substances or engaging in addictive behaviors; and recognizing and understanding co-occurring disorders.

(b) **Treatment knowledge:** Includes the philosophies, practices, policies, and outcomes of the most generally accepted and scientifically supported models, along with research and outcome data, of treatment, recovery, relapse prevention, and continuing care for addictive disorders, including alcohol and substance use disorders. Treatment knowledge includes the ability to work effectively with families, significant others, social networks, and community systems in the treatment process and understanding the value of a multidisciplinary approach to treatment of addictive disorders, including alcohol and substance use disorders.

(c) **Application to practice:** Includes the ability to properly diagnose behavioral health disorders using appropriate assessment and testing instruments and placement criteria; stabilization to reduce negative effects of problematic behaviors; developing helping strategies and treatment levels of care based on the client's stage of readiness for change; cultural competency; and familiarity with medical and pharmacological resources for treatment.

(d) **Professional readiness:** Includes an understanding of diverse cultures; cultivation of a high level of self-awareness; ability to use critical thinking skills; adherence to ethical standards of conduct; ongoing use of clinical supervision and consultation; crisis management; and knowledge of the importance of prevention and recovery management.

(3) The primary practice dimensions of addiction counseling include the following competencies, as appropriate based on the level of certification or licensure and scope of practice:

(a) Clinical evaluation, including screening and assessment;

(b) Clinical intake, discharge, discharge planning, and referral;

(c) Treatment planning;

(d) Service coordination, including client advocacy, continuing care planning, and collaboration with other behavioral health professionals;

(e) Counseling of individuals, groups, families, couples, and significant others;

(f) Recovery management;

(g) Case management;

(h) Client, family, and community education;

(i) Documentation required for a clinical record;

(j) Professional and ethical practices;

(k) Clinical supervision; and

(l) Intervention.

(4) **Scope of practice - licensed addiction counselors.** Based on education, training, knowledge, and experience, the scope of practice of a licensed addiction counselor includes behavioral health counseling and may include the treatment of substance use disorders, addictive behavioral disorders, and co-occurring disorders, including clinical evaluation and diagnosis, treatment planning, service coordination, case management, clinical documentation, professional and ethical responsibilities, education and psychotherapy with clients, family, and community, clinical supervisory responsibilities, and intervention.

Source: L. 2008: Entire part added, p. 414, § 1, effective August 5. **L. 2010:** (1) and (3) amended, (SB 10-175), ch. 188, p. 779, § 13, effective April 29. **L. 2011:** Entire section R&RE, (SB 11-187), ch. 285, p. 1321, § 61, effective July 1. **L. 2018:** (2)(a) and (2)(b) amended, (SB 18-091), ch. 35, p. 382, § 7, effective August 8.

Editor's note: This section is similar to former § 24-34-102 (14)(a) as it existed prior to 2008.

Cross references: For the legislative declaration in SB 18-091, see section 1 of chapter 35, Session Laws of Colorado 2018.

12-43-804. Requirements for licensure and certification - rules. (1) The board shall issue a license as an addiction counselor to an applicant who files an application in the form and manner required by the board, submits the fee required by the board pursuant to section 12-43-204, and submits evidence satisfactory to the board that he or she:

(a) Is at least twenty-one years of age;

(b) Is not in violation of any provision of this article or any rules promulgated by the board;

(c) Has completed a master's or doctorate degree in the behavioral health sciences from an accredited school, college, or university or an equivalent program as determined by the board;

(d) Demonstrates professional competence by:

(I) Passing a national examination demonstrating special knowledge and skills in behavioral health disorders counseling as determined by the office of behavioral health in the department of human services and approved by the board; and

(II) Passing a jurisprudence examination administered by the division;

(e) Has met the requirements for a certificate of addiction counseling, level III;

(f) Has completed the number of clock hours of addiction-specific training, as specified by the board by rule, including training in evidence-based treatment approaches, clinical supervision, ethics, and co-occurring disorders; and

(g) Has completed at least five thousand hours of clinically supervised work experience.

(2) The board shall issue a certification as an addiction counselor to an applicant who files an application in the form and manner required by the board, submits the fee required by the board pursuant to section 12-43-204, and submits evidence satisfactory to the board that he or she:

(a) Is at least eighteen years of age;

(b) Is not in violation of any provision of this article or any rules promulgated by the board or by the state board of human services in the department of human services pursuant to section 27-80-108 (1)(e), C.R.S.;

(c) Has met the requirements for certification at a particular certification level as specified in rules adopted pursuant to subsection (3) of this section by the state board of human services in the department of human services.

(3) The state board of human services in the department of human services shall promulgate rules, with approval of the board, for certification of addiction counselors in accordance with section 27-80-108 (1)(e), C.R.S.

(4) Nothing in this part 8 prevents members of other professions licensed under the laws of this state from rendering services within their scope of practice as set forth in the statutes regulating their professional practices so long as they do not represent themselves to be certified or licensed addiction counselors.

Source: L. 2008: Entire part added, p. 415, § 1, effective August 5. **L. 2011:** Entire section R&RE, (SB 11-187), ch. 285, p. 1322, § 62, effective July 1. **L. 2016:** (1)(c) amended, (HB 16-1103), ch. 98, p. 285, § 18, effective January 1, 2017. **L. 2017:** (1)(d)(I) amended, (SB 17-242), ch. 263, p. 1250, § 3, effective May 25.

Editor's note: This section is similar to former § 24-34-102 (14)(b) and (14)(c) as they existed prior to 2008.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-43-804.5. Rights and privileges of certification and licensure. (1) Any person who possesses a valid, unsuspended, and unrevoked certificate as a level I, II, or III certified addiction counselor has the right to practice addiction counseling under supervision or consultation as required by the rules of the state board of human services in the department of human services; a level III certified addiction counselor has the right to supervise addiction counseling practice; and all levels of certification have the right to use the title "certified

addiction counselor" and the abbreviations "CAC I", "CAC II", or "CAC III", as applicable. No other person shall assume these titles or use these abbreviations on any work or media to indicate that the person using the title or abbreviation is a certified addiction counselor.

(2) Any person who possesses a valid, unsuspended, and unrevoked license as an addiction counselor has the right to practice addiction counseling and to use the title "licensed addiction counselor" or the abbreviation "LAC". No other person shall assume these titles or use these abbreviations on any work or media to indicate that the person using the title or abbreviation is a licensed addiction counselor.

Source: L. 2011: Entire section added, (SB 11-187), ch. 285, p. 1324, § 63, effective July 1.

12-43-805. Continuing professional competency - rules. (1) (a) In accordance with sections 12-43-803 and 12-43-804, the board issues a license or certificate to practice addiction counseling based on whether the applicant satisfies minimum educational and experience requirements that demonstrate professional competency to practice addiction counseling. After a license or a certificate as a level II or level III addiction counselor is issued to an applicant, the licensed or level II or level III certified addiction counselor shall maintain continuing professional competency to practice addiction counseling.

(b) The board, in consultation with the office of behavioral health in the department of human services and other stakeholders, shall adopt rules establishing a continuing professional competency program that includes, at a minimum, the following elements:

(I) A self-assessment of the knowledge and skills of a licensed or level II or level III certified addiction counselor seeking to renew or reinstate a license;

(II) Development, execution, and documentation of a learning plan based on the assessment; and

(III) Periodic demonstration of knowledge and skills through documentation of activities necessary to ensure at least minimal ability to safely practice the profession. Nothing in this subparagraph (III) shall require a licensed or level II or level III certified addiction counselor to retake any examination required pursuant to section 12-43-804 in connection with initial licensure or certification.

(c) A licensed or level II or level III certified addiction counselor satisfies the continuing competency requirements of this section if the licensed or level II or level III certified addiction counselor meets the continued professional competence requirements of one of the following entities:

(I) A state department, including continued professional competence requirements imposed through a contractual arrangement with a provider;

(II) An accrediting body recognized by the board; or

(III) An entity approved by the board.

(d) (I) After the program is established, a licensed or level II or level III certified addiction counselor shall satisfy the requirements of the program in order to renew or reinstate a license or certificate to practice addiction counseling in Colorado.

(II) The requirements of this section apply to individual addiction counselors who are licensed or level II or level III certified pursuant to this part 8, and nothing in this section shall

be construed to require a person who employs or contracts with a licensed or level II or level III certified addiction counselor to comply with the requirements of this section.

(2) (a) Records of assessments or other documentation developed or submitted in connection with the continuing professional competency program are confidential and not subject to inspection by the public or discovery in connection with a civil action against a licensed or certified addiction counselor. The records or documents shall be used only by the board for purposes of determining whether a licensed or level II or level III certified addiction counselor is maintaining continuing professional competency to engage in the profession.

(b) Subject to the requirements of paragraph (a) of this subsection (2), nothing in this section shall be construed to restrict the discovery of information or documents that are otherwise discoverable under the Colorado rules of civil procedure in connection with a civil action against a licensed or certified addiction counselor.

(3) As used in this section, "continuing professional competency" means the ongoing ability of a licensed or level II or level III certified addiction counselor to learn, integrate, and apply the knowledge, skill, and judgment to practice as an addiction counselor according to generally accepted industry standards and professional ethical standards in a designated role and setting.

(4) Repealed.

Source: L. 2009: Entire section added, (HB 09-1086), ch. 304, p. 1646, § 5, effective August 5. **L. 2011:** (1) amended, (SB 11-187), ch. 285, p. 1324, § 64, effective July 1. **L. 2013:** (4) repealed, (HB 13-1104), ch. 77, p. 248, § 3, effective August 7. **L. 2017:** IP(1)(b) amended, (SB 17-242), ch. 263, p. 1250, § 4, effective May 25.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

ARTICLE 43.2

Surgical Assistants and Surgical Technologists

12-43.2-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Database" means the database required by section 12-43.2-102.

(2) "Director" means the director of the division of professions and occupations in the department of regulatory agencies or the director's designee.

(3) "Employer" means a health care institution as defined in section 13-64-202, C.R.S., a health care professional as defined in section 13-64-202, C.R.S., or an entity who either employs a registrant or who provides a registrant to a health care institution or health care professional on a contractual basis.

(4) "Register" means to record the information required by section 12-43.2-102 (3)(b) in the database in a form and manner as determined by the director. To be registered does not mean that the registrant:

(a) Has any particular qualifications or professional competency; or

(b) Must be certified as a surgical assistant or surgical technologist.

(5) "Registrant" means a person required to be registered pursuant to this article.

(6) "Surgical assistant" means a person who performs certain duties, including:

(a) Positioning the patient;

(b) Providing visualization of the operative site;

(c) Utilizing appropriate techniques to assist with hemostasis;

(d) Participating in volume replacement or autotransfusion techniques as appropriate;

(e) Utilizing appropriate techniques to assist with closure of body planes;

(f) Selecting and applying appropriate wound dressings;

(g) Providing assistance in securing drainage systems to tissue; and

(h) The duties specified in subsection (7) of this section.

(7) "Surgical technologist" means a person who performs certain duties, including:

(a) Preparation of the operating or procedure room and the sterile field for surgical procedures by sterilizing supplies, instruments, and equipment;

(b) Preparation of the operating or procedure room for surgical procedures by ensuring that surgical equipment is functioning properly and safely; and

(c) Passing instruments, equipment, or supplies to a surgeon; sponging or suctioning an operative site; preparing and cutting suture material; holding retractors; transferring but not administering fluids or drugs; assisting in counting sponges, needles, supplies, and instruments; and performing other similar duties as directed during a surgical procedure.

Source: L. 2010: Entire article added, (HB 10-1415), ch. 339, p. 1553, § 1, effective August 11.

12-43.2-102. Registration - penalty - renewal - database - fees - rules. (1) On and after April 1, 2011:

(a) A person may not perform the duties of a surgical assistant or surgical technologist unless the person is registered by the director. Prior to registration, a person shall submit to a criminal history record check in the form and manner as described in section 12-43.2-105.5.

(b) A person who performs the duties of a surgical assistant or surgical technologist without being registered 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 a second or 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) Registrations made pursuant to this article are valid for the period of time established by the director. Each registrant shall renew his or her registration according to a schedule set by the director. If a registrant does not renew his or her registration according to the schedule, the registration expires. A person whose registration has expired shall not perform the duties of a surgical assistant or surgical technologist until he or she reinstates the registration. The director shall not reinstate the registration until the person submits to a criminal history record check in the form and manner as described in section 12-43.2-105.5.

(b) The director shall establish a process for renewal of registrations and reinstatement of expired registrations. A person renewing or reinstating a registration shall submit an application in the form and manner established by the director.

(3) (a) The director shall maintain a database of all registrants. The director shall charge a fee in the same manner as authorized in section 24-34-105, C.R.S., for registration in the database. The director shall transmit the fees to the state treasurer, who shall deposit them in the

division of professions and occupations cash fund created in section 24-34-105, C.R.S. The director shall use the fees for the administration of this article.

(b) Each registrant shall provide for registration in the database the registrant's name; current address; educational and training qualifications; all current employers; employers within the previous five years; the jurisdictions other than Colorado in which the registrant is or has been licensed, certified, or registered, if applicable; whether the registrant is currently certified by a nationally accredited certifying organization and, if so, which one; and any civil, criminal, or administrative action relating to performing the duties of a surgical assistant or surgical technologist of which the registrant was the subject in this or any other jurisdiction. Registrants shall update such information in the database within thirty days after any change and give the director written notice of any civil, criminal, or administrative actions. When recording the information required by this section, each registrant shall indicate whether he or she has been convicted of or entered a plea of guilty or nolo contendere to any misdemeanor relating to drugs or alcohol or to any felony.

(c) Information in the database shall be open to the public.

(4) The director shall promulgate rules necessary and convenient for the administration of this article.

Source: L. 2010: Entire article added, (HB 10-1415), ch. 339, p. 1554, § 1, effective August 11. **L. 2016:** (1)(a) and (2)(a) amended, (HB 16-1160), ch. 330, p. 1337, § 1, effective August 10.

12-43.2-103. Scope of article - exclusion. (1) This article does not prevent or restrict the practice, services, or activities of:

(a) A person licensed, otherwise regulated, or specifically exempted in this state by any other law from engaging in his or her profession or occupation as defined in the article under which he or she is licensed or otherwise regulated or require a person who is licensed, otherwise regulated, or specifically exempted pursuant to articles 29 to 43.9 of this title to register pursuant to this article; or

(b) A person pursuing a course of study in an accredited educational surgical assistant or surgical technologist program if that person is designated by a title that clearly indicates his or her status as a student and if he or she acts under appropriate instruction and supervision.

Source: L. 2010: Entire article added, (HB 10-1415), ch. 339, p. 1555, § 1, effective August 11.

12-43.2-104. Employers - requirements - references. (1) On and after April 1, 2011, an employer of a registrant shall:

(a) Check the database to verify that the person is registered in the database before the person may perform the duties specified in section 12-43.2-101 (6) or (7); and

(b) Give the director written notice within two weeks after a disciplinary action or investigation that is based on conduct that constitutes a violation of this article. For purposes of this paragraph (b), "disciplinary action" includes termination or resignation of the registrant while under investigation or in lieu of investigation or disciplinary action. The director shall establish a notification form on the department's website.

(2) (a) The general assembly hereby finds, determines, and declares that sections 8-2-110 and 8-2-111, C.R.S., which prohibit the maintenance or use of blacklists, were enacted to protect employees from retribution and harassment in the pursuit of their lawful activities. The general assembly further finds, determines, and declares that these prohibitions against blacklisting have in some instances been abused and have been used as a shield by persons responsible for drug violations or patient endangerment.

(b) In response to a request by an employer, it shall not be unlawful nor a violation of the prohibitions against blacklisting specified in section 8-2-110 or 8-2-111, C.R.S., for an employer, when acting in good faith, to disclose information known about any involvement in drug diversion, drug tampering, patient abuse, violation of drug or alcohol policies, or crimes of violence, as listed in section 18-1.3-406 (2)(a), C.R.S., committed by a registrant who is an employee or former employee of the responding employer.

(c) The provision of employment information pursuant to paragraph (b) of this subsection (2) does not constitute a violation of the prohibition against blacklisting as provided in sections 8-2-110 and 8-2-111, C.R.S., nor does it constitute an unfair labor practice in violation of any provision of article 3 of title 8, C.R.S.

(d) (I) An employer who provides information pursuant to this subsection (2) to a prospective employer of the registrant upon request of the prospective employer or the registrant is immune from civil liability and is not liable in civil damages for the disclosure or any consequences of the disclosure; except that this immunity does not apply when the registrant shows by a preponderance of the evidence both of the following:

(A) The information disclosed by the current or former employer was false; and

(B) The employer providing the information knew or reasonably should have known that the information was false.

(II) This subsection (2) applies to any employee, agent, or other representative of the current or former employer who is authorized to provide and who provides information in accordance with this subsection (2).

(e) An employer or any officer, director, or employee thereof who discloses information under this subsection (2) shall be presumed to be acting in good faith unless it is shown by a preponderance of the evidence that the employer, officer, director, or employee intentionally or recklessly disclosed false information about the employee or former employee.

(f) Nothing in this subsection (2) shall be construed to abrogate or contradict the provisions of part 1 of article 2 of title 8, C.R.S.

(3) An employer who requires a registrant applying for employment to submit to a drug test shall forward to the director any confirmed positive drug test results for a controlled substance that is not subject to a valid prescription.

Source: L. 2010: Entire article added, (HB 10-1415), ch. 339, p. 1556, § 1, effective August 11. **L. 2016:** (3) added, (HB 16-1160), ch. 330, p. 1337, § 2, effective August 10.

12-43.2-105. Grounds for discipline - disciplinary proceedings - judicial review. (1) The director may take disciplinary action against a registrant if the director finds that the registrant has represented himself or herself as a registered surgical assistant or technologist after the expiration, suspension, or revocation of his or her registration.

(2) The director may revoke, suspend, deny, or refuse to renew a registration or issue a cease-and-desist order to a registrant in accordance with this section upon proof that the registrant:

(a) Has performed the duties of a surgical assistant or surgical technologist without being registered;

(b) Has falsified information in an application or the database or has attempted to obtain or has obtained a registration by fraud, deception, or misrepresentation;

(c) Has an alcohol use disorder, as defined in section 27-81-102, or a substance use disorder, as defined in section 27-82-102, is an excessive or habitual user or abuser of alcohol or habit-forming drugs, or is a habitual user of a controlled substance, as defined in section 18-18-102, or other drugs having similar effects;

(d) Has a physical condition or disability; a behavioral, mental health, or substance use disorder; or an intellectual and developmental disability that renders the registrant unable to perform his or her tasks with reasonable skill and safety or that may endanger the health or safety of individuals receiving services;

(e) Has violated this article or aided or abetted or knowingly permitted any person to violate this article, a rule adopted under this article, or any lawful order of the director;

(f) Had a registration, license, or certification suspended, revoked, or denied by another jurisdiction for actions that are a violation of this article;

(g) Has been convicted of or pled guilty or nolo contendere to a misdemeanor related to drugs or alcohol or a felony. A certified copy of the judgment of a court of competent jurisdiction of the conviction or plea shall be conclusive evidence of the conviction or plea. In considering the disciplinary action, the director shall be governed by section 24-5-101, C.R.S.

(h) Has fraudulently obtained, furnished, or sold any surgical assistant or surgical technologist diploma, certificate, registration, renewal of registration, or record or aided or abetted such act;

(i) Has failed to notify the director of the suspension, revocation, or denial of the person's past or currently held license, certificate, or registration required to perform the duties of a surgical assistant or surgical technologist in this or any other jurisdiction;

(j) Has refused to submit to a physical or mental examination when ordered by the director pursuant to section 12-43.2-106; or

(k) Has otherwise violated any provision of this article or lawful order or rule of the director.

(3) (a) Except as otherwise provided in subsection (2) of this section, the director need not find that the actions that are grounds for discipline were willful but may consider whether such actions were willful when determining the nature of disciplinary sanctions to be imposed.

(b) Upon the failure of a registrant to comply with any conditions imposed by the director pursuant to subsection (2) of this section, unless compliance is beyond the control of the registrant, the director may suspend the registration of the registrant until the registrant complies with the conditions of the director.

(4) (a) The director may commence a proceeding to discipline a registrant when the director has reasonable grounds to believe that the registrant has committed an act enumerated in this section or has violated a lawful order or rule of the director.

(b) In any proceeding under this section, the director may accept as evidence of grounds for disciplinary action any disciplinary action taken against a registrant in another jurisdiction if

the violation that prompted the disciplinary action in the other jurisdiction would be grounds for disciplinary action under this article.

(5) Disciplinary proceedings shall be conducted in accordance with article 4 of title 24, C.R.S., and the hearing and opportunity for review shall be conducted pursuant to that article by the director or by an administrative law judge, at the director's discretion. The director has the authority to exercise all powers and duties conferred by this article during the disciplinary proceedings.

(6) (a) The director may request the attorney general to seek an injunction, in any court of competent jurisdiction, to enjoin a person from committing an act prohibited by this article. When seeking an injunction under this paragraph (a), the attorney general shall 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.

(b) (I) In accordance with article 4 of title 24, C.R.S., and this article, the director is authorized to investigate, hold hearings, and gather evidence in all matters related to the exercise and performance of the powers and duties of the director.

(II) In order to aid the director in any hearing or investigation instituted pursuant to this section, the director or an administrative law judge appointed pursuant to paragraph (c) of this subsection (6) is authorized to administer oaths, take affirmations of witnesses, and issue subpoenas compelling the attendance of witnesses and the production of all relevant records, papers, books, documentary evidence, and materials in any hearing, investigation, accusation, or other matter before the director or an administrative law judge.

(III) Upon failure of any witness or registrant to comply with a subpoena or process, the district court of the county in which the subpoenaed person or registrant resides or conducts business, upon application by the director with notice to the subpoenaed person or registrant, may issue to the person or registrant an order requiring that person or registrant to appear before the director; produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or give evidence touching the matter under investigation or in question. If the person or registrant fails to obey the order of the court, the person or registrant may be held in contempt of court.

(c) The director may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to conduct hearings, take evidence, make findings, and report such findings to the director.

(7) (a) The director, the director's staff, any person acting as a witness or consultant to the director, an employer who notifies the director pursuant to section 12-43.2-104 (1)(b), and any person who lodges a complaint pursuant to this article shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as director, staff, consultant, employer, or witness, respectively, if such person was acting in good faith within the scope of his, her, or its respective capacity, made a reasonable effort to obtain the facts of the matter as to which he, she, or it acted, and acted in the reasonable belief that the action taken by him, her, or it was warranted by the facts.

(b) A person participating in good faith in making a complaint or report or in an investigative or administrative proceeding pursuant to this section shall be immune from any civil or criminal liability that otherwise might result by reason of the participation.

(8) A final action of the director is subject to judicial review by the court of appeals pursuant to section 24-4-106 (11), C.R.S.

(9) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the director, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(10) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a registrant 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, the director may issue an order to cease and desist such activity. 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 the performance of unregistered activities immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (10), the respondent may request a hearing on the question of whether acts in violation of this article have occurred. The hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

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

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (11) shall be notified promptly by the director of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the director for a hearing on the order. The notice may be served on the person against whom the order has been issued by personal service, by first-class, postage prepaid United States mail, or in another manner as may be practicable. Personal service or mailing of an order or document pursuant to this paragraph (b) shall constitute notice of the order to the person.

(c) (I) The hearing on an order to show cause shall be held no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the director as provided in paragraph (b) of this subsection (11). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing be held later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (11) does not appear at the hearing, the director may present evidence that notification was properly sent or served on the person pursuant to paragraph (b) of this subsection (11) and such other evidence related to the matter as the director deems appropriate. The director shall issue the order within ten days after the director's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(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, or has or is about to engage in acts or practices constituting violations of this article, a final cease-and-desist order may be issued, directing the person to cease and desist from further unlawful acts or unregistered practices.

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

(12) If it appears to the director, based upon credible evidence presented to the director, that a person has engaged or is about to engage in an unregistered act or practice; an act or practice constituting a violation of this article, a rule promulgated pursuant to this article, or an order issued pursuant to this article; or an act or practice constituting grounds for administrative sanction pursuant to this article, the director may enter into a stipulation with the person.

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

(14) A person aggrieved by the final cease-and-desist order may seek judicial review of the director's determination or of the director's final order as provided in subsection (8) of this section.

(15) The director shall notify the chief medical officer of the department of public health and environment within thirty days after taking action regarding conduct of a registrant that violates either this article or any applicable requirement of title 25, C.R.S., and post a notice of such action on the division's website.

Source: L. 2010: Entire article added, (HB 10-1415), ch. 339, p. 1557, § 1, effective August 11. **L. 2017:** (2)(c) and (2)(d) amended, (SB 17-242), ch. 263, p. 1289, § 99, effective May 25.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-43.2-105.5. Criminal history record check required. Each applicant for registration must have his or her fingerprints taken by a local law enforcement agency or any third party approved by the Colorado bureau of investigation for the purpose of obtaining a fingerprint-based criminal history record check. If an approved third party takes the person's fingerprints, the fingerprints may be electronically captured using Colorado bureau of investigation-approved livescan equipment. Third-party vendors shall not keep the applicant information for more than thirty days unless requested to do so by the applicant. The applicant shall submit payment by certified check or money order for the fingerprints and for the actual costs of the record check at the time the fingerprints are submitted to the Colorado bureau of investigation. Upon receipt of fingerprints and receipt of the payment for costs, the Colorado bureau of investigation shall conduct a state and national fingerprint-based criminal history record check utilizing records of the Colorado bureau of investigation and the federal bureau of investigation and shall forward the results of the criminal history record check to the director.

Source: L. 2016: Entire section added, (HB 16-1160), ch. 330, p. 1338, § 3, effective August 10. **L. 2017:** Entire section amended, (SB 17-189), ch. 149, p. 498, § 4, effective August 9.

12-43.2-106. Mental and physical examination. (1) If the director has reasonable cause to believe that a registrant is unable to perform the duties of a surgical assistant or surgical technologist, as appropriate, with reasonable skill and safety, the director may order the registrant to undergo a mental or physical examination administered by a physician or other licensed health care professional designated by the director. Unless due to circumstances beyond the registrant's control, if the registrant refuses to undergo a mental or physical examination, the director may suspend the registrant's registration until the results of the examination are known and the director has made a determination of the registrant's fitness to perform the duties of a surgical assistant or surgical technologist. The director shall proceed with an order for examination and shall make his or her determination in a timely manner.

(2) An order requiring a registrant to undergo a mental or physical examination shall contain the basis of the director's reasonable cause to believe that the registrant is unable to work with reasonable skill and safety. For purposes of a disciplinary proceeding authorized under this article, the registrant shall be deemed to have waived all objections to the admissibility of the examining physician's or other licensed health care professional's testimony or examination reports on the ground that they are privileged communications.

(3) The registrant may submit to the director testimony or examination reports from a physician or other licensed health care professional chosen by the registrant and pertaining to any condition that the director has alleged may preclude the registrant from working with reasonable skill and safety. The testimony and reports submitted by the registrant may be considered by the director in conjunction with, but not in lieu of, testimony and examination reports from the physician or other licensed health care professional designated by the director.

(4) The results of a mental or physical examination ordered by the director shall not be used as evidence in any proceeding other than one before the director and shall not be deemed a public record or made available to the public.

Source: L. 2010: Entire article added, (HB 10-1415), ch. 339, p. 1562, § 1, effective August 11.

12-43.2-107. Repeal of article. This article is repealed, effective September 1, 2021. Prior to such repeal, the registration of surgical assistants and surgical technologists shall be reviewed as provided in section 24-34-104, C.R.S.

Source: L. 2010: Entire article added, (HB 10-1415), ch. 339, p. 1563, § 1, effective August 11. **L. 2016:** Entire section amended, (HB 16-1160), ch. 330, p. 1338, § 4, effective August 10.

ARTICLE 43.3

Medical Marijuana

12-43.3-101 to 12-43.3-1102. (Repealed)

Source: L. 2018: Entire article repealed, (HB 18-1023), ch. 55, p. 592, § 29, effective October 1.

Editor's note: (1) This article 43.3 was added in 2010. For amendments to this article 43.3 prior to its repeal in 2018, consult the 2017 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume. This article 43.3 was relocated to article 11 of title 44 by HB 18-1023. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article 43.3, see the comparative tables located in the back of the index.

(2) (a) Changes by SB 18-187 to §§ 12-43.3-104 (1.2) and (1.7) and 12-43.3-202 (2.5)(a)(IV) were harmonized with HB 18-1023 and relocated to §§ 44-11-104 (1.8) and (4.2) and 44-11-202 (3)(a)(IV), respectively.

(b) Changes by SB 18-271 to §§ 12-43.3-202 (2)(a)(XXII) and (2)(a)(XXIII) and 12-43.3-404 (2) were harmonized with HB 18-1023 and relocated to §§ 44-11-202 (2)(a)(XXVI) and (2)(a)(XXIX) and 44-11-404 (2), respectively.

(c) Changes by HB 18-1280 to §§ 12-43.3-202 (2)(a)(XXIII) and 12-43.3-401 (1.5) were harmonized with HB 18-1023 and relocated to §§ 44-11-202 (2)(a)(XXVII) and 44-11-401 (1.5), respectively.

(d) Changes by HB 18-1389 to §§ 12-43.3-202 (2)(a)(XXIII) and 12-43.3-403 (4) were harmonized with HB 18-1023 and relocated to §§ 44-11-202 (2)(a)(XXVIII) and 44-11-403 (5), respectively.

(e) Changes by SB 18-105 to § 12-43.3-202 (2.5)(a)(I)(G) were harmonized with HB 18-1023 and relocated to § 44-11-202 (3)(a)(I)(G).

(f) Changes by HB 18-1422 to §§ 12-43.3-202 (2.5)(a)(I)(H) and 12-43.3-405 (1) were harmonized with HB 18-1023 and relocated to §§ 44-11-202 (3)(a)(I)(H) and 44-11-405 (1), respectively.

(g) Changes by HB 18-1381 to §§ 12-43.3-202 (4), 12-43.3-402 (3) and (4), 12-43.3-403, 12-43.3-404 (1)(b) and (8), and 12-43.3-901 (4)(e) and (5) were harmonized with HB 18-1023 and relocated to §§ 44-11-202 (4), 44-11-402 (3) and (4), 44-11-403, 44-11-404 (1)(b) and (8), and 44-11-901 (4)(e) and (5), respectively.

(h) Changes by HB 18-1259 to §§ 12-43.3-403 (4) and 12-43.3-404 (12) were harmonized with HB 18-1023 and relocated to §§ 44-11-403 (4) and 44-11-404 (12), respectively.

ARTICLE 43.4

Colorado Retail Marijuana Code

12-43.4-101 to 12-43.4-1101. (Repealed)

Source: L. 2018: Entire article repealed, (HB 18-1023), ch. 55, p. 592, § 29, effective October 1.

Editor's note: (1) This article 43.4 was added in 2013. For amendments to this article 43.4 prior to its repeal in 2018, consult the 2017 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume. This article 43.4 was relocated to article 12 of title 44 by HB 18-1023. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article 43.4, see the comparative tables located in the back of the index.

(2) (a) Changes by SB 18-187 to §§ 12-43.4-103 (1.7) and (2.7) and 12-43.4-202 (5) were harmonized with HB 18-1023 and relocated to §§ 44-12-103 (3.3) and (5.2) and 44-12-202 (5), respectively, effective January 1, 2019.

(b) Changes by SB 18-105 to § 12-43.4-202 (3)(a)(IV)(H) were harmonized with HB 18-1023 and relocated to § 44-12-202 (3)(a)(IV)(H). For the law in effect from March 5, 2018, until the effective date of the relocation, see L. 2018, p. 264.

(c) Changes by HB 18-1422 to §§ 12-43.4-202 (3)(a)(IV)(I) and 12-43.4-405 (1) were harmonized with HB 18-1023 and relocated to §§ 44-12-202 (3)(a)(IV)(I) and 44-12-405 (1), respectively. For the law in effect from August 8, 2018, until the effective date of the relocation, see L. 2018, p. 2358.

(d) Changes by HB 18-1280 to §§ 12-43.4-202 (3)(a)(XIX), (3)(a)(XX), and (3)(a)(XXI) and 12-43.4-401 (1.5) were harmonized with HB 18-1023 and relocated to §§ 44-12-202 (3)(a)(XX), (3)(a)(XXI), and (3)(a)(XXII) and 44-12-401 (1.5), respectively. For the law in effect from May 15, 2018, until the effective date of the relocation, see L. 2018, pp. 1357, 1358.

(e) Changes by SB 18-271 to §§ 12-43.4-202 (3)(a)(XIX), (3)(a)(XX), and (3)(a)(XXI) and 12-43.4-404 (2) were harmonized with HB 18-1023 and relocated to §§ 44-12-202 (3)(a)(XX), (3)(a)(XXI), and (3)(a)(XXIV) and 44-12-404 (2), respectively. For the law in effect from May 30, 2018, until the effective date of the relocation, see L. 2018, p. 1971.

(f) Changes by HB 18-1389 to §§ 12-43.4-202 (3)(a)(XXI), 12-43.4-403 (7), and 12-43.4-404 (1)(b) were harmonized with HB 18-1023 and relocated to §§ 44-12-202 (3)(a)(XXIII), 44-12-403 (7), and 44-12-404 (1)(b), respectively. For the law in effect from May 24, 2018, until the effective date of the relocation, see L. 2018, pp. 1523 to 1525.

(g) Changes by HB 18-1259 to §§ 12-43.4-403 (7) and 12-43.4-404 (10) were harmonized with HB 18-1023 and relocated to §§ 44-12-403 (6) and 44-12-404 (10), respectively. For the law in effect from August 8, 2018, until the effective date of the relocation, see L. 2018, pp. 1229, 1231.

ARTICLE 43.5

Professional Review - Health Care

12-43.5-101 to 12-43.5-103. (Repealed)

Source: L. 89: Entire article repealed, p. 689, § 6, effective July 1, 1989.

Editor's note: This article was added in 1975. For amendments to this article prior to its repeal in 1989, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 43.7

Speech-language Pathologists

Editor's note: This article was numbered as article 43.5 in House Bill 12-1303 but has been renumbered on revision for ease of location.

12-43.7-101. Short title. This article shall be known and may be cited as the "Speech-language Pathology Practice Act".

Source: L. 2012: Entire article added, (HB 12-1303), ch. 263, p. 1360, § 1, effective August 8.

12-43.7-102. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that:

(a) Speech-language pathology services are provided for the purpose of improving the abilities of those who have congenital or acquired speech, language, cognitive, feeding, and swallowing deficits;

(b) Speech-language pathologists provide specific therapy and treatments that are related to the effects of medical or dental diagnoses or congenital, genetic, or developmental conditions but do not provide medical or dental procedures, medications, or interventions that constitute the practice of medicine or dentistry;

(c) The professional roles and activities in speech-language pathology include clinical and educational services, which include evaluation, assessment, planning, and treatment; prevention and advocacy; education; administration; and research;

(d) This article is necessary to safeguard public health, safety, and welfare and to protect the public from incompetent, unethical, or unauthorized persons.

(2) The general assembly further determines that it is the purpose of this article to:

(a) Regulate persons who are representing or holding themselves out as speech-language pathologists or who are performing services that constitute speech-language pathology; and

(b) Exclude from regulation under this article those school speech-language pathologists who are paid solely by an administrative unit or state-operated program.

Source: L. 2012: Entire article added, (HB 12-1303), ch. 263, p. 1360, § 1, effective August 8.

12-43.7-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Administrative unit" has the same meaning as set forth in section 22-20-103 (1), C.R.S.

(2) "Department" means the department of regulatory agencies.

(3) "Director" means the director of the division of professions and occupations or the director's designee.

(4) "Division" means the division of professions and occupations in the department created in section 24-34-102, C.R.S.

(5) "School speech-language pathologist" means a person licensed by the department of education to provide speech-language pathology services that are paid for by an administrative unit or a state-operated program. "School speech-language pathologist" includes a school speech-language pathology assistant authorized by the department of education pursuant to section 22-60.5-111 (10), C.R.S., to provide speech-language pathology services that are paid for by an administrative unit or a state-operated program.

(6) "Speech-language pathologist" or "certificate holder" means a person certified to practice speech-language pathology under this article.

(7) (a) "Speech-language pathology" means the application of principles, methods, and procedures related to the development, disorders, and effectiveness of human communication and related functions, which includes providing prevention, screening, consultation, assessment or evaluation, treatment, intervention, management, counseling, collaboration, and referral services for disorders of:

(I) Speech, such as speech sound production, fluency, resonance, and voice;

(II) Language, such as phonology, morphology, syntax, semantics, pragmatic and social communication skills, and literacy skills;

(III) Feeding and swallowing; and

(IV) Cognitive aspects of communication, such as attention, memory, executive functioning, and problem solving.

(b) "Speech-language pathology" also includes establishing augmentative and alternative communication techniques and strategies, including the following:

(I) Developing, selecting, and prescribing augmentative or alternative communication systems and devices, such as speech generating devices;

(II) Providing services to individuals with hearing loss and their families, such as auditory training, speech reading, or speech and language intervention secondary to hearing loss;

(III) Screening individuals for hearing loss or middle ear pathology using conventional pure-tone air conduction methods, including otoscopic inspection, otoacoustic emissions, or screening tympanometry;

(IV) Using instrumentation such as videofluroscopy, endoscopy, or stroboscopy to observe, collect data, and measure parameters of communication and swallowing;

(V) Selecting, fitting, and establishing effective use of prosthetic or adaptive devices for communication, swallowing, or other upper aerodigestive functions, not including sensory devices used by individuals with hearing loss or the orthodontic movement of teeth for the purpose of correction of speech pathology conditions; and

(VI) Providing services to modify or enhance communication performance, such as accent modification and personal or professional communication efficacy.

(8) "State-operated program" has the same meaning as set forth in section 22-20-103 (28), C.R.S.

Source: L. 2012: Entire article added, (HB 12-1303), ch. 263, p. 1361, § 1, effective August 8.

12-43.7-104. Use of titles restricted. (1) Only a person required to be and who is certified as a speech-language pathologist under this article or licensed by the Colorado department of education to provide speech-language pathology services may advertise as or use

the title "speech-language pathologist", "speech pathologist", "speech therapist", "speech correctionist", "speech clinician", "language pathologist", "voice therapist", "voice pathologist", "aphasiologist", or any other generally accepted terms, letters, or figures that indicate that the person is a certified speech-language pathologist.

(2) For a certificate holder who has successfully completed a doctoral degree in communication sciences and disorders as described in section 12-43.7-106 (1)(a), a certification to practice speech-language pathology issued pursuant to this article entitles the certificate holder to use the title "Doctor" or "Dr." when accompanied by the terms "speech-language pathology" or the letters "S.L.P."

Source: L. 2012: Entire article added, (HB 12-1303), ch. 263, p. 1362, § 1, effective August 8.

12-43.7-105. Certification required - exception. (1) Except as otherwise provided in this article 43.7, on and after July 1, 2013, a person shall not practice speech-language pathology or represent or hold himself or herself out as being able to practice speech-language pathology in this state without possessing a valid certification issued by the director in accordance with this article 43.7 and any rules adopted under this article 43.7 or a special services license issued by the department of education pursuant to section 22-60.5-210.

(2) A person described in section 12-43.7-108 (1) is not required to obtain certification under this article.

Source: L. 2012: Entire article added, (HB 12-1303), ch. 263, p. 1363, § 1, effective August 8. **L. 2017:** (1) amended, (SB 17-108), ch. 146, p. 490, § 3, effective August 9.

12-43.7-106. Certification - application - qualifications - provisional certification - renewal - fees - rules. (1) **Educational and experiential requirements.** Every applicant for a certification as a speech-language pathologist must have:

(a) Successfully completed a master's or higher degree in communication sciences and disorders granted by an accredited institution of higher education recognized by the United States department of education;

(b) Successfully completed a speech-language pathology clinical fellowship approved by the director, as documented by the supervising clinician or a national certifying body approved by the director; and

(c) Passed the appropriate examination and clinical fellowships adopted by the director.

(2) **Application.** When an applicant has fulfilled the requirements of subsection (1) of this section, the applicant may apply for certification in the manner required by the director. The applicant shall submit an application fee with his or her application in an amount determined by the director. Additionally, if the applicant will provide speech-language pathology services to patients, the applicant shall submit to the director proof that the applicant has purchased and is maintaining or is covered by professional liability insurance in an amount determined by the director by rule.

(3) **Certification.** (a) Except as provided in paragraph (b) of this subsection (3), when an applicant has fulfilled the requirements of subsections (1) and (2) of this section, the director shall issue a certification to the applicant.

(b) The director may deny a certification if the applicant has committed any act that would be grounds for disciplinary action under section 12-43.7-110.

(4) **Certification by endorsement.** (a) An applicant for certification by endorsement shall file an application and pay a fee as determined by the director and shall hold a current, valid license or certification in a jurisdiction that requires qualifications substantially equivalent to those required for certification by subsection (1) of this section.

(b) An applicant for certification by endorsement shall submit with the application verification that the applicant has actively practiced for a period of time determined by rules of the director or otherwise maintained competency as determined by the director. Additionally, if the applicant will provide speech-language pathology services to patients, the applicant shall submit to the director proof that the applicant has purchased and is maintaining or is covered by professional liability insurance in an amount determined by the director by rule.

(c) Upon receipt of all documents required by paragraphs (a) and (b) of this subsection (4), the director shall review the application and make a determination of the applicant's qualification to be certified by endorsement.

(d) The director may deny the certification by endorsement if the applicant has committed an act that would be grounds for disciplinary action under section 12-43.7-110.

(5) **Certification renewal.** (a) A certificate holder shall renew the certification issued under this article according to a schedule of renewal dates established by the director. The certificate holder shall submit an application in the manner required by the director and shall pay a renewal fee in an amount determined by the director.

(b) Certifications shall be renewed or reinstated in accordance with the schedule established by the director, and the renewal or reinstatement shall be granted pursuant to section 24-34-102 (8), C.R.S. The director may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a certificate holder fails to renew his or her certification pursuant to the schedule established by the director, the certification expires. Any person whose certification has expired and who continues to practice speech-language pathology is subject to the penalties provided in this article or section 24-34-102 (8), C.R.S., for reinstatement.

(6) **Fees.** (a) The director shall establish and collect fees under this article pursuant to section 24-34-105, C.R.S., and shall base the fees charged to speech-language pathologists certified under this article on the cost to administer the program divided by the total number of speech-language pathologists, as required by section 24-34-105, C.R.S. All fees collected under this article shall be determined, collected, and appropriated in the same manner as set forth in section 24-34-105, C.R.S., and periodically adjusted in accordance with section 24-75-402, C.R.S.

(b) Except as otherwise provided in this article, the division shall transmit all fees collected pursuant to this article to the state treasurer, who shall credit the fees to the division of professions and occupations cash fund created pursuant to section 24-34-105 (2)(b), C.R.S. The general assembly shall make annual appropriations from the division of professions and occupations cash fund for expenditures of the division incurred in the performance of its duties under this article.

Source: L. 2012: Entire article added, (HB 12-1303), ch. 263, p. 1363, § 1, effective August 8. **L. 2017:** (1)(c) amended, (SB 17-108), ch. 146, p. 490, § 4, effective August 9.

12-43.7-106.5. Provisional certification - qualifications - application - expiration - practice. (1) **Educational and experiential requirements.** An applicant for a provisional certification as a speech-language pathologist must:

(a) Successfully complete a master's or higher degree in communication sciences and disorders granted by an accredited institution of higher education recognized by the United States department of education; and

(b) Pass the appropriate examination and clinical fellowships adopted by the director.

(2) **Application.** On or after September 1, 2015, an applicant may apply for provisional certification in the manner required by the director. The applicant shall submit an application fee with the application in an amount determined by the director. If the applicant will provide speech-language pathology services to patients, the applicant also shall submit proof that he or she has purchased and is maintaining or is covered by professional liability insurance in an amount determined by the director by rule. Additionally, the applicant shall submit a plan for the completion of a speech-language pathology clinical fellowship, as specified in section 12-43.7-106 (1)(b).

(3) **Provisional certification.** (a) Except as provided in paragraph (b) of this subsection (3), when an applicant has fulfilled the requirements of subsections (1) and (2) of this section, the director shall issue a provisional certification to the applicant.

(b) The director may deny a provisional certification if the applicant has committed any act that would be grounds for disciplinary action under section 12-43.7-110.

(4) **Expiration of provisional certification.** (a) A provisional certification expires twenty-four months after issuance or upon the issuance of certification to the applicant under section 12-43.7-106, whichever occurs first.

(b) The director shall not renew a provisional certification.

(c) A provisional certificate holder may apply for certification in accordance with section 12-43.7-106 upon completion of a speech-language pathology clinical fellowship.

(5) **Practice.** A provisional certificate holder may practice speech-language pathology only under the general supervision of a speech-language pathologist who holds a certificate of clinical competence and has passed the appropriate examination and clinical fellowships adopted by the director.

Source: L. 2015: Entire section added, (HB 15-1373), ch. 248, p. 908, § 1, effective May 29. **L. 2017:** (1)(b) and (5) amended, (SB 17-108), ch. 146, p. 490, § 5, effective August 9.

12-43.7-107. Continuing professional competency - rules. (1) (a) A speech-language pathologist shall maintain continuing professional competency to practice.

(b) The director shall establish a continuing professional competency program that includes, at a minimum, the following elements:

(I) A self-assessment of the knowledge and skills of a speech-language pathologist seeking to renew or reinstate a certification;

(II) Development, execution, and documentation of a learning plan based on the assessment; and

(III) Periodic demonstration of knowledge and skills through documentation of activities necessary to ensure at least minimal ability to safely practice the profession; except that a

speech-language pathologist certified pursuant to this article need not retake any examination required by section 12-43.7-106 for initial certification.

(2) The director shall establish that a speech-language pathologist satisfies the continuing competency requirements of this section if the speech-language pathologist meets the continuing professional competency requirements of one of the following entities:

(a) An accrediting body approved by the director; or

(b) An entity approved by the director.

(3) (a) After the program is established, a speech-language pathologist shall satisfy the requirements of the program in order to renew or reinstate a certification to practice speech-language pathology.

(b) The requirements of this section apply to individual speech-language pathologists, and nothing in this section requires a person who employs or contracts with a speech-language pathologist to comply with this section.

(4) Records of assessments or other documentation developed or submitted in connection with the continuing professional competency program are confidential and not subject to inspection by the public or discovery in connection with a civil action against a speech-language pathologist or other professional regulated under this title. A person or the director shall not use the records or documents unless used by the director to determine whether a speech-language pathologist is maintaining continuing professional competency to engage in the profession.

(5) As used in this section, "continuing professional competency" means the ongoing ability of a speech-language pathologist to learn, integrate, and apply the knowledge, skill, and judgment to practice as a speech-language pathologist according to generally accepted standards and professional ethical standards.

Source: L. 2012: Entire article added, (HB 12-1303), ch. 263, p. 1365, § 1, effective August 8.

12-43.7-108. Scope of article - exclusions. (1) This article 43.7 does not prevent or restrict the practice, services, or activities of:

(a) A school speech-language pathologist whose compensation for speech-language pathology services is paid solely by an administrative unit or state-operated program;

(b) A person licensed or otherwise regulated in this state by any other law from engaging in his or her profession or occupation as defined in the law under which he or she is regulated;

(c) A person pursuing a course of study leading to a degree in speech-language pathology at an educational institution with an accredited speech-language pathology program if that person is designated by a title that clearly indicates his or her status as a student and if he or she acts under appropriate instruction and supervision;

(d) A person participating in good faith in a clinical fellowship if the experience constitutes a part of the experience necessary to meet the requirement of section 12-43.7-106 (1) and the person acts under appropriate supervision;

(e) Any legally qualified speech-language pathologist from another state or country when providing services on behalf of a temporarily absent speech-language pathologist certified in this state, so long as the uncertified speech-language pathologist is acting in accordance with

rules adopted by the director. The uncertified practice must not occur more than once in any twelve-month period.

(f) A speech-language pathologist who possesses a special services license issued by the department of education pursuant to section 22-60.5-210.

(2) Nothing in this article requires or allows the department of education, the department of health care policy and financing, or any other state department to adopt or apply the standards contained in this article:

(a) As the standards for endorsing or otherwise authorizing school speech-language pathologists to provide speech-language pathology services that are paid for by an administrative unit or state-operated program; or

(b) For purposes of determining whether medicaid reimbursement may be obtained for speech-language pathology services.

(3) Nothing in this article requires a professional licensed, certified, registered, or otherwise regulated under this title or title 22, C.R.S., to obtain certification under this article, or subjects the professional to discipline under this article, for engaging in activities that are within his or her professional scope of practice.

Source: L. 2012: Entire article added, (HB 12-1303), ch. 263, p. 1366, § 1, effective August 8. **L. 2017:** IP(1), (1)(d), and (1)(e) amended and (1)(f) added, (SB 17-108), ch. 146, p. 491, § 6, effective August 9.

12-43.7-109. Limitations on authority. Nothing in this article authorizes a speech-language pathologist to engage in the practice of medicine, as defined in section 12-36-106, dentistry, as defined in sections 12-35-103 (5) and 12-35-113, or any other profession for which licensure, certification, or registration is required by this article.

Source: L. 2012: Entire article added, (HB 12-1303), ch. 263, p. 1367, § 1, effective August 8.

12-43.7-110. Grounds for discipline. (1) The director may take disciplinary action against a certificate holder pursuant to section 12-43.7-111 if the director finds that the certificate holder has represented or held himself or herself out as a certified speech-language pathologist after the expiration, suspension, or revocation of his or her certification.

(2) The director may revoke, suspend, or deny a certification, place a certificate holder on probation, issue a letter of admonition or a confidential letter of concern, impose a fine against a certificate holder, or issue a cease-and-desist order to a certificate holder in accordance with section 12-43.7-111 upon proof that the certificate holder:

(a) Has engaged in a sexual act with a person receiving services while a therapeutic relationship existed or within six months immediately following termination of the therapeutic relationship in writing. For the purposes of this paragraph (a):

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

(II) "Therapeutic relationship" means the period beginning with the initial evaluation and ending upon the written termination of treatment.

(b) Has falsified information in an application or has attempted to obtain or has obtained a certification by fraud, deception, or misrepresentation;

(c) Has an alcohol use disorder, as defined in section 27-81-102, or a substance use disorder, as defined in section 27-82-102, excessively or habitually uses or abuses alcohol or habit-forming drugs, or habitually uses a controlled substance, as defined in section 18-18-102, or other drugs having similar effects; except that the director has the discretion not to discipline the certificate holder if he or she is participating in good faith in an alcohol or substance use disorder treatment program approved by the director;

(d) (I) Failed to notify the director, as required by section 12-43.7-115, of a physical illness; a physical condition; or a behavioral, mental health, or substance use disorder that impacts the speech-language pathologist's ability to perform speech-language pathology with reasonable skill and safety to patients;

(II) Failed to act within the limitations created by a physical illness; a physical condition; or a behavioral, mental health, or substance use disorder that renders the certificate holder unable to perform speech-language pathology with reasonable skill and safety to the patient; or

(III) Failed to comply with the limitations agreed to under a confidential agreement entered pursuant to section 12-43.7-115;

(e) Has violated this article or aided or abetted or knowingly permitted any person to violate this article, a rule adopted under this article, or any lawful order of the director;

(f) Has failed to respond to a request or order of the director;

(g) Has been convicted of or pled guilty or nolo contendere to a felony or any crime related to the certificate holder's practice of speech-language pathology or has committed an act specified in section 12-43.7-112. A certified copy of the judgment of a court of competent jurisdiction of the conviction or plea is conclusive evidence of the conviction or plea. In considering the disciplinary action, the director is governed by section 24-5-101, C.R.S.

(h) Has fraudulently obtained, furnished, or sold any speech-language pathology diploma, certificate, certification, renewal of certification, or record or aided or abetted such act;

(i) Has failed to notify the director of the suspension or revocation of the person's past or currently held license, certificate, or certification required to practice speech-language pathology in this or any other jurisdiction;

(j) Has failed to respond in an honest, materially responsive, and timely manner to a complaint against the certificate holder;

(k) Has resorted to fraud, misrepresentation, or deception in applying for, securing, renewing, or seeking reinstatement of a certification in this or any other state, in applying for professional liability coverage, or in taking the examination required by this article;

(l) Has failed to refer a patient to the appropriate licensed, certified, or registered health care professional when the services required by the patient are beyond the level of competence of the speech-language pathologist or beyond the scope of speech-language pathology practice;

(m) Has refused to submit to a physical or mental examination when ordered by the director pursuant to section 12-43.7-114;

(n) Has failed to maintain or is not covered by professional liability insurance as required by section 12-43.7-106 (2) or (4) in the amount determined by the director by rule;

(o) Has willfully or negligently acted in a manner inconsistent with the health or safety of persons under his or her care;

(p) Has negligently or willfully practiced speech-language pathology in a manner that fails to meet generally accepted standards for speech-language pathology practice;

(q) Has failed to make essential entries on patient records or falsified or made incorrect entries of an essential nature on patient records; or

(r) Has otherwise violated any provision of this article or lawful order or rule of the director.

(3) Except as otherwise provided in subsection (2) of this section, the director need not find that the actions that are grounds for discipline were willful but may consider whether the actions were willful when determining the nature of disciplinary sanctions to impose.

Source: L. 2012: Entire article added, (HB 12-1303), ch. 263, p. 1367, § 1, effective August 8. **L. 2017:** (2)(c), (2)(d)(I), and (2)(d)(II) amended, (SB 17-242), ch. 263, p. 1290, § 100, effective May 25.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-43.7-111. Disciplinary actions - judicial review. (1) (a) The director may commence a proceeding to discipline a certificate holder when the director has reasonable grounds to believe that the certificate holder has committed an act enumerated in section 12-43.7-110 or has violated a lawful order or rule of the director.

(b) In any proceeding under this section, the director may accept as evidence of grounds for disciplinary action any disciplinary action taken against a certificate holder in another jurisdiction if the violation that prompted the disciplinary action in the other jurisdiction would be grounds for disciplinary action under this article.

(2) The director shall conduct disciplinary proceedings in accordance with article 4 of title 24, C.R.S., and the director or an administrative law judge, as determined by the director, shall conduct the hearing and opportunity for review pursuant to that article. The director may exercise all powers and duties conferred by this article during the disciplinary proceedings.

(3) (a) The director may request the attorney general to seek an injunction, in any court of competent jurisdiction, to enjoin a person from committing an act prohibited by this article. When seeking an injunction under this paragraph (a), the attorney general is not 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.

(b) (I) In accordance with article 4 of title 24, C.R.S., and this article, the director may investigate, hold hearings, and gather evidence in all matters related to the exercise and performance of the powers and duties of the director.

(II) In order to aid the director in any hearing or investigation instituted pursuant to this section, the director or an administrative law judge appointed pursuant to paragraph (c) of this subsection (3) may administer oaths, take affirmations of witnesses, and issue subpoenas compelling the attendance of witnesses and the production of all relevant records, papers, books, documentary evidence, and materials in any hearing, investigation, accusation, or other matter before the director or an administrative law judge.

(III) Upon failure of any witness or certificate holder to comply with a subpoena or process and upon application by the director with notice to the subpoenaed person or certificate

holder, the district court of the county in which the subpoenaed person or certificate holder resides or conducts business may issue an order requiring the person or certificate holder to appear before the director; to produce the relevant papers, books, records, documentary evidence, or materials; or to give evidence touching the matter under investigation or in question. If the person or certificate holder fails to obey the order of the court, the district court may hold the person or certificate holder in contempt of court.

(c) The director may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to conduct hearings, take evidence, and make and report findings to the director.

(4) (a) The director, the director's staff, any person acting as a witness or 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 is immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as director, staff, consultant, witness, or complainant, respectively, if the individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that his or her action was warranted by the facts.

(b) A person participating in good faith in making a complaint or report or in an investigative or administrative proceeding pursuant to this section is immune from any civil or criminal liability that otherwise might result by reason of the participation.

(5) A final action of the director is subject to judicial review by the court of appeals pursuant to section 24-4-106 (11), C.R.S. The director may institute a judicial proceeding in accordance with section 24-4-106, C.R.S., to enforce an order of the director.

(6) 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 by a deferred settlement, action, judgment, or prosecution.

(7) When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the director and, in the opinion of the director, the complaint should be dismissed, but the director has noticed indications of possible errant conduct by the certificate holder that could lead to serious consequences if not corrected, the director may send a confidential letter of concern to the certificate holder.

(8) (a) When a complaint or 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 certificate holder.

(b) When the director sends a letter of admonition to a certificate holder, the director shall notify the certificate holder 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 certificate holder timely requests adjudication, the director shall vacate the letter of admonition and shall process the matter by means of formal disciplinary proceedings.

(9) The director may include in a disciplinary order that allows the certificate holder to continue to practice on probation any conditions the director deems appropriate to assure that the certificate holder is physically, mentally, morally, and otherwise qualified to practice speech-language pathology in accordance with generally accepted professional standards of practice. If the certificate holder fails to comply with any conditions imposed by the director pursuant to this

subsection (9), and the failure to comply is not due to conditions beyond the certificate holder's control, the director may order suspension of the certificate holder's certification to practice speech-language pathology in this state until the certificate holder complies with the conditions.

(10) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a certificate holder 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 certification, the director may issue an order to cease and desist the activity. The order must set forth the statutes and rules alleged to have been violated, the facts alleged to constitute the violation, and the requirement that all unlawful acts or uncertified practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (10), the respondent may request a hearing on the question of whether acts or practices in violation of this article have occurred. The director shall conduct the hearing pursuant to sections 24-4-104 and 24-4-105, C.R.S.

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

(b) The director shall promptly notify a person against whom he or she issues an order to show cause pursuant to paragraph (a) of this subsection (11) and shall include in the notice a copy of the order, a statement of the factual and legal basis for the order, and the date set by the director for a hearing on the order. The director may serve the notice on the person against whom the order has been issued by personal service, by first-class, postage prepaid United States mail, or in another manner as may be practicable. Personal service or mailing of an order or document pursuant to this paragraph (b) constitutes notice of the order to the person.

(c) (I) The director shall conduct the hearing on an order to show cause no sooner than ten and no later than forty-five calendar days after the date the director transmits or serves the notification as provided in paragraph (b) of this subsection (11). The director may continue the hearing by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the director conduct the hearing later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (11) does not appear at the hearing, the director may present evidence that notification was properly sent or served on the person pursuant to paragraph (b) of this subsection (11) and any other evidence related to the matter that the director deems appropriate. The director shall issue the order within ten days after the director's determination related to reasonable attempts to notify the respondent, and the order becomes final as to that person by operation of law. The director shall conduct the hearing pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(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 certification, or has or is about to engage in acts or practices constituting a violation of this article, the director may issue a final cease-and-desist order directing the person to cease and desist from further unlawful acts or uncertified practices.

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

(12) If it appears to the director, based upon credible evidence presented to the director, that a person has engaged or is about to engage in an uncertified act or practice; an act or practice constituting a violation of this article, a rule promulgated pursuant to this article, or an order issued pursuant to this article; or an act or practice constituting grounds for administrative sanction pursuant to this article, the director may enter into a stipulation with the person.

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

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

(15) Any person whose certification is revoked or who surrenders his or her certification to avoid discipline is ineligible to apply for certification under this article for at least two years after the date of revocation of the certification. The director shall treat a subsequent application for certification from a person whose certification was revoked as an application for a new certification under this article.

Source: L. 2012: Entire article added, (HB 12-1303), ch. 263, p. 1369, § 1, effective August 8.

12-43.7-112. Unauthorized practice - penalties. A person who practices or offers or attempts to practice speech-language pathology without an active certification 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. 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.

Source: L. 2012: Entire article added, (HB 12-1303), ch. 263, p. 1373, § 1, effective August 8.

12-43.7-113. Rule-making authority. The director shall promulgate rules as necessary for the administration of this article.

Source: L. 2012: Entire article added, (HB 12-1303), ch. 263, p. 1373, § 1, effective August 8.

12-43.7-114. Mental and physical examination of certificate holders. (1) If the director has reasonable cause to believe that a certificate holder is unable to practice with reasonable skill and safety, the director may order the certificate holder to take a mental or

physical examination administered by a physician or other licensed health care professional designated by the director. Except where due to circumstances beyond the certificate holder's control, if the certificate holder fails or refuses to undergo a mental or physical examination, the director may suspend the certificate holder's certification until the director has made a determination of the certificate holder's fitness to practice. The director shall proceed with an order for examination and shall make his or her determination in a timely manner.

(2) The director shall include in an order requiring a certificate holder to undergo a mental or physical examination the basis of the director's reasonable cause to believe that the certificate holder is unable to practice with reasonable skill and safety. For purposes of a disciplinary proceeding authorized under this article, the certificate holder is deemed to have waived all objections to the admissibility of the examining physician's or licensed health care professional's testimony or examination reports on the grounds that they are privileged communication.

(3) The certificate holder may submit to the director testimony or examination reports from a physician chosen by the certificate holder and pertaining to any condition that the director has alleged may preclude the certificate holder from practicing with reasonable skill and safety. The director may consider the testimony and reports submitted by the certificate holder in conjunction with, but not in lieu of, the testimony and examination reports of the physician designated by the director.

(4) The results of a mental or physical examination ordered by the director shall not be used as evidence in any proceeding other than one before the director, are not a public record, and are not available to the public.

Source: L. 2012: Entire article added, (HB 12-1303), ch. 263, p. 1373, § 1, effective August 8.

12-43.7-115. Confidential agreement to limit practice - violation grounds for discipline. (1) If a speech-language pathologist suffers from a physical illness; a physical condition; or a behavioral or mental health disorder that renders him or her unable to practice speech-language pathology or practice as a speech-language pathologist with reasonable skill and patient safety, the speech-language pathologist shall notify the director of the physical illness; the physical condition; or the behavioral or mental health disorder in a manner and within a period of time determined by the director. The director may require the speech-language pathologist to submit to an examination to evaluate the extent of the physical illness; the physical condition; or the behavioral or mental health disorder and its impact on the speech-language pathologist's ability to practice with reasonable skill and safety to patients.

(2) (a) Upon determining that a speech-language pathologist with a physical illness; a physical condition; or a behavioral or mental health disorder is able to render limited speech-language pathology services with reasonable skill and patient safety, the director may enter into a confidential agreement with the speech-language pathologist in which the speech-language pathologist agrees to limit his or her practice based on the restrictions imposed by the physical illness; the physical condition; or the behavioral or mental health disorder, as determined by the director.

(b) The agreement must specify that the speech-language pathologist 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.

(d) By entering into an agreement with the director pursuant to this section to limit his or her practice, the speech-language pathologist is not engaging in activities that constitute grounds for discipline pursuant to section 12-43.7-110. The agreement is an administrative action and does not constitute a restriction or discipline by the director. However, if the speech-language pathologist fails to comply with the terms of an agreement entered into pursuant to this section, the failure constitutes grounds for disciplinary action under section 12-43.7-110 (2)(d), and the speech-language pathologist is subject to discipline in accordance with section 12-43.7-111.

(3) This section does not apply to a licensee subject to discipline under section 12-43.7-110 (2)(c).

Source: L. 2012: Entire article added, (HB 12-1303), ch. 263, p. 1374, § 1, effective August 8. **L. 2017:** (1) and (2)(a) amended, (SB 17-242), ch. 263, p. 1290, § 101, effective May 25.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-43.7-116. Protection of medical records - certificate holder's obligations - verification of compliance - noncompliance grounds for discipline - rules. (1) Each speech-language pathologist responsible for patient records shall develop a written plan to ensure the security of patient medical records. The plan must address at least the following:

(a) The storage and proper disposal of patient medical records;

(b) The disposition of patient medical records in the event the certificate holder dies, retires, or otherwise ceases to practice or provide speech-language pathology services to patients; and

(c) The method by which patients may access or obtain their medical records promptly if any of the events described in paragraph (b) of this subsection (1) occur.

(2) Upon initial certification under this article and upon renewal of a certification, the applicant or certificate holder shall attest to the director that he or she has developed a plan in compliance with this section.

(3) A certificate holder shall inform each patient in writing of the method by which the patient may access or obtain his or her medical records if an event described in paragraph (b) of subsection (1) of this section occurs.

(4) A speech-language pathologist who fails to comply with this section is subject to discipline in accordance with section 12-43.7-111.

(5) The director may adopt rules reasonably necessary to implement this section.

Source: L. 2012: Entire article added, (HB 12-1303), ch. 263, p. 1375, § 1, effective August 8.

12-43.7-117. Severability. If any provision of this article is held invalid, the invalidity does not affect other provisions of this article that can be given effect without the invalid provision.

Source: L. 2012: Entire article added, (HB 12-1303), ch. 263, p. 1376, § 1, effective August 8.

12-43.7-118. Repeal of article - review of functions. This article 43.7 is repealed, effective September 1, 2022. Before its repeal, the director's powers, duties, and functions under this article 43.7 are scheduled for review in accordance with section 24-34-104.

Source: L. 2012: Entire article added, (HB 12-1303), ch. 263, p. 1376, § 1, effective August 8. **L. 2017:** Entire section amended, (SB 17-108), ch. 146, p. 489, § 2, effective August 9.

ARTICLE 43.9

Colorado Hospital Commission

12-43.9-101 to 12-43.9-115. (Repealed)

Source: L. 79: Entire article repealed, p. 553, § 1, effective March 1, 1980.

Editor's note: This article was added in 1977. For amendments to this article prior to its repeal in 1979, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

GENERAL - Continued

ARTICLE 44

Hotels and Food Service Establishments

PART 1

HOTELS

12-44-101 to 12-44-112. (Repealed)

Source: L. 2017: Entire part repealed, (HB 17-1245), ch. 240, p. 989, § 3, effective August 9.

Editor's note: This part 1 was numbered as article 1 of chapter 68, C.R.S. 1963. For amendments to this part 1 prior to its repeal in 2017, consult the 2016 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume. This part 1 was relocated to part 1 of article 25 of title 6. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this part 1, see the comparative tables located in the back of the index.

PART 2

FOOD SERVICE ESTABLISHMENTS

12-44-201 to 12-44-213. (Repealed)

Source: L. 98: Entire part repealed, p. 1256, § 2, effective July 1.

Editor's note: This part 2 was numbered as article 2 of chapter 68, C.R.S. 1963. For amendments to this part 2 prior to its repeal in 1998, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

PART 3

INNKEEPERS' RIGHTS

12-44-301 and 12-44-302. (Repealed)

Source: L. 2017: Entire part repealed, (HB 17-1245), ch. 240, p. 989, § 3, effective August 9.

Editor's note: This part 3 was added in 1995. For amendments to this part 3 prior to its repeal in 2017, consult the 2016 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume. This part 3 was relocated to part 2 of article 25 of title 6. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this part 3, see the comparative tables located in the back of the index.

ARTICLE 44.5

Indian Arts and Crafts Sales

12-44.5-101 to 12-44.5-108. (Repealed)

Source: L. 2017: Entire article repealed, (HB 17-1241), ch. 163, p. 606, § 6, effective August 9.

Editor's note: This article 44.5 was added in 1975. For amendments to this article 44.5 prior to its repeal in 2017, consult the 2016 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume. This article 44.5 was relocated to part 2 of article 15 of title 6 by HB 17-1241. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of article 44.5, see the comparative tables located in the back of the index.

ARTICLE 45

Landscape Architects

Editor's note: This article was numbered as article 2 of chapter 10, C.R.S. 1963. This article was repealed in 1977 and was subsequently recreated and reenacted in 2007, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1977, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers prior to 1977 are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

Cross references: For regulatory provisions for architects, see part 3 of article 25 of this title.

12-45-101. Short title. This article shall be known and may be cited as the "Landscape Architects Professional Licensing Act".

Source: L. 2007: Entire article RC&RE, p. 1424, § 1, effective August 3.

12-45-102. Legislative declaration. The general assembly hereby finds and declares that the regulatory authority established in this article is necessary to safeguard the health, safety, and welfare of the people of Colorado by preventing the improper design of public domain landscape infrastructure by unauthorized, unqualified, and incompetent persons.

Source: L. 2007: Entire article RC&RE, p. 1424, § 1, effective August 3.

12-45-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Board" or "state board" means the state board of landscape architects, created in section 12-45-105.

(2) "Director" means the director of the division of professions and occupations in the department of regulatory agencies.

(3) "Division" means the division of professions and occupations in the department of regulatory agencies.

(4) "Habit-forming drug" means a drug or medicine required to be labeled under section 25-5-415, C.R.S., or the "Federal Food, Drug, and Cosmetic Act", 21 U.S.C. sec. 301 et seq., as a habit-forming drug.

(5) "Infrastructure" means elements of the public domain that support developments such as roads, streets, parks, plazas, and other places that are not privately owned and managed.

(6) "Landscape architect" means a person who engages in the practice of landscape architecture.

(7) "Planning" means preparing layouts and schemes for land areas, infrastructure systems, facilities, or objects. "Planning" includes technical documentation.

(8) (a) "Practice of landscape architecture" means:

(I) The application of landscape architectural higher education, training, and experience as well as required mathematical, physical, and social science skills to consult, evaluate, plan, and design projects and improvements principally directed at the functional and aesthetic uses of land;

(II) Collaboration with architects and engineers during the design of public infrastructure projects such as roads, bridges, buildings, and other structures, concerning the functional and aesthetic requirements of the area and project site; or

(III) Assistance in the preparation and administration of construction documents, contracts, and contract offers related to site landscape improvements.

(b) "Practice of landscape architecture" does not include acts exempted by section 12-45-118.

(9) "Substantial gift" means a gift, donation, or other consideration sufficient to influence a person to act in a specific manner. The term does not include a gift of nominal value such as reasonable entertainment or hospitality or an employer's reward to an employee for work performed.

(10) "Supervision" means the actions taken by a landscape architect in directing, personally reviewing, correcting, or approving the work performed by an employee or subcontractor of the landscape architect.

Source: L. 2007: Entire article RC&RE, p. 1424, § 1, effective August 3.

12-45-104. License required. On and after January 1, 2008, a person shall not practice landscape architecture or represent himself or herself as a landscape architect unless the person has a license issued by the board. A person licensed by the board is entitled to use the stamp specified in section 12-45-117, which shall constitute a professional credential attesting to the minimum competence of the landscape architect.

Source: L. 2007: Entire article RC&RE, p. 1425, § 1, effective August 3.

Editor's note: This section is similar to former § 12-45-102 as it existed prior to 1977.

12-45-105. Board - composition - appointments - terms. (1) There is hereby created in the division the Colorado state board of landscape architects. The board shall consist of five members who shall have the following qualifications:

(a) Three members shall:

(I) Be licensed landscape architects in Colorado or persons who are eligible to be licensed in Colorado as landscape architects at the time of the formation of the board;

(II) Have at least three years of experience in the practice of landscape architecture; and

(III) Be residents of the state of Colorado.

(b) (I) Two members shall:

(A) Not be licensed landscape architects nor practice landscape architecture in any jurisdiction;

(B) Not have a current or prior significant personal or financial interest in the practice of landscape architecture; and

(C) Be residents of the state of Colorado.

(II) Of the two members appointed pursuant to this paragraph (b), one member shall be a building or landscape contractor in Colorado.

(2) Appointments to the board shall be made by the governor and shall be made to provide for staggering of terms of members so that not more than two members' terms expire each year. Thereafter appointments shall be for terms of four years. Each board member shall hold office until the expiration of the term for which the member is appointed or until a successor has been duly appointed and qualified. Appointees shall be limited to two full terms. The governor may remove a member of the board for misconduct, incompetence, neglect of duty, or an act that would justify the revocation of the board member's license to practice landscape architecture, if applicable.

(3) The board shall meet on or before August 30 of each year and elect from its members a chair and vice-chair. The board shall meet at such other times as it deems necessary, but not less than twice a year.

Source: L. 2007: Entire article RC&RE, p. 1426, § 1, effective August 3.

Editor's note: This section is similar to former § 12-45-103 as it existed prior to 1977.

12-45-106. Immunity. (1) A member of the board or the board's staff, a person acting as a witness or consultant to the board, and a witness testifying in a proceeding authorized under this article shall be immune from liability in a civil action for acts occurring while acting in his or her capacity as a board member, member of the board's staff, consultant, or witness if the person acting in good faith within the scope of his or her respective capacity made a reasonable effort to obtain the facts of the matter as to which he or she acted and acted with the reasonable belief that the action was warranted by the facts.

(2) Any person participating in good faith in making a complaint or participating in an investigation or administrative proceeding pursuant to this article shall be immune from any civil or criminal liability that may result from such participation.

Source: L. 2007: Entire article RC&RE, p. 1427, § 1, effective August 3.

12-45-107. Powers and duties of board - rules. (1) The board shall have the following powers and duties:

(a) To promulgate rules necessary to effectuate this article;

(b) To examine license applicants for qualifications;

(c) To review special cases as authorized in this article;

(d) To grant the licenses of duly qualified applicants to practice landscape architecture in accordance with this article;

(e) (I) To administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board. The board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to perform the functions of this paragraph (e) and to take evidence and to make findings and report them to the board.

(II) Upon failure of any witness to comply with such subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board or director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or 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 to obey the order of the court may be punished by the court as a contempt of court.

(f) To adopt and use a seal;

(g) To conduct hearings in accordance with section 24-4-105, C.R.S., upon complaints concerning the conduct of landscape architects; except that the board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to conduct such hearings;

(h) To refer for prosecution by the district attorney or the attorney general persons violating this article;

(i) To require a licensed landscape architect to have a stamp as prescribed by the board; and

(j) To deny the issuance or renewal of, suspend for a specified period, or revoke a license; issue a letter of admonition to or censure or place on probation any person who, while holding a landscape architect license, violates any provision of this article; issue confidential letters of concern; issue cease-and-desist orders; or impose other conditions or limitations on a licensee.

Source: L. 2007: Entire article RC&RE, p. 1427, § 1, effective August 3.

Editor's note: This section is similar to former § 12-45-103 as it existed prior to 1977.

12-45-108. Management of fees and expenses of board. (1) Fees collected pursuant to section 12-45-111 shall be transmitted to the state treasurer, who shall credit the same in accordance with section 24-34-105, C.R.S. The general assembly shall make annual appropriations pursuant to said section for the expenditures of the board.

(2) The board may employ such technical, clerical, investigative, or other assistance necessary for the proper performance of the board's duties, subject to the provisions of section 13 of article XII of the state constitution, and may make expenditures that are necessary for the proper performance of the board's duties under this article.

Source: L. 2007: Entire article RC&RE, p. 1428, § 1, effective August 3.

Editor's note: This section is similar to former §§ 12-45-111 and 12-45-112 as they existed prior to 1977.

12-45-109. Records. (1) The board shall keep a record of its proceedings, a register of all applications for licensing, and other information deemed necessary by the board.

(2) The records of the board shall be public records pursuant to article 72 of title 24, C.R.S. Copies of records and papers of the board or the department of regulatory agencies

concerning the administration of this article, when certified and authenticated by seal, shall be received by a court in the same manner as original documents.

Source: L. 2007: Entire article RC&RE, p. 1428, § 1, effective August 3.

Editor's note: This section is similar to former § 12-45-103 as it existed prior to 1977.

12-45-110. Licensure - application - qualifications - rules. (1) **Application.** (a) An application for licensure shall include evidence of the education and practical experience required by this section and the rules of the board.

(b) A person applying for licensure under this article shall disclose whether he or she has been denied licensure or disciplined as a landscape architect or practiced landscape architecture in violation of this article. If an applicant has violated this article, the board may deny an application for licensure. When determining whether a person has violated this article, section 24-5-101, C.R.S., shall govern the board's actions.

(c) Applicants may seek licensure in one of the following manners:

(I) Licensure by examination as described in subsection (3) of this section;

(II) Licensure by endorsement as described in subsection (4) of this section; or

(III) Licensure by prior practice as described in subsection (5) of this section.

(2) **Education and experience.** The board shall set minimum educational and experience requirements for licensure by examination, subject to the following guidelines:

(a) The board may require either:

(I) (A) Practical experience for a specified period, not to exceed three years, or education or experience determined by the board to be substantially equivalent; and

(B) A professional degree from a program accredited by the landscape architectural accreditation board, or any successor organization, or education or experience determined by the board to be substantially equivalent; or

(II) Practical experience for a specified period, not to exceed ten years, under the direct supervision of a licensed landscape architect or a landscape architect with an equivalent level of competence as defined by rules of the board; or

(III) A combination of such practical experience and education, not to exceed ten years.

(b) One year of the experience required by this subsection (2) may be practical field experience in construction techniques, teaching, or research in a program accredited by the landscape architectural accreditation board or an equivalent successor organization.

(c) Subject to review and approval by the board pursuant to rules, a graduate of an unaccredited program of landscape architecture or a related field shall be eligible to substitute education for the practical experience required by the board pursuant to this subsection (2).

(d) (I) Prior to licensure, an applicant by examination shall pass an examination developed or adopted by the board that measures the minimum level of competence necessary to be a licensed landscape architect. The board shall designate and notify applicants of the time and location for examinations. The board may engage a private contractor to administer the examinations.

(II) The board may adopt the examinations, recommended grading procedures, and educational and practical experience requirements and equivalents of the council of landscape

architectural registration boards or a successor organization if such examinations, procedures, and requirements and equivalents do not conflict with the requirements of this article.

(3) **Licensure by examination.** (a) Before being licensed pursuant to this subsection (3), an applicant for licensure by examination shall pass an examination developed or adopted by the board to measure the minimum level of competence.

(b) The board shall designate a time and location for examinations and shall notify applicants of this time and location in a timely manner. The board may contract for assistance in administering the examinations.

(c) The board may adopt the examinations, recommended grading procedures, and educational and practical experience requirements of the council of landscape architectural registration boards or any substantially equivalent successor organization if such examinations, procedures, and requirements do not conflict with the requirements of this article.

(4) **Licensure by endorsement.** (a) An applicant for licensure by endorsement shall file an application as prescribed by the board and shall hold a current valid license or registration in a jurisdiction requiring qualifications substantially equivalent to those required for licensure by subsections (2) and (3) of this section.

(b) The board shall provide procedures for an applicant to apply directly to the board for a license by endorsement. A certified record from the council of landscape architectural registration boards, or its successor organization, shall qualify a candidate to submit an application to the board for licensure by endorsement.

(c) The board may develop or adopt a supplementary examination to measure the minimum competence of applicants for licensure by endorsement. The supplementary examination shall be administered at the discretion of the board when an applicant for licensure by endorsement has otherwise failed to sufficiently demonstrate minimum competence.

(5) **Licensure by prior practice.** (a) The board shall adopt rules authorizing the issuance of a license to qualified candidates who practiced landscape architecture before January 1, 2008.

(b) The following evidence, as verified by the board, shall be acceptable as proof that a candidate is qualified for licensure by prior practice:

(I) (A) A diploma or certificate of graduation from a landscape architecture degree program accredited by the landscape architecture accreditation board or its successor organization; and

(B) Evidence of at least six years of practical experience in the practice of landscape architecture sufficient to satisfy the board that the applicant has minimum competence in the practice of landscape architecture; or

(II) Evidence that the applicant has at least ten years of practical experience in the practice of landscape architecture sufficient to satisfy the board that the applicant has minimum competence in the practice of landscape architecture.

(c) All experience required to qualify for licensure by prior practice shall be obtained before January 1, 2008; except that one year of required experience for licensure by prior practice may accrue after January 1, 2008.

(d) The board may develop or adopt a supplementary examination to measure the minimum competence of applicants for licensure by prior practice. The supplementary examination shall be administered at the discretion of the board when an applicant for licensure by prior practice has otherwise failed to sufficiently demonstrate minimum competence.

(6) **Issuance of license.** Upon application and satisfaction of the requirements of this section, the board shall issue a license to practice landscape architecture. The board is not required to issue a license if the applicant is subject to discipline pursuant to this article.

(7) **Lapse of application.** If an applicant fails to meet the licensing requirements within three years after filing an application, the application shall be void. The board may authorize an applicant for licensure by examination to reattempt the examination without limitation and may exempt an applicant from this subsection (7) so long as the applicant reattempts the examination within thirty-one months after the last examination.

(8) **Renewal and reinstatement.** All licenses shall expire pursuant to a schedule established by the director. Licenses shall be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license pursuant to the schedule established by the director, the license shall expire. Any person whose license has expired shall be subject to penalties provided in this article or in section 24-34-102 (8), C.R.S. All fees collected under this article shall be deposited in accordance with section 12-45-111.

Source: L. 2007: Entire article RC&RE, p. 1428, § 1, effective August 3.

Editor's note: This section is similar to former §§ 12-45-104 and 12-45-105 as they existed prior to 1977.

12-45-111. Fees. The director shall establish a schedule of reasonable fees for applications, licenses, renewal of licenses, inactive status, and late fees. The fees shall be set, collected, and credited pursuant to section 24-34-105, C.R.S.

Source: L. 2007: Entire article RC&RE, p. 1431, § 1, effective August 3.

Editor's note: This section is similar to former § 12-45-111 as it existed prior to 1977.

12-45-112. Professional liability. (1) The shareholders, members, or partners of an entity that practices landscape architecture are liable for the acts, errors, and omissions of the employees, members, and partners of the entity, except when the entity maintains a qualifying policy of professional liability insurance as set forth in subsection (2) of this section.

(2) (a) A qualifying policy of professional liability insurance shall meet the following minimum standards:

(I) The policy shall insure the entity against liability imposed upon it by law for damages arising out of the negligent acts, errors, and omissions of all professional and nonprofessional employees, members, and partners; and

(II) The insurance shall be in a policy amount of at least seventy-five thousand dollars multiplied by the total number of landscape architects in or employed by the entity, up to a maximum of five hundred thousand dollars.

(b) In addition, the policy may include:

(I) A provision stating that the policy shall not apply to the following:

(A) A dishonest, fraudulent, criminal, or malicious act or omission of the insured entity or of any stockholder, employee, member, or partner of the insured entity;

(B) The conduct of a business enterprise that is not the practice of landscape architecture by the insured entity;

(C) The conduct of a business enterprise in which the insured entity may be a partner or that may be controlled, operated, or managed by the insured entity in its own or in a fiduciary capacity, including, but not limited to, the ownership, maintenance, or use of property;

(D) Bodily injury, sickness, disease, or death of a person; or

(E) Damage to, or destruction of, tangible property owned by the insured entity;

(II) Any other reasonable provisions with respect to policy periods, territory, claims, conditions, and ministerial matters.

Source: L. 2007: Entire article RC&RE, p. 1431, § 1, effective August 3.

12-45-113. Grounds for disciplinary action. (1) The board shall investigate the activities of a licensee or other person upon its own motion or upon the receipt of a written, signed complaint alleging grounds for disciplinary action under this article.

(2) Grounds for disciplinary action shall include:

(a) Fraud or a material misstatement of fact made in procuring or attempting to procure a license;

(b) An act or omission that fails to meet the generally accepted standards of the practice of landscape architecture and that endangers life, health, property, or the public welfare;

(c) Fraud or deceit in the practice of landscape architecture;

(d) Affixing a seal or authorizing a seal to be affixed to a document if such act misleads another into incorrectly believing that a licensed landscape architect was the document's author or was responsible for its preparation;

(e) Violation of or aiding or abetting in the violation of this article, a rule promulgated by the board under this article, or an order of the board issued under this article;

(f) Being convicted of or pleading nolo contendere to a felony in Colorado or to any crime outside Colorado that would constitute a felony in Colorado, if the felony or other crime concerns the practice of landscape architecture. A certified copy of the judgment of a court of competent jurisdiction of a conviction or plea shall be presumptive evidence of the conviction or plea in any hearing under this article. The board shall be governed by section 24-5-101, C.R.S., when considering the conviction or plea.

(g) Use of false, deceptive, or misleading advertising;

(h) Habitual or excessive use or abuse of alcohol or a habit-forming drug or habitual use of a controlled substance, as defined in section 18-18-102 (5), C.R.S., or other drug having similar effects, when the use or abuse renders the landscape architect unfit to engage in the practice of landscape architecture;

(i) Use of a schedule I controlled substance, as defined in section 18-18-203, C.R.S.;

(j) Failure to report to the board a landscape architect known to have violated this article or any board order or rule. Potential violations of this paragraph (j) include knowledge of an action or arbitration in which claims regarding the life and safety of the users of a site are alleged.

(k) Making or offering a substantial gift to influence a prospective or existing client or employer to use or refrain from using a specific landscape architect;

(l) Failure to exercise adequate professional supervision of persons assisting in the practice of landscape architecture under a licensed landscape architect;

(m) Performing services beyond the competence, training, or education of a landscape architect;

(n) Selling, fraudulently obtaining, or fraudulently furnishing a license or renewal of a license to practice landscape architecture;

(o) Practicing landscape architecture or advertising, representing, or holding oneself out as a licensed landscape architect or using the title "landscape architect" or "licensed landscape architect" unless the person is licensed pursuant to this article; or

(p) Otherwise violating any provision of this article.

(3) A disciplinary action in another state or jurisdiction taken on grounds that would constitute a violation under this article shall be prima facie evidence of grounds for disciplinary action under this section.

Source: L. 2007: Entire article RC&RE, p. 1432, § 1, effective August 3.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1977. For a detailed comparison, see the comparative tables located in the back of the index.

12-45-114. Disciplinary actions by board - licenses denied, suspended, or revoked - cease-and-desist orders. (1) The board may deny, refuse to renew, suspend, or revoke any license, may place a licensee on probation, may place conditions or limitations on the license, or may impose a censure or fine if, after notice and hearing, the board determines that the licensee has committed any of the acts specified in section 12-45-113.

(2) (a) When a complaint or investigation discloses an instance of misconduct that, in the board's opinion, does not warrant formal action but that should not be dismissed as being without merit, the board may issue and send to the licensee, by certified mail, a written letter of admonition.

(b) When a letter of admonition is sent by the board, the licensee shall be advised that he or she has the right to request, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(c) Upon receipt of a timely request for adjudication pursuant to paragraph (b) of this subsection (2), the board shall void the letter of admonition and shall institute formal disciplinary proceedings to address the matter.

(3) When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the board and, in the opinion of the board, the complaint should be dismissed, but the board has noticed indications of possible errant conduct by the licensee that could lead to serious consequences if not corrected, a confidential letter of concern may be issued to the licensee. The confidential letter of concern and notice of the issuance of the letter shall be sent to the licensee by certified mail. Issuance of a confidential letter of concern shall not be construed to be discipline.

(4) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the board, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(5) If the board determines that a person licensed to practice landscape architecture pursuant to this article is subject to disciplinary action under this section, the board may, in lieu of or in addition to other discipline, require a licensee to take courses of professional training or education. The board shall determine the educational conditions to be imposed on the licensee, including, but not limited to, the type and number of hours of training or education. All training or education courses are subject to approval by the board, and the licensee shall furnish proof of satisfactory completion of the training or education.

(6) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a 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 license, the board may issue an order to cease and desist such activity. 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 unlicensed or unregistered practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (6), the respondent may request a hearing on the question of whether acts or practices in violation of this article have occurred. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(7) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this article, then, in addition to any specific powers granted pursuant to this article, the board may issue to such person an order to show cause as to why the board should not issue a final order directing the person to cease and desist from the unlawful act or unlicensed practice.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (7) shall be promptly notified by the board of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the board for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom the order is issued. Personal service or mailing of an order or document pursuant to this subsection (7) shall constitute notice of the order and hearing to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the board as provided in paragraph (b) of this subsection (7). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (7) does not appear at the hearing, the board may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (7) and such other evidence related to the matter as the board deems appropriate. The board shall issue the order within ten days after the board's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that

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

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

(IV) The board shall provide notice, in the manner set forth in paragraph (b) of this subsection (7), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

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

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

(10) Any disciplinary action taken by the board and judicial review of such action shall be in accordance with the provisions of article 4 of title 24, C.R.S., and the hearing and opportunity for review shall be conducted pursuant to said article by the board or an administrative law judge at the board's discretion.

(11) A person aggrieved by the final cease-and-desist order may seek judicial review of the board's determination or of the board's final order as provided in section 12-45-116.

(12) (a) In addition to the penalties provided for in this section, and in lieu of revoking a license upon a finding of misconduct by the board, a person who violates this article or rules promulgated pursuant to this article may be punished by a fine not to exceed five thousand dollars.

(b) A fine collected pursuant to this subsection (12) shall be transmitted to the state treasurer, who shall credit the same to the general fund.

(13) Except as provided in subsection (14) of this section, a license that is revoked shall not be reinstated within two years after the effective date of the revocation.

(14) On its own motion or upon application after the imposition of discipline, the board may reconsider its prior action and reinstate a license, terminate suspension or probation, or reduce the severity of its prior disciplinary action.

Source: L. 2007: Entire article RC&RE, p. 1434, § 1, effective August 3.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1977. For a detailed comparison, see the comparative tables located in the back of the index.

12-45-115. Unauthorized practice - penalties. (1) Any person who practices or offers or attempts to practice landscape architecture 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 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(2) A violation of this section may be prosecuted by the district attorney of the judicial district in which the offense was committed or by the attorney general of the state of Colorado in the name of the people of the state of Colorado. In such action, the court may issue an order, enter judgment, or issue a preliminary or final injunction.

Source: L. 2007: Entire article RC&RE, p. 1437, § 1, effective August 3.

Editor's note: This section is similar to former §§ 12-45-109 and 12-45-110 as they existed prior to 1977.

12-45-116. Judicial review. A person aggrieved by a final action or order of the board may seek judicial review pursuant to section 24-4-106, C.R.S.

Source: L. 2007: Entire article RC&RE, p. 1437, § 1, effective August 3.

12-45-117. Landscape architect's stamp. (1) A licensed landscape architect shall obtain a stamp of a design authorized by the board. The stamp shall bear the name, date of licensing, and license number of the landscape architect, together with the legend "Colorado - Licensed Landscape Architect".

(2) A landscape architect's records and documents shall be prepared, recorded, and retained in the following manner:

(a) The stamp, signature of the landscape architect whose name appears on the stamp, and date of the landscape architect's signature shall be placed on reproductions of drawings to establish a record set of contract documents.

(b) The record set shall be prominently identified and shall be for the permanent record of the landscape architect, the project owner, and the regulatory authorities who have jurisdiction over the project.

(c) The stamp and the date the document is stamped shall be placed on the cover, title page, and table of contents of specifications and on each reproduction of drawings prepared under the direct supervision of the landscape architect.

(d) Subsequently issued addenda, revisions, clarifications, or other modifications shall be properly identified and dated for the record set.

(e) Where consultant drawings and specifications are incorporated into the record set, their origin shall be clearly identified and dated to distinguish them from stamped documents.

(f) Except as required for compliance with a federal contract, the landscape architect shall not stamp reproductions or copies that are transferred from the landscape architect's possession or supervision.

(g) A record set shall be retained by the landscape architect for a minimum of three years after beneficial occupancy or beneficial use of the project.

(h) One original document may be stamped, signed, and dated as required for federal government contracts.

(3) The board, by rule, may authorize the use of an electronic stamp, an electronic seal, and recording of electronic records in a manner substantially equivalent to the requirements of subsections (1) and (2) of this section.

Source: L. 2007: Entire article RC&RE, p. 1437, § 1, effective August 3.

Editor's note: This section is similar to former § 12-45-102 as it existed prior to 1977.

12-45-118. Exemptions. (1) The following shall be exempt from the provisions of this article:

(a) The practice of architecture by licensed architects pursuant to part 3 of article 25 of this title;

(b) The practice of professional engineering by registered professional engineers pursuant to part 1 of article 25 of this title;

(c) The practice of professional land surveying by licensed land surveyors pursuant to part 2 of article 25 of this title;

(d) Residential landscape design, consisting of landscape design services for single- and multi-family residential properties of four or fewer units not including common areas;

(e) The design of irrigation systems by professionals qualified by appropriate experience or certification; and

(f) Landscape installation and construction services, including, but not limited to, all contracting services not within the scope of the practice of landscape architecture.

(2) Nothing in this article shall prohibit or limit a municipality or county of this state, in the reasonable exercise of its police power, from adopting codes that may be necessary for the protection of the inhabitants of the municipality or county.

(3) Nothing in this article shall be construed to limit or extend the rights of another profession or craft.

(4) Nothing in this article shall be construed to prohibit the practice of landscape architecture by any employee of the United States government or any bureau, division, or agency of the United States while discharging his or her official duties.

Source: L. 2007: Entire article RC&RE, p. 1438, § 1, effective August 3.

Editor's note: This section is similar to former § 12-45-106 as it existed prior to 1977.

12-45-119. Architecture, engineering, and surveying. Nothing in this article shall be construed to authorize a landscape architect to engage in the practice of architecture, as defined in part 3 of article 25 of this title, the practice of engineering, as defined in part 1 of article 25 of this title, or professional land surveying, as defined in part 2 of article 25 of this title.

Source: L. 2007: Entire article RC&RE, p. 1439, § 1, effective August 3.

12-45-120. Repeal of article. This article 45 is repealed, effective September 1, 2028. Before its repeal, the licensing of landscape architects by the board is scheduled for review in accordance with section 24-34-104.

Source: L. 2007: Entire article RC&RE, p. 1439, § 1, effective August 3. **L. 2017:** Entire section amended, (SB 17-218), ch. 304, p. 1656, § 1, effective June 2.

ARTICLE 46

Fermented Malt Beverages

12-46-101 to 12-46-109. (Repealed)

Source: L. 2018: Entire article repealed, (HB 18-1025), ch. 152, p. 1077, § 3, effective October 1.

Editor's note: (1) This article 46 was numbered as article 1 of chapter 75, C.R.S. 1963. For amendments to this article 46 prior to its repeal in 2018, consult the 2017 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume. This article 46 was relocated to article 4 of title 44 by HB 18-1025. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article 46, see the comparative tables located in the back of the index.

(2) (a) Changes by SB 18-243 to §§ 12-46-104 IP(1) and (1)(c); 12-46-106; and 12-46-107 (1)(c), (3), (4), (5), and (6) were harmonized with HB 18-1025 and relocated to 44-4-104 IP(1) and (1)(c); 44-6-106; and 44-4-107 (1)(c), (3), (4), (5), and (6), respectively.

(b) Changes by HB 18-1026 to § 12-46-105 (2)(c) were harmonized with HB 18-1025 and relocated to § 44-4-105 (2)(c).

ARTICLE 47

Alcohol Beverages

12-47-101 to 12-47-1002. (Repealed)

Source: L. 2018: Entire article repealed, (HB 18-1025), ch. 152, p. 1077, § 3, effective October 1.

Editor's note: (1) This article 47 was numbered as article 2 of chapter 75, C.R.S. 1963. For amendments to this article 47 prior to its repeal in 2018, consult the 2017 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume. This article 47 was relocated to article 3 of title 44 by HB 18-1025. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article 47, see the comparative tables located in the back of the index.

(2) (a) Changes by HB 18-1024 to §§ 12-47-103 (25) and 12-47-901 (5)(n)(I) were harmonized with HB 18-1025 and relocated to §§ 44-3-103 (42) and 44-3-901 (6)(n)(I), respectively.

(b) Changes by SB 18-079 to § 12-47-103 (39) were harmonized with HB 18-1025 and relocated to § 44-3-103 (59).

(c) (I) Changes by SB 18-067 to §§ 12-47-107; 12-47-407 (1)(a)(I); and 12-47-901 IP(1), (1)(f), (1)(m), and (5)(e) were harmonized with HB 18-1025 and relocated to §§ 44-3-107; 44-3-409 (1)(a)(I); and 44-3-901 IP(1), (1)(g), (1)(n), and (6)(e), respectively.

(II) Changes by SB 18-067 to § 12-47-901 (1)(f) were further harmonized with SB 18-243, effective January 1, 2019.

(d) Changes by SB 18-243 to §§ 12-47-301 (2)(a), (8), (9)(a), (10)(c)(I), (10)(c)(V), (10)(c)(VII), (10)(c)(XI), (10)(c)(XII), (10)(d), and (12); 12-47-308 (1)(a), (3)(a), and (5); 12-47-313 IP(1) and (1)(e); 12-47-407 (1)(a)(II), (2), and (3); 12-47-408 (1)(a)(I), IP(1)(b)(IV), (1)(b)(IV)(B), (2)(a)(II), (2)(a)(III), (3), IP(4)(b)(IV), (4)(b)(V), (4)(c), and (8); 12-47-601 (7.5)(c); and 12-47-901 IP(1), (1)(f), (1)(h)(I), (1)(h)(II), (1)(h)(VII), (5)(c), (5)(k), (5)(p)(I)(B), (5)(p)(II), (5)(p)(III), (9)(b), and (10) were harmonized with HB 18-1025 and relocated to §§ 44-3-301 (2)(a), (8), (9)(a), (10)(c)(I), (10)(c)(V), (10)(c)(VII), (10)(c)(XI), (10)(c)(XII), (10)(d), and (12); 44-3-308 (1)(a), (3)(a), and (5); 44-3-313 IP(1) and (1)(e); 44-3-409 (1)(a)(II), (2), and (3); 44-3-410 (1)(a)(I), IP(1)(b)(IV), (1)(b)(IV)(B), (2)(a)(II), (2)(a)(III), (3), IP(4)(b)(IV), (4)(b)(V), (4)(c), and (7); 44-3-601 (8)(c); and 44-3-901 IP(1), (1)(g), (1)(i)(I), (1)(i)(II), (1)(i)(VII), (6)(c), (6)(k), (6)(p)(I)(B), (6)(p)(II), (6)(p)(III), (10)(b), and (11), respectively.

(e) Changes by HB 18-1375 to §§ 12-47-412 (9)(a) and 12-47-901 (1)(l) were harmonized with HB 18-1025 and relocated to §§ 44-3-414 (9)(a) and 44-3-901 (1)(m), respectively.

(f) Changes by SB 18-034 to § 12-47-414 (1) were harmonized with HB 18-1025 and relocated to § 44-3-416 (1).

(g) Changes by SB 18-173 to § 12-47-421 (2)(b) were harmonized with HB 18-1025 and relocated to § 44-3-423 (2)(b).

(h) Changes by SB 18-138 to § 12-47-427 were harmonized with HB 18-1025 and relocated to § 44-3-429.

(i) Changes by HB 18-1026 to § 12-47-502 (1)(c) were harmonized with HB 18-1025 and relocated to § 44-3-502 (1)(c).

(j) Changes by SB 18-124 to § 12-47-901 (3)(c) were harmonized with HB 18-1025 and relocated to § 44-3-901 (4)(c).

ARTICLE 47.1

Colorado Limited Gaming Act

12-47.1-101 to 12-47.1-1707. (Repealed)

Source: L. 2018: Entire article repealed, (SB 18-034), ch. 14, p. 237, § 4, effective October 1.

Editor's note: (1) This article 47.1 was added in 1991. For amendments to this article 47.1 prior to its repeal in 2018, consult the 2017 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume. This article 47.1 was relocated to article 30 of title 44 by SB 18-034. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article 47.1, see the comparative tables located in the back of the index.

(2) (a) Changes by HB 18-1234 to § 12-47.1-302 (1)(n) were harmonized with SB 18-034 and relocated to § 44-30-302 (1)(n).

(b) Changes by SB 18-191 to §§ 12-47.1-701 IP(2)(a) and (2)(a)(III) and 12-47.1-1601 (1)(a) were harmonized with SB 18-034 and relocated to §§ 44-30-701 IP(2)(a) and (2)(a)(III) and 44-30-1301 (1), respectively.

(c) Changes by HB 18-1293 to § 12-47.1-1201 (10) were harmonized with SB 18-034 and relocated to § 44-30-1201 (10).

(d) Changes by HB 18-1340 to § 12-47.1-1201 (11) were harmonized with SB 18-034 and relocated to § 44-30-1201 (11).

ARTICLE 47.2

Tribal-state Gaming Compact

12-47.2-101 to 12-47.2-103. (Repealed)

Source: L. 2018: Entire article repealed, (SB 18-034), ch. 14, p. 237, § 4, effective October 1.

Editor's note: This article 47.2 was added in 1991 and was not amended prior to its repeal in 2018. For the text of this article 47.2 prior to 2018, consult the 2017 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume. This article 47.2 was relocated to article 31 of title 44 by SB 18-034. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article 47.2, see the comparative tables located in the back of the index.

ARTICLE 48

Liquors - Special Event Permits

12-48-101 to 12-48-108. (Repealed)

Source: L. 2018: Entire article repealed, (HB 18-1025), ch. 152, p. 1077, § 3, effective October 1.

Editor's note: (1) This article 48 was numbered as article 3 of chapter 75, C.R.S. 1963. For amendments to this article 48 prior to its repeal in 2018, consult the 2017 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front

of this volume. This article 48 was relocated to article 5 of title 44 by HB 18-1025. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article 48, see the comparative tables located in the back of the index.

(2) Changes by HB 18-1096 to §§ 12-48-101 and 12-48-102 (1) and (2) were harmonized with HB 18-1025 and relocated to §§ 44-5-101 and 44-5-102 (1) and (2), respectively.

ARTICLE 48.5

Massage Parlor Code

12-48.5-101 to 12-48.5-119. (Repealed)

Editor's note: (1) This article was added in 1977. For amendments to this article prior to its repeal in 2015, consult the 2014 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Section 12-48.5-119 provided for the repeal of this article, effective July 1, 2015. (See L. 2002, p. 116.)

(3) In 2015, Senate Bill 15-122, ch. 123, p. 386, provided for the repeal of this article, effective August 5, 2015.

ARTICLE 49

Merchants - Chain Store License

12-49-101 to 12-49-111. (Repealed)

Source: L. 85: Entire article repealed, p. 1284, § 4, effective January 1, 1986.

Editor's note: This article was numbered as article 3 of chapter 85, C.R.S. 1963. For amendments to this article prior to its repeal in 1986, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 50

Merchants - Dealers, Transient

12-50-101 to 12-50-113. (Repealed)

Source: L. 83: Entire article repealed, p. 566, § 1, effective July 1, 1983.

Editor's note: This article was numbered as article 2 of chapter 85, C.R.S. 1963. For amendments to this article prior to its repeal in 1983, consult the Colorado statutory research

explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 51

Merchants - Mercantile Licenses

12-51-101 to 12-51-111. (Repealed)

Source: L. 2015: Entire article repealed, (HB 15-1028), ch. 35, p. 84, § 1, effective March 18.

Editor's note: This article was numbered as article 1 of chapter 85, C.R.S. 1963. For amendments to this article prior to its repeal in 2015, consult the 2014 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

ARTICLE 51.5

Manufactured Housing

12-51.5-101 to 12-51.5-207. (Repealed)

Editor's note: (1) This article was added in 1975. For amendments to this article prior to its repeal in 1992, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 12-51.5-102 (5)(b) provided for the repeal of this article, effective July 1, 1992. (See L. 91, p. 684.)

Cross references: For the "Mobile Home Park Act", see part 2 of article 12 of title 38; for mobile home, manufactured housing, and factory-built housing standards, see part 33 of article 32 of title 24; for camper trailer and camper coach standards, see part 9 of article 32 of title 24.

ARTICLE 52

Money Transmitters

12-52-101 to 12-52-206. (Repealed)

Source: L. 2017: Entire article repealed, (SB 17-226), ch. 159, p. 591, § 12, effective August 9.

Editor's note: This article 52 was numbered as article 7 of chapter 125, C.R.S. 1963. For amendments to this article 52 prior to its repeal in 2017, consult the 2016 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume. This article 52 was relocated to article 110 of title 11 by SB 17-226. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article 52, see the comparative tables located in the back of the index.

ARTICLE 53

Motor Clubs and Similar Organizations

12-53-101 to 12-53-113. (Repealed)

Source: L. 92: Entire article repealed, p. 1615, § 174, effective May 20.

Editor's note: (1) This article was numbered as article 7 of chapter 125, C.R.S. 1963. For amendments to this article prior to its repeal in 1992, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 12-53-101 (14) was amended in Senate Bill 92-104. Those amendments were superseded by the repeal of the section in Senate Bill 92-90.

ARTICLE 54

Mortuaries

PART 1

MORTUARY SCIENCE CODE

Editor's note: This part 1 was numbered as article 4 of chapter 61, C.R.S. 1963. This part 1 was repealed and reenacted in 1978 and was subsequently amended with relocations in 2003, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 2003, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers prior to 2003 are shown in editor's notes following those sections that were relocated.

12-54-101. Short title. This article shall be known and may be cited as the "Mortuary Science Code".

Source: L. 2003: Entire part amended with relocations, p. 1916, § 1, effective July 1. **L. 2010:** Entire section amended, (HB 10-1422), ch. 419, p. 2068, § 20, effective August 11.

12-54-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Alternative container" means a nonmetal receptacle or enclosure, without ornamentation or a fixed interior lining, that is designed for the encasement of human remains and is made of fiberboard, pressed wood, composition materials, or other similar materials.

(2) "Casket" means a rigid container that is designed for the encasement of human remains and is ornamented and lined with fabric.

(3) "Cremated remains" or "cremains" means all human remains recovered after cremation, including pulverization, that leaves only bone fragments that have been reduced to unidentifiable dimensions.

(4) "Cremation" or "cremate" means the reduction of human remains to essential elements, the processing of the remains, and the placement of the processed remains in a cremated remains container.

(4.3) "Cremation chamber" means the enclosed space inside of which human remains are cremated.

(4.5) "Cremation container" means a container in which the human remains are transported to the crematory and intended to be placed in the cremation chamber.

(4.7) "Cremationist" means a person who cremates or prepares for cremation human remains.

(5) "Crematory" means a building, facility, establishment, or structure where human remains are cremated.

(5.3) "Custodian" means the person with possession and control of human remains.

(5.5) "Designee" means an individual designated by a funeral establishment registered in accordance with section 12-54-110 or 12-54-303.

(5.7) "Director" means the director of the division of professions and occupations or the director's designee.

(6) "Division" means the division of professions and occupations created in section 24-34-102, C.R.S.

(7) "Embalm" or "embalming" means the disinfection and temporary preservation of human remains by chemically treating the body to reduce the presence and growth of organisms, to retard organic decomposition, or to attempt restoration of the physical appearance.

(8) "Embalmer" means any person who embalms, or prepares for embalming, human remains for compensation.

(9) "Final disposition" means the disposition of human remains by entombment, burial, cremation, or removal from the state.

(10) "Funeral", "funeral service", or "funeral ceremony" means a service or rite commemorating the deceased and at which service or rite the body of the deceased is present.

(11) "Funeral director" means a person who, for compensation:

(a) Arranges, directs, or supervises funerals, memorial services, or graveside services; or

(b) Prepares human remains for final disposition by means other than embalming.

(12) "Funeral establishment", "funeral home", or "mortuary" means:

(a) An establishment that holds, cares for, or prepares human remains prior to final disposition, including a crematory or embalming room; except that this paragraph (a) does not apply to establishments in which individuals regularly die;

(b) An establishment that holds itself out to the general public as providing funeral goods and services;

(c) Facilities used to hold, care for, or prepare human remains prior to final disposition; except that this paragraph (c) does not apply to facilities in which individuals regularly die; or

(d) An establishment that provides funeral or memorial services to the public for compensation.

(13) "Funeral goods" means goods that are sold or offered for sale directly to the public for use in connection with funeral or cremation services.

(14) "Funeral services" means:

(a) Preparation of human remains for final disposition; except that this paragraph (a) does not apply to cremation;

(b) Arrangement, supervision, or conduct of the funeral ceremony or the final disposition of human remains; or

(c) Transportation of human remains to or from a funeral establishment.

(14.2) "Human remains" means the physical remains of a dead human.

(14.5) "Implanted device" means a mechanical device that may explode or cause damage to crematory equipment.

(15) "Memorial service" means a service or rite commemorating the deceased and at which service or rite the body of the deceased is not present.

(16) "Mortuary science practitioner" means a person who, for compensation, does the following or offers to do the following:

(a) Embalms or cremates human remains;

(b) Arranges, directs, or supervises funerals, memorial services, or graveside services; or

(c) Prepares human remains for final disposition.

(17) "Next of kin" means a family member or members of the deceased who, under Colorado law, have legal authority over the disposition of human remains.

(17.5) "Ossuary" means a receptacle used for the communal placement of cremated remains, without using an urn or other container, in which cremated remains are commingled with other cremated remains.

(18) "Preneed contract" means a preneed contract as defined in section 10-15-102 (13), C.R.S.

(19) "Preparation of the body" means embalming, washing, disinfecting, shaving, dressing, restoring, casketing, positioning, caring for the hair of or applying cosmetics to human remains.

(20) "Processing" means the removal of foreign objects from cremated remains and the reduction of such remains by mechanical means to granules appropriate for final disposition.

Source: L. 2003: Entire part amended with relocations, p. 1916, § 1, effective July 1. **L. 2009:** IP, (4), (8), (12), IP(14), (14)(a), and (16) amended and (4.5), (4.7), (5.5), (5.7), and (14.5) added, (HB 09-1202), ch. 422, p. 2340, § 1, effective July 1. **L. 2011:** (1), (2), (4), (4.5), (4.7), (5), (7) to (9), (11)(b), (12), (14), (16), (17), and (19) amended and (4.3), (5.3), (14.2), and (17.5) added, (HB 11-1178), ch. 89, p. 254, § 1, effective August 10. **L. 2015:** (5) and IP(12) amended, (SB 15-110), ch. 178, p. 580, § 3, effective July 1.

Editor's note: This section is similar to former § 12-54-103 as it existed prior to 2003, and the former § 12-54-102 was repealed.

12-54-103. Funeral establishment. (1) A funeral establishment shall have the appropriate equipment and personnel to adequately provide the funeral services it contracts to provide and shall provide written notice to the consumer specifying any subcontractors or agents routinely handling or caring for human remains. To comply, the notice must be given when the consumer inquires about the goods or services the funeral establishment provides and must include the names and addresses of the subcontractors, agents, or other providers; except that, if the inquiry is over the telephone, the written notice must be provided when the customer finalizes the arrangements for goods or services with the funeral establishment.

(2) A funeral establishment shall retain all documents and records concerning the final disposition of human remains for at least seven years after the disposition.

Source: L. 2003: Entire part amended with relocations, p. 1918, § 1, effective July 1. **L. 2011:** (1) and (2) amended, (HB 11-1178), ch. 89, p. 256, § 2, effective August 10.

Editor's note: This section is similar to former § 12-54-108 as it existed prior to 2003, and the former § 12-54-103 was relocated to § 12-54-102.

12-54-104. Unlawful acts. (1) It is unlawful:

(a) To disinfect or preserve or to make final disposition of human remains with knowledge sufficient to arouse a reasonable suspicion of a crime in connection with the cause of death of the deceased until the permission of the coroner, deputy coroner, or district attorney, if there is no coroner, has been first obtained;

(b) To discriminate because of race, creed, color, religion, disability, sex, sexual orientation, marital status, national origin, or ancestry in the provision of funeral services;

(c) For any public officer or employee or any other person having a professional relationship with the decedent to approve or cause the final disposition of human remains in violation of this article;

(d) For a person in the business of paying for or providing death benefits, funerals, funeral ceremonies, final dispositions, or preneed contracts to pay or provide benefits in a manner that deprives the next of kin or legal representative of the right to use those payments or benefits at a funeral establishment of his or her choice;

(e) For a funeral director, mortuary science practitioner, embalmer, funeral establishment, or facility in which people regularly die or such person's or facility's agent to engage in a business practice that interferes with the freedom of choice of the general public to choose a funeral director, mortuary science practitioner, embalmer, or funeral establishment;

(f) For a county coroner to violate section 30-10-619, C.R.S.;

(g) To transport or otherwise transfer by common carrier human remains unless:

(I) A funeral director, mortuary science practitioner, or embalmer has embalmed or hermetically sealed the body for transportation and complies with applicable common carrier law; or

(II) The transport or transfer is to a funeral establishment, funeral director, or embalmer within the state of Colorado;

(h) To advertise as holding a degree, a certificate of registration, a professional license, or a professional certification issued by a state, political subdivision, or agency unless the person

holds such degree, registration, license, or certification and it is current and valid at the time of advertisement;

(i) For a funeral director, mortuary science practitioner, or embalmer to admit or permit any person to visit the embalming, cremation, or preparation room during the time a body is being embalmed, cremated, or prepared for final disposition, unless the person:

(I) Is a funeral director, mortuary science practitioner, cremationist, or embalmer;

(II) Is an authorized employee of a funeral establishment;

(III) Has the written consent of the next of kin of such deceased person or of a person having legal authority to give such permission in the absence of any next of kin;

(IV) Enters by order of a court of competent jurisdiction or a peace officer level I, Ia, II, III, or IIIa;

(V) Is a student enrolled in a mortuary science program;

(VI) Is a registered or licensed nurse with a medical reason to be present;

(VII) Is a licensed physician or surgeon with a medical reason to be present;

(VIII) Is a technician representing a procurement organization as defined in section 15-19-202 for purposes of an anatomical gift; or

(IX) Is the director or the director's designee;

(j) To refuse to properly and promptly release human remains or cremated remains to the custody of the person who has the legal right to effect such release whether or not any costs have been paid;

(k) To tell a person that a casket is required when the expressed wish is for immediate cremation;

(l) To embalm or cremate human remains without obtaining permission from the person with the right of final disposition unless otherwise required by section 12-54-105;

(m) To prohibit, hinder, or restrict or to attempt to prohibit, hinder, or restrict the following:

(I) The offering or advertising of immediate cremation, advance funeral arrangements, or low-cost funerals;

(II) Arrangements between memorial societies and funeral industry members; or

(III) A funeral service industry member from disclosing accurate information concerning funeral merchandise and services;

(n) To engage in willfully dishonest conduct or commit negligence in the practice of embalming, funeral directing, or providing for final disposition that defrauds or causes injury or is likely to defraud or cause injury;

(o) To fail to include in a contract for funeral services the following statement: "INQUIRIES REGARDING YOUR FUNERAL AGREEMENT MAY BE DIRECTED TO THE DEPARTMENT OF REGULATORY AGENCIES", along with the current address or telephone number of the department of regulatory agencies;

(p) For a person owning an indirect interest with more than ten-percent ownership in a funeral establishment or for a person owning a direct interest in a funeral establishment to own an indirect interest with more than ten-percent ownership in a nontransplant tissue bank, as defined in section 12-54.5-101 (5), or to own a direct interest in a nontransplant tissue bank.

(2) For purposes of this section only, "next of kin" shall not include any person who is arrested on suspicion of having committed, is charged with, or has been convicted of, any felony offense specified in part 1 of article 3 of title 18, C.R.S., involving the death of the deceased

person. If charges are not brought, charges are brought but dismissed, or the person charged is acquitted of the alleged crime before final disposition of the deceased person's body, this subsection (2) shall not apply.

Source: L. 2003: Entire part amended with relocations and (2) amended, pp. 1919, 1924, §§ 1, 6, effective July 1; (1)(a) and (1)(c) to (1)(f) amended and (2) added, p. 2602, § 1, effective July 1. **L. 2008:** (1)(b) amended, p. 1600, § 17, effective May 29. **L. 2009:** (1)(c), (1)(e), (1)(g)(I), (1)(h), IP(1)(i), (1)(i)(I), (1)(i)(VI), and (1)(i)(VII) amended and (1)(i)(VIII), (1)(i)(IX), (1)(n), and (1)(o) added, (HB 09-1202), ch. 422, pp. 2341, 2342, §§ 2, 3, effective July 1. **L. 2011:** (1)(a), (1)(c), IP(1)(g), (1)(j), and (1)(l) amended, (HB 11-1178), ch. 89, p. 256, § 3, effective August 10. **L. 2017:** IP(1)(i) and (1)(i)(VIII) amended, (SB 17-223), ch. 158, p. 557, § 2, effective August 9. **L. 2018:** (1)(p) added, (SB 18-234), ch. 332, p. 1994, § 1, effective August 8.

Editor's note: (1) This section is similar to former § 12-54-117 as it existed prior to 2003.

(2) Subsections (1)(a), (1)(c), (1)(d), (1)(e), and (1)(f), as amended by Senate Bill 03-038, were relocated and renumbered from § 12-54-117 (1)(a), (1)(f), (1)(g), (1)(h), and (1)(h.1), respectively, and harmonized with House Bill 03-1305.

Cross references: For the legislative declaration contained in the 2008 act amending subsection (1)(b), see section 1 of chapter 341, Session Laws of Colorado 2008.

12-54-105. Care of bodies required - public health. A funeral establishment shall embalm, refrigerate, cremate, bury, or entomb human remains within twenty-four hours after taking custody of the remains.

Source: L. 2003: Entire part amended with relocations, p. 1921, § 1, effective July 1. **L. 2011:** Entire section amended, (HB 11-1178), ch. 89, p. 257, § 4, effective August 10. **L. 2015:** Entire section amended, (SB 15-110), ch. 178, p. 580, § 4, effective July 1.

Editor's note: This section is similar to former § 12-54-111 as it existed prior to 2003.

12-54-106. Consumer protection. (1) A funeral establishment whose services are purchased shall make every reasonable attempt to fulfill the expressed needs and desires of the person with the right of final disposition, and shall make a full disclosure of all its available services and merchandise to the arrangers prior to selection of the casket.

(2) Before a person selects the funeral, the funeral establishment shall provide a written itemized list of the prices of all available merchandise and individual services at that funeral establishment. Full disclosure shall also be made in the case of a memorial service and as to use of funeral merchandise and facilities. In no event shall such person be required to purchase services or products contained on the itemized list that are not desired for the funeral unless such services or goods are required by law.

(3) Any statements of legal or practical requirements shall be complete and accurate, including the conditions under which embalming is required or advisable. Representations as to

the use or necessity of a casket or alternative container in connection with a funeral or alternatives for final disposition shall be truthful and shall disclose all pertinent information.

(4) When quoting funeral prices, either orally, by use of a disclosure statement, or by a final bill, the funeral establishment shall only list those items as cash advances or accommodation items that are paid for or could be paid for by the next of kin in the same amount that is paid by the funeral home.

Source: L. 2003: Entire part amended with relocations, p. 1921, § 1, effective July 1.

Editor's note: This section is similar to former § 12-54-120 as it existed prior to 2003.

12-54-107. Violations and penalties. Any person who violates this part 1 or part 3 of this article is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than five thousand dollars or by imprisonment in the county jail for not more than twenty-four months or by both such fine and imprisonment.

Source: L. 2003: Entire part amended with relocations, p. 1922, § 1, effective July 1. **L. 2009:** Entire section amended, (HB 09-1202), ch. 422, p. 2343, § 4, effective July 1.

Editor's note: This section is similar to former § 12-54-118 as it existed prior to 2003.

12-54-108. Exceptions - safe harbor. (1) This part 1 shall not apply to, or in any way interfere with, the duties of the following persons:

(a) An officer of a public institution;

(b) An officer of a medical college, county medical society, anatomical association, or college of embalming; or

(c) A person acting under the authority of part 2 of article 34 of this title.

(2) (a) This part 1 shall not apply to, nor in any way interfere with, any custom or rite of any religious sect in the burial of its dead, and the members and followers of the religious sect may continue to provide memorial services for, care for, prepare, and bury the bodies of deceased members of the religious sect, free from any term or condition, or any provision of this part 1, and are not subject to this part 1, so long as the human remains are refrigerated, frozen, embalmed, interred, or cremated within seven days after death.

(b) If human remains are refrigerated or embalmed pursuant to paragraph (a) of this subsection (2), the body must be interred, frozen, or cremated within thirty days after death unless the coroner authorizes otherwise in writing. The coroner shall not permit an exception to this paragraph (b) unless the applicant can demonstrate a legitimate delay caused by unforeseen uncontrollable circumstances or by a criminal investigation.

(c) Notwithstanding this subsection (2), upon the receipt of evidence that the human remains likely contained a serious contagious disease, the state department of public health and environment, the state board of health, or a local department of health may issue an order overruling this subsection (2).

(3) A person who sells or offers to sell caskets, urns, or other funeral goods, but does not provide funeral services, shall not be subject to this article.

(4) If a funeral director, mortuary science practitioner, or embalmer has acted in good faith, the funeral director, mortuary science practitioner, or embalmer may rely on a signed statement from a person with the right of final disposition under section 15-19-106, C.R.S., that:

(a) The person knows of no document expressing the deceased's wishes for final disposition that qualifies to direct the final disposition under section 15-19-104, C.R.S.;

(b) The person has made a reasonable effort under section 15-19-106, C.R.S., to contact each person with the right of final disposition and to learn his or her wishes; and

(c) The person knows of no objections to the final disposition.

(5) (a) (I) A funeral establishment, funeral director, or mortuary science practitioner may dispose of cremated remains at the expense of the person with the right of final disposition one hundred eighty days after cremation if the person was given clear prior notice of this paragraph (a) and a reasonable opportunity to collect the cremated remains, the exact location of the final disposition and the costs associated with the final disposition are recorded, and the recovery of the cremated remains is possible. Recovery of costs is limited to a reasonable amount of the costs actually expended by the funeral establishment, funeral director, or mortuary science practitioner.

(II) A funeral establishment, funeral director, or mortuary science practitioner may comply with this paragraph (a) by transferring the cremated remains and the records showing the funeral establishment and the deceased's name, date of birth, and next of kin for final disposition to a facility or place normally used for final disposition if the new custodian can comply with this paragraph (a).

(III) If cremated remains are not claimed by the person with the right of final disposition within three years after cremation, a funeral establishment, funeral director, or mortuary science practitioner may dispose of the remains in an unrecoverable manner by placing the remains in an ossuary or by scattering the remains in a dedicated cemetery, scattering garden, or consecrated ground used exclusively for these purposes.

(IV) The custodian is not liable for the loss or destruction of records required to be kept by this paragraph (a) if the loss or destruction was not caused by the custodian's negligence.

(b) If the person was cremated prior to July 1, 2003, and the funeral director or mortuary science practitioner reasonably attempts to notify the person with the right of final disposition of the provisions of this subsection (5), the cremated remains may be disposed of in accordance with this subsection (5) notwithstanding a failure to provide the notice of the provisions of this subsection (5) to the person with the right of final disposition prior to disposing of the remains.

Source: L. 2003: Entire part amended with relocations, p. 1922, § 1, effective July 1. **L. 2004:** IP(4), (4)(a), and (4)(b) amended, p. 1196, § 44, effective August 4. **L. 2009:** (3), IP(4), and (5) amended, (HB 09-1202), ch. 422, p. 2343, § 5, effective July 1. **L. 2011:** (2) and (5)(a) amended, (HB 11-1178), ch. 89, p. 257, § 5, effective August 10.

Editor's note: This section is similar to former § 12-54-119 as it existed prior to 2003, and the former § 12-54-108 was relocated to § 12-54-103.

12-54-109. Effect of criminal charges. (Repealed)

Source: L. 2003: Entire part amended with relocations, p. 1924, § 1, effective July 1. **L. 2009:** Entire section repealed, (HB 09-1202), ch. 422, p. 2344, § 8, effective July 1.

12-54-110. Registration required. (1) Unless practicing at a registered funeral establishment pursuant to this section, a person shall not practice as, or offer the services of, a mortuary science practitioner, funeral director, or embalmer, nor shall the funeral establishment sell or offer to sell funeral goods and services to the public.

(2) (a) Each funeral establishment shall register with the director using forms as determined by the director. The registration shall include the following:

(I) The specific location of the funeral establishment;

(II) The full name and address of the designee appointed pursuant to subsection (3) of this section;

(III) The date the funeral establishment began doing business; and

(IV) A list of each of the following services provided at each funeral establishment location:

(A) Refrigerating or holding human remains;

(B) Embalming human remains;

(C) Transporting human remains to or from the funeral establishment or the place of final disposition;

(D) Providing funeral goods or services to the public; and

(E) Selling preneed contracts.

(b) Each funeral establishment registration shall be renewed, according to a schedule established by the director, in a form as determined by the director.

(c) If, after initial registration, the funeral establishment provides a service listed in subparagraph (IV) of paragraph (a) of this subsection (2) that was not included in the initial registration, the funeral establishment shall submit an amended registration within thirty days after beginning to provide the new service.

(d) If, after initial registration, the funeral establishment appoints a new designee, the funeral establishment shall submit an amended registration within thirty days after appointing the designee.

(e) The director may establish registration fees, renewal fees, and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a funeral establishment fails to renew the registration in accordance with the schedule established by the director, the registration shall expire.

(3) Each funeral establishment shall appoint an individual as the designee of the funeral establishment. A designee shall:

(a) Be at least eighteen years of age;

(b) Have at least two years' experience working for a funeral establishment;

(c) Be employed by the registered funeral establishment that the designee represents;

(d) Have the authority within the funeral establishment's organization to require that personnel comply with this article; and

(e) Not be designated for more than one funeral establishment unless the additional establishment is operated under common ownership and management and no funeral establishment is more than sixty miles from another establishment held under the same ownership conditions.

(4) The designee shall require each person employed at the funeral establishment to demonstrate evidence of compliance with section 12-54-111. The designee shall retain the records of such evidence so long as the person is employed at the funeral establishment.

(5) This section shall not require the registration of a nonprofit organization that only provides education or support to an individual who intends to provide for final disposition of human remains.

Source: L. 2009: Entire section added, (HB 09-1202), ch. 422, p. 2344, § 9, effective July 1. **L. 2011:** (2)(a)(IV)(A), (2)(a)(IV)(B), (2)(a)(IV)(C), and (5) amended, (HB 11-1178), ch. 89, p. 258, § 6, effective August 10. **L. 2013:** IP(2)(a), (2)(a)(IV)(C), and (2)(a)(IV)(D) amended and (2)(a)(IV)(E) added, (SB 13-125), ch. 287, p. 1521, § 8, effective August 7.

Editor's note: This section is repealed, effective July 1, 2024, pursuant to § 12-54-410.

12-54-111. Title protection. (1) A person shall not advertise, represent, or hold oneself out as or use the title of a mortuary science practitioner unless the person:

(a) Has at least two thousand hours practicing or interning as a mortuary science practitioner, including, without limitation, experience in cremation and embalming;

(b) Has graduated with a certificate, diploma, or degree in mortuary science from:

(I) A program accredited by the American board of funeral service education or its successor, if the successor is approved by the director, and the program is part of a school of higher education; or

(II) A school of higher education accredited by the American board of funeral service education or its successor, if the successor is approved by the director; and

(c) Has taken the mortuary science test, known as the national board examination, administered by the international conference of funeral service examining boards or its successor, if the successor is approved by the director, and received a passing score.

(2) A person shall not advertise, represent, or hold oneself out as or use the title of a funeral director unless the applicant:

(a) Has at least two thousand hours practicing or interning as a funeral director; and

(b) Has directed at least fifty funerals or graveside services.

(3) A person shall not advertise, represent, or hold oneself out as or use the title of an embalmer unless the applicant:

(a) Has at least four thousand hours practicing or interning as an embalmer; and

(b) Has embalmed at least fifty human remains.

(4) For purposes of this section, intern or practice hours from Colorado or any other state shall meet the standards set by this section.

Source: L. 2009: Entire section added, (HB 09-1202), ch. 422, p. 2345, § 9, effective July 1. **L. 2011:** IP(1), (1)(b), and (3)(b) amended, (HB 11-1178), ch. 89, p. 259, § 7, effective August 10.

Editor's note: This section is repealed, effective July 1, 2024, pursuant to § 12-54-410.

12-54-112. Standards of practice - embalming - transporting. (1) A funeral establishment that performs embalming shall:

(a) Maintain a sanitary preparation room with sanitary flooring, drainage, and ventilation;

(b) Employ universal biological hazard precautions;

(c) Employ reasonable care to minimize the risk of transmitting communicable diseases from human remains;

(d) Be equipped with instruments and supplies necessary to protect the health and safety of the public and employees of the funeral establishment; and

(e) Transport human remains in a safe and sanitary manner.

(2) A funeral establishment that transports human remains shall:

(a) Use a motor vehicle that is appropriate for the transportation of human remains; and

(b) Transport human remains in a safe and sanitary manner.

(3) A funeral establishment shall remove any implanted device in human remains before transporting the body to a crematory.

Source: L. 2009: Entire section added, (HB 09-1202), ch. 422, p. 2346, § 9, effective July 1. **L. 2011:** (1)(c), (1)(e), (2), and (3) amended, (HB 11-1178), ch. 89, p. 259, § 8, effective August 10.

12-54-113. Custody and responsibility - rules. (1) A funeral establishment shall not, through its managers, employees, contractors, or agents, take custody of human remains without an attestation of positive identification on a form promulgated by the director by rule by:

(a) The next of kin;

(b) The county coroner or the county coroner's designee; or

(c) An authorized person at the care facility where the deceased died.

(2) A funeral establishment is responsible for identifying and tracking human remains from the time it takes custody of human remains until the:

(a) Final disposition has occurred or the remains are returned to the person who has the right of final disposition;

(b) Human remains are released in accordance with the instructions given by the person who has the right of final disposition; or

(c) Remains are released to another funeral establishment, crematory, repository, or entity as authorized by the person who has the right of final disposition.

(3) The director shall adopt rules implementing this section that:

(a) Establish what constitutes custody;

(b) Define "care facility", "repository", and "entity";

(c) Establish who is authorized to identify human remains at a care facility for a funeral establishment; and

(d) Prescribe the minimum standards for the positive identification and chain of custody of human remains. A funeral establishment may use the establishment's own procedures if the procedures meet or exceed the minimum standards of the rule promulgated by the director.

Source: L. 2015: Entire section added, (SB 15-110), ch. 178, p. 580, § 5, effective July 1.

PART 2

ASSESSMENT OF MORTUARIES

12-54-201. Mortuaries in cemeteries not exempt. No person, firm, association, partnership, or corporation engaged in the ownership, operation, or management of a cemetery or mausoleum in this state which is exempt from payment of general property taxes, shall, either directly or indirectly, own, manage, conduct, or operate a funeral home or mortuary in such cemetery or mausoleum, or adjacent thereto and in connection therewith, unless said cemetery or mausoleum and funeral home or mortuary is listed for assessment purposes. The attorney general, county attorney, or any interested party may maintain injunction proceedings to prevent any violation of this section.

Source: L. 53: p. 183, § 1. **CRS 53:** § 61-2-1. **C.R.S. 1963:** § 61-2-1.

Cross references: For exemption of cemetery corporation property, see § 7-47-106.

PART 3

CREMATION

12-54-301. Unlawful acts. (1) It is unlawful for a crematory:

(a) To discriminate because of race, creed, color, religion, sex, marital status, sexual orientation, or national origin in the provision of funeral services;

(b) To approve or cause the final disposition of human remains in violation of this article;

(c) To engage in a business practice that interferes with the freedom of choice of the general public to choose a funeral director, mortuary science practitioner, cremationist, embalmer, or funeral establishment;

(d) To advertise as holding a degree, a certificate of registration, a professional license, or a professional certification issued by a state, political subdivision, or agency unless the person holds such degree, registration, license, or certification and it is current and valid at the time of advertisement;

(e) To admit or permit any person to visit the crematory or preparation room during the time a body is being cremated or prepared for final disposition unless the person:

(I) Is a funeral director, mortuary science practitioner, or cremationist;

(II) Is an authorized employee of a crematory;

(III) Has the written consent of the next of kin of the deceased person or of a person having legal authority to give consent in the absence of any next of kin;

(IV) Enters by order of a court of competent jurisdiction or a peace officer level I, Ia, II, III, or IIIa;

(V) Is a student or intern enrolled in a mortuary science program;

(VI) Is a registered or licensed nurse with a medical reason to be present;

(VII) Is a licensed physician or surgeon with a medical reason to be present;

(VIII) Is a technician representing a procurement organization as defined in section 15-19-202 for purposes of an anatomical gift; or

(IX) Is the director or the director's designee;

(f) To refuse to properly and promptly release human remains to the custody of the person who has the legal right to effect the release, whether or not any costs have been paid, unless there is a good-faith dispute over who controls the right of final disposition;

(g) To cremate human remains without obtaining permission from the person with the right of final disposition;

(h) To prohibit, hinder, or restrict, or attempt to prohibit, hinder, or restrict, the following:

(I) The offering or advertising of immediate cremation, advance funeral arrangements, low-cost funerals, or low-cost cremations;

(II) Arrangements between memorial societies and funeral industry members; or

(III) A funeral service industry member from disclosing accurate information concerning funeral merchandise and services;

(i) To cremate human remains in a facility unless the facility is registered pursuant to section 12-54-303;

(j) To refuse to accept human remains that are not in a casket or to require human remains to be placed in a casket at any time;

(k) To allow a crematory operator to perform services beyond an operator's competency, training, or education;

(l) To engage in willfully dishonest conduct or commit negligence in the practice of cremation or providing for final disposition that defrauds or causes injury or is likely to defraud or cause injury.

(2) For purposes of this section only, "next of kin" shall not include any person who is arrested on suspicion of having committed, is charged with, or has been convicted of, any felony offense specified in part 1 of article 3 of title 18, C.R.S., involving the death of the deceased person. This subsection (2) shall not apply if charges are not brought, charges are brought but dismissed, or the person charged is acquitted of the alleged crime before final disposition of the deceased person's body.

(3) It is unlawful for a person owning an indirect interest with more than ten-percent ownership in a crematory or for a person owning a direct interest in a crematory to own an indirect interest with more than ten-percent ownership in a nontransplant tissue bank, as defined in section 12-54.5-101 (5), or to own a direct interest in a nontransplant tissue bank.

Source: L. 2009: Entire part added, (HB 09-1202), ch. 422, p. 2347, § 10, effective July 1. **L. 2011:** (1)(b), (1)(f), (1)(g), (1)(i), and (1)(j) amended, (HB 11-1178), ch. 89, p. 259, § 9, effective August 10. **L. 2015:** IP(1) and (1)(k) amended, (SB 15-110), ch. 178, p. 581, § 6, effective July 1. **L. 2017:** IP(1)(e) and (1)(e)(VIII) amended, (SB 17-223), ch. 158, p. 557, § 3, effective August 9. **L. 2018:** (3) added, (SB 18-234), ch. 332, p. 1994, § 2, effective August 8.

12-54-302. Exceptions - safe harbor. (1) If a crematory has acted in good faith, the crematory may rely on a signed statement from a person with the right of final disposition under section 15-19-106, C.R.S., that:

(a) The person knows of no document expressing the deceased person's wishes for final disposition that qualifies to direct the final disposition under section 15-19-104, C.R.S.;

(b) The person has made a reasonable effort under section 15-19-106, C.R.S., to contact each person with the right of final disposition and to learn his or her wishes; and

(c) The person knows of no objections to the final disposition.

(2) (a) (I) A crematory may dispose of cremains at the expense of the person with the right of final disposition one hundred eighty days after cremation if the person was given clear prior notice of this paragraph (a) and a reasonable opportunity to collect the cremains; the exact location of the final disposition and the costs associated with the final disposition are recorded; and the recovery of the cremains is possible. Recovery of costs is limited to a reasonable amount of the costs actually expended by the crematory.

(II) A crematory may comply with this paragraph (a) by transferring the cremated remains and the records showing the funeral establishment and the deceased's name, date of birth, and next of kin for final disposition to a facility or place normally used for final disposition if the new custodian can comply with this paragraph (a).

(III) If cremated remains are not claimed by the person with the right of final disposition within three years after cremation, a crematory may dispose of the remains in an unrecoverable manner by placing the remains in an ossuary or by scattering the remains in a dedicated cemetery, scattering garden, or consecrated ground used exclusively for these purposes.

(IV) The custodian is not liable for the loss or destruction of records required to be kept by this paragraph (a) if the loss or destruction was not caused by the custodian's negligence.

(b) If the deceased was cremated prior to July 1, 2003, and the crematory reasonably attempts to notify the person with the right of final disposition of the provisions of this subsection (2), the remains may be disposed of in accordance with this subsection (2), notwithstanding a failure to provide the notice of the provisions of this subsection (2) to the person with the right of final disposition prior to disposing of the remains.

(3) (a) This part 3 shall not apply to, nor interfere with, any custom or rite of a religious sect in the final disposition of its dead, and the members and followers of the religious sect may continue to provide memorial services for, care for, prepare, and cremate the bodies of deceased members of the religious sect if the human remains are refrigerated, frozen, or cremated within seven days after death.

(b) If human remains are refrigerated pursuant to paragraph (a) of this subsection (3), the body must be cremated within thirty days after death unless the coroner authorizes otherwise in writing. The coroner shall not permit an exception to this paragraph (b) unless the applicant can demonstrate a legitimate delay caused by unforeseen, uncontrollable circumstances or by a criminal investigation.

Source: L. 2009: Entire part added, (HB 09-1202), ch. 422, p. 2349, § 10, effective July 1. **L. 2011:** (2)(a) and (3) amended, (HB 11-1178), ch. 89, p. 260, § 10, effective August 10. **L. 2015:** IP(1), (2)(a)(I), (2)(a)(II), (2)(a)(III), and (2)(b) amended, (SB 15-110), ch. 178, p. 581, § 7, effective July 1.

12-54-303. Registration required. (1) Unless practicing at a registered crematory under this section and except as provided in section 12-54.5-104 (3), a person shall not practice

as, or offer the services of, a cremationist, nor shall the crematory sell or offer to sell funeral goods and services to the public.

(2) (a) Each crematory shall register with the director using forms as determined by the director. The registration shall include the following:

(I) The specific location of the crematory;

(II) The full name and address of the designee appointed pursuant to subsection (3) of this section;

(III) The date the crematory began doing business; and

(IV) A list of each of the following services provided at each crematory location:

(A) Refrigerating or holding human remains;

(B) Transporting human remains to or from the crematory or the place of final disposition;

(C) Providing funeral goods or services to the public;

(D) Cremating human remains; and

(E) Selling preneed contracts.

(b) Each crematory registration shall be renewed, according to a schedule established by the director, in a form as determined by the director.

(c) If, after initial registration, the crematory provides a service listed in subparagraph (IV) of paragraph (a) of this subsection (2) that was not included in the initial registration, the crematory shall submit an amended registration within thirty days after beginning to provide the new service.

(d) If, after initial registration, the crematory appoints a new designee, the crematory shall submit an amended registration within thirty days after appointing the designee.

(e) The director may establish registration fees, renewal fees, and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a crematory fails to renew the registration in accordance with the schedule established by the director, the registration shall expire.

(3) Each crematory shall appoint an individual as the designee of the crematory. A designee shall:

(a) Be at least eighteen years of age;

(b) Have at least two years' experience working for a crematory;

(c) Be employed by the registered crematory that the designee represents;

(d) Have the authority within the crematory's organization to require that personnel comply with this article; and

(e) Not be designated for more than one crematory unless the additional establishment is operated under common ownership and management and no crematory is more than sixty miles from another establishment held under the same ownership conditions.

(4) The designee shall require each person employed at the crematory to demonstrate evidence of compliance with section 12-54-304. The designee shall retain the records of such evidence so long as the person is employed at the crematory.

(5) This section shall not require the registration of a nonprofit organization that only provides education or support to an individual who intends to provide for final disposition of human remains.

Source: L. 2009: Entire part added, (HB 09-1202), ch. 422, p. 2349, § 10, effective July 1. **L. 2011:** (2)(a)(IV)(A), (2)(a)(IV)(B), (2)(a)(IV)(D), and (5) amended, (HB 11-1178), ch. 89,

p. 261, § 11, effective August 10. **L. 2013:** IP(2)(a), (2)(a)(IV)(C), and (2)(a)(IV)(D) amended and (2)(a)(IV)(E) added, (SB 13-125), ch. 287, p. 1521, § 9, effective August 7. **L. 2018:** (1) amended, (SB 18-234), ch. 332, p. 1999, § 5, effective August 8.

Editor's note: This section is repealed, effective July 1, 2024, pursuant to § 12-54-410.

12-54-304. Title protection. A person shall not advertise, represent, or hold oneself out as or use the title of a cremationist unless the applicant has at least five hundred hours practicing or interning as a cremationist and has cremated at least fifty human remains.

Source: L. 2009: Entire part added, (HB 09-1202), ch. 422, p. 2351, § 10, effective July 1. **L. 2011:** Entire section amended, (HB 11-1178), ch. 89, p. 261, § 12, effective August 10.

Editor's note: This section is repealed, effective July 1, 2024, pursuant to § 12-54-410.

12-54-305. Records and receipts. (1) The crematory shall furnish to a person who delivers human remains to the crematory a receipt, which shall be signed by both the crematory's representative and the person who delivers the human remains. The crematory shall retain a copy of the receipt in its records pursuant to subsection (3) of this section. The receipt shall include the following:

(a) The date and time of the delivery;

(b) The type of casket or alternative container that was delivered;

(c) The name of the person who delivered the human remains;

(d) The name of any business with which the person delivering the human remains is affiliated;

(e) The name of the person who received the human remains on behalf of the crematory; and

(f) The name of the decedent.

(2) Upon release of cremains, the crematory shall furnish to the person who receives the cremains a receipt, signed by both the crematory's representative and the person who receives the cremains. The crematory shall retain a copy of the receipt in its records pursuant to subsection (1) of this section. The receipt shall include the following:

(a) The date and time of the release;

(b) The name of the person to whom the cremains were released;

(c) The name of the person who released the cremains on behalf of the crematory; and

(d) The name of the decedent.

(3) A crematory shall maintain, for at least five years and available at the registered location, a permanent record of each cremation occurring at the facility and copies of the receipts required by this section.

Source: L. 2009: Entire part added, (HB 09-1202), ch. 422, p. 2351, § 10, effective July 1.

12-54-306. Limited liability. A crematory shall not be liable for any valuables delivered to the crematory if the crematory exercised reasonable care in handling and protecting the valuables.

Source: L. 2009: Entire part added, (HB 09-1202), ch. 422, p. 2352, § 10, effective July 1.

12-54-307. Standards of practice - cremating. (1) A crematory shall:

(a) Maintain a retort or crematory chamber that is operated at all times in a safe and sanitary manner;

(b) Employ reasonable care to minimize the risk of transmitting communicable diseases from human remains;

(c) Be equipped with instruments and supplies necessary to protect the health and safety of the public and employees of the crematory; and

(d) Transport human remains in a safe and sanitary manner.

(2) (a) A crematory shall not cremate human remains unless the crematory has obtained a statement containing the following from a funeral establishment, funeral director, mortuary science practitioner, or the person with the right of final disposition:

(I) The identity of the decedent;

(II) The date of death;

(III) Authorization to cremate the human remains;

(IV) The name of the person authorizing cremation and an affidavit or other document in compliance with article 19 of title 15, C.R.S., that the authorization complies with article 19 of title 15, C.R.S.;

(V) A statement that the human remains do not contain an implanted device;

(VI) The name of the person authorized to receive the cremains;

(VII) A list of items delivered to the crematory along with the human remains;

(VIII) A statement as to whether the next of kin has made arrangements for a viewing or service before cremation and the date and time of any viewing or service;

(IX) A copy of the disposition permit; and

(X) A signature of a representative of any funeral establishment or the next of kin making arrangements for cremation that the representative has no actual knowledge that contradicts any information required by this paragraph (a).

(b) A person who signs the statement required by paragraph (a) of this subsection (2) shall warrant the truthfulness of the facts contained therein. A person who signs the statement with actual knowledge to the contrary shall be civilly liable.

(3) (a) The crematory shall hold human remains in a cremation container and shall not remove the remains.

(b) The crematory shall cremate the human remains in a cremation container.

(c) A cremation container must:

(I) Be composed of materials suitable for cremation;

(II) Be able to be closed in order to provide a complete covering for the human remains;

(III) Be resistant to leaking or spilling;

(IV) Be rigid enough to handle with ease;

(V) Provide reasonable protection for the health and safety of crematory employees; and

(VI) Be used exclusively for the cremation of human remains.

(4) A crematory shall not cremate the human remains of more than one person within the same cremation chamber or otherwise commingle the cremains of multiple human remains unless the next of kin has signed a written authorization. No crematory is civilly liable for commingling the cremains of human remains if the next of kin has signed the written authorization.

(5) (a) A crematory shall use a tag to identify human remains and cremains. The tag must be verified, removed, and placed near the cremation chamber control panel prior to cremation. The tag must remain next to the cremation chamber until the cremation is complete.

(b) After cremation is complete, all of the cremains and reasonable recoverable residue shall be removed from the cremation chamber and processed as necessary. Anything other than the cremains shall be disposed of unless the next of kin authorizes otherwise.

(c) The processed cremains shall be placed in a temporary container or urn. Any cremains that do not fit within such enclosure shall be placed in a separate temporary container or urn. Each container shall be marked with the decedent's identity and the name of the crematory. If a temporary container is used, the crematory shall disclose that the temporary container should not be used for permanent storage.

(d) If cremated remains are shipped, the crematory shall use a method that employs an internal tracking system and obtains a signed receipt from the person accepting delivery.

(6) Cremains shall not be commingled with other cremains in final disposition or scattering without written authorization from the next of kin unless the disposition or scattering occurs within a dedicated cemetery or consecrated grounds used exclusively for such purposes.

(7) (a) A crematory shall not cremate human remains containing an implanted device. If the funeral establishment that had control of the human remains failed to ensure that a device was removed, the funeral establishment is responsible for removing the device.

(b) If the person authorizing cremation fails to inform the crematory of the presence of an implanted device, the person shall be solely liable for any resulting damage to the crematory.

Source: L. 2009: Entire part added, (HB 09-1202), ch. 422, p. 2352, § 10, effective July 1. **L. 2011:** (1)(b), (1)(d), IP(2)(a), (2)(a)(III), (2)(a)(V), (2)(a)(VII), (2)(a)(IX), (3)(a), (3)(b), IP(3)(c), (3)(c)(I), (3)(c)(II), (4), (5)(a), and (7)(a) amended and (3)(c)(VI) added, (HB 11-1178), ch. 89, p. 261, § 13, effective August 10.

12-54-308. Custody and responsibility - rules. (1) A crematory shall not, through its managers, employees, contractors, or agents, take custody of human remains without an attestation of positive identification on a form promulgated by the director by rule by:

(a) The next of kin;

(b) The county coroner or the county coroner's designee; or

(c) An authorized person at the care facility where the deceased died.

(2) A crematory is responsible for identifying and tracking human remains from the time it takes custody of human remains until the:

(a) Final disposition has occurred or the remains are returned to the person who has the right of final disposition;

(b) Human remains are released in accordance with the instructions given by the person who has the right of final disposition; or

(c) Remains are released to a funeral establishment, another crematory, repository, or entity as authorized by the person who has the right of final disposition.

(3) The director shall adopt rules implementing this section that:

(a) Establish what constitutes custody;

(b) Define "care facility", "repository", and "entity";

(c) Establish who is authorized to identify human remains at a care facility for a funeral establishment; and

(d) Prescribe the minimum standards for the positive identification and chain of custody of human remains. A crematory may use the crematory's own procedures if the procedures meet or exceed the minimum standards of the rule promulgated by the director.

Source: L. 2015: Entire section added, (SB 15-110), ch. 178, p. 582, § 8, effective July 1.

PART 4

ADMINISTRATION

Editor's note: This part 4 is repealed, effective July 1, 2024, pursuant to § 12-54-410.

12-54-401. Powers and duties of the director - rules. (1) The director may deny, suspend, refuse to renew, issue a letter of admonition or confidential letter of concern to, revoke, place on probation, or limit the scope of practice of the registration of a funeral establishment or crematory under this article that has:

(a) Filed an application with the director containing material misstatements of fact or has omitted any disclosure required by this article;

(b) Had a registration issued by Colorado, or an equivalent license, registration, or certification issued by another state, to practice mortuary science or to embalm or cremate human remains revoked; or

(c) Violated this article or any rule of the director adopted under this article.

(2) (a) The director may deny or revoke a registration if the funeral establishment, crematory, or the designee thereof has been convicted of a felony related to another activity regulated under this article or a felony of moral turpitude. The director shall promptly notify the funeral establishment or crematory of such revocation.

(b) A crematory or funeral establishment whose registration has been revoked shall not be eligible for a registration for two years after the effective date of the revocation.

(3) The director may investigate the activities of a funeral establishment or crematory upon his or her own initiative or upon receipt of a complaint or a suspected or alleged violation of this article.

(4) The director or an administrative law judge appointed pursuant to part 10 of article 30 of title 24, C.R.S., shall conduct disciplinary hearings concerning a registration issued under this article. Such hearings shall conform to article 4 of title 24, C.R.S.

(5) (a) The director or an administrative law judge may administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the

production of all relevant papers, books, records, documentary evidence, and materials in any hearing or investigation conducted by the director or an administrative law judge.

(b) Upon failure of a witness to comply with a subpoena or service of process, the district court of the county in which the subpoenaed witness resides or conducts business may issue an order requiring the witness to appear before the director or administrative law judge and produce the relevant papers, books, records, documentary evidence, testimony, or materials in question. Failure to obey the order of the court may be punished as a contempt of court. The director or an administrative law judge may apply for such order.

(6) The director shall keep records of registrations and disciplinary proceedings. The records kept by the director shall be open to public inspection in a reasonable time and manner determined by the director.

(7) When the director or administrative law judge deems it appropriate and useful, the director or administrative law judge may consult with or obtain a written opinion from an appropriate professional organization or association of businesses who offer services requiring registration under this article for the purpose of investigating possible violations or weighing the appropriate standard of care to be applied to specific events or the facts in a hearing being held under this article.

(8) (a) The director may promulgate reasonable rules necessary to implement this section, sections 12-54-110, 12-54-111, 12-54-303, and 12-54-304, and this part 4.

(b) Before promulgating rules, the director shall seek input and advice from a person, or any state professional organization of persons, offering services that require registration pursuant to this article.

(c) Before promulgating rules, the director may seek input and advice from a consumer representative who advocates for consumers affected by this article.

Source: L. 2009: Entire part added, (HB 09-1202), ch. 422, p. 2354, § 10, effective July 1. **L. 2011:** (1)(b) amended, (HB 11-1178), ch. 89, p. 262, § 14, effective August 10.

12-54-402. Fees. (1) The director shall establish and collect the fees for a registration issued under this article pursuant to section 24-34-105, C.R.S.

(2) All fees collected by the director shall be transmitted to the state treasurer, who shall credit the same pursuant to section 24-34-105, C.R.S., and the general assembly shall make annual appropriations for expenditures of the director required to perform his or her duties under this article, which expenditures shall be made from such appropriations upon vouchers and warrants drawn pursuant to law. The division shall employ, subject to section 13 of article XII of the state constitution, such clerical or other assistants as are necessary for the proper performance of its work.

Source: L. 2009: Entire part added, (HB 09-1202), ch. 422, p. 2356, § 10, effective July 1.

12-54-403. Immunity. The director, any member of the director's staff, any person acting as a witness or 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 liability in any civil action for acts occurring while acting within the scope of the

person's capacity as director, staff, consultant, witness, or complainant respectively, if the person was acting in good faith, made a reasonable effort to obtain the facts of the matter as to which the person acted, and acted in the reasonable belief that the action taken was warranted by the facts. A person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this article shall be immune from any civil liability that may result from such participation.

Source: L. 2009: Entire part added, (HB 09-1202), ch. 422, p. 2356, § 10, effective July 1.

12-54-404. Letters of concern. The director may issue and send a confidential letter of concern to the funeral establishment or crematory when a complaint or investigation discloses an instance of conduct that does not warrant formal action by the director and, in the opinion of the director, the complaint should be dismissed, but the director has noticed indications of possible errant conduct by the funeral establishment or crematory that could lead to serious consequences if not corrected.

Source: L. 2009: Entire part added, (HB 09-1202), ch. 422, p. 2356, § 10, effective July 1.

12-54-405. Letters of admonition - funeral homes and crematories. (1) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the director, does not warrant formal action by the director but that should not be dismissed as being without merit, a letter of admonition may be issued and sent to a person by certified mail.

(2) When a letter of admonition is sent by the director, the subject shall be advised of the right to request that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based. The subject shall make the request in writing within twenty days after receipt of the letter.

(3) If the request for adjudication is timely made, the letter of admonition shall be deemed vacated and the matter shall be processed by means of formal disciplinary proceedings.

Source: L. 2009: Entire part added, (HB 09-1202), ch. 422, p. 2356, § 10, effective July 1.

12-54-406. Cease-and-desist orders - procedure. (1) (a) If it appears to the director, based upon credible evidence as presented in a written complaint, that a person is acting in a manner that creates an imminent threat to the health and safety of the public, or a person is acting or has acted without the required registration, the director may issue an order to cease and desist such activity. 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 unauthorized practices immediately cease.

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

(2) (a) If it appears to the director, based upon credible evidence as presented in a written complaint, that a person has violated this article or rules promulgated under this article, then, in addition to any specific powers granted pursuant to this article, the director may issue to such person an order to show cause as to why the director should not issue a final order directing such person to cease and desist from such violations.

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

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

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (2) does not appear at the hearing, the director may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (2) and such other evidence related to the matter as the director deems appropriate. The director shall issue the order within ten days after the director's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(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 or has engaged in acts or practices constituting violations of this article or rules promulgated under this article, a final cease-and-desist order may be issued, directing such person to cease and desist from further violations.

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

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

(4) If a person fails to comply with a final cease-and-desist order or a stipulation, the director may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring, and if so requested such attorney shall bring, suit for a

temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

(5) A person aggrieved by the final cease-and-desist order may seek judicial review of the director's determination or of the director's final order.

Source: L. 2009: Entire part added, (HB 09-1202), ch. 422, p. 2357, § 10, effective July 1.

12-54-407. Civil penalty - fine. (1) On motion of the director, the court may impose a civil penalty of not more than one thousand dollars for a violation of this article or a rule promulgated under this article. The penalty shall be transmitted to the state treasurer and credited to the general fund.

(2) In addition to any other penalty that may be imposed pursuant to this section, a funeral establishment or crematory violating this article or a rule promulgated pursuant to this article may be fined no less than one hundred dollars and no more than five thousand dollars for each violation proven by the director. All fines collected pursuant to this subsection (2) shall be transferred to the state treasurer, who shall credit such moneys to the general fund.

Source: L. 2009: Entire part added, (HB 09-1202), ch. 422, p. 2358, § 10, effective July 1.

12-54-408. Enforcement - injunctions. (1) The director may forward to a district attorney or a state or federal law enforcement agency any information concerning possible violations of statute or rule under this article committed by any person or complaints filed against a funeral director, mortuary science practitioner, cremationist, or embalmer.

(2) The director may request that an action be brought in the name of the people of the state of Colorado by the attorney general or the district attorney of the district in which the violation is alleged to have occurred to enjoin a person from engaging in or continuing the violation or from doing any act that furthers the violation. In such an action, an order or judgment may be entered awarding such preliminary or final injunction as is deemed proper by the court. The notice, hearing, or duration of an injunction or restraining order shall be made in accordance with the Colorado rules of civil procedure.

Source: L. 2009: Entire part added, (HB 09-1202), ch. 422, p. 2359, § 10, effective July 1.

12-54-409. Deferment prohibited. When a complaint or an investigation discloses misconduct that, in the opinion of the director, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

Source: L. 2009: Entire part added, (HB 09-1202), ch. 422, p. 2359, § 10, effective July 1.

12-54-410. Repeal. Sections 12-54-110, 12-54-111, 12-54-303, and 12-54-304 and this part 4 are repealed, effective July 1, 2024. Prior to such repeal, the regulation of persons

registered to practice cremation and mortuary science shall be reviewed pursuant to section 24-34-104, C.R.S.

Source: L. 2009: Entire part added, (HB 09-1202), ch. 422, p. 2359, § 10, effective July 1. **L. 2015:** Entire section amended, (SB 15-110), ch. 178, p. 579, § 1, effective July 1.

ARTICLE 54.5

Nontransplant Tissue Banks

12-54.5-101. Definitions. As used in this article 54.5, unless the context otherwise requires:

(1) "Designee" means an individual designated by a nontransplant tissue bank registered in accordance with section 12-54.5-102.

(2) "Director" means the director of the division or the director's designee.

(3) "Division" means the division of professions and occupations created in section 24-34-102.

(4) "Human remains" means all or any portion of the physical remains of a dead human who was born alive.

(5) (a) "Nontransplant tissue bank" means a person that, for any purpose other than transplantation into a living human being, recovers, transports, distributes, screens, stores, and arranges for the storage and distribution of human remains.

(b) "Nontransplant tissue bank" does not include:

(I) An eye bank, an organ procurement organization, or a tissue bank, as those terms are defined in section 15-19-202 (10), (16), and (31), respectively;

(II) A funeral establishment registered in accordance with section 12-54-110; or

(III) A crematory registered in accordance with section 12-54-303.

Source: L. 2018: Entire article added, (SB 18-234), ch. 332, p. 1994, § 3, effective August 8.

12-54.5-102. Registration required - repeal. (1) (a) By July 1, 2019, each nontransplant tissue bank shall register with the director in the form and manner determined by the director. The registration must include:

(I) The specific address of the nontransplant tissue bank;

(II) The full name and address of the designee appointed in accordance with subsection (2)(a) of this section;

(III) The date the nontransplant tissue bank began doing business;

(IV) The type of services provided by the nontransplant tissue bank; and

(V) A description of the nontransplant tissue bank's premises and equipment.

(b) Each nontransplant tissue bank registration is subject to renewal pursuant to a schedule established by the director in accordance with section 24-34-102 (8) and in the form and manner determined by the director.

(c) In accordance with section 24-34-105, the director may adjust the registration fee set under subsection (3) of this section and establish renewal fees and delinquency fees for

reinstatement. If a nontransplant tissue bank fails to renew the registration in accordance with the schedule established by the director, the registration expires.

(2) (a) Each nontransplant tissue bank shall appoint an individual as the designee of the nontransplant tissue bank. A designee must:

(I) Be at least eighteen years of age;

(II) Have at least two years of experience working for a nontransplant tissue bank;

(III) Be employed by the registered nontransplant tissue bank that the designee represents;

(IV) Have the authority within the nontransplant tissue bank's organization to require that personnel comply with this article 54.5; and

(V) Not be designated for more than one nontransplant tissue bank unless each additional nontransplant tissue bank is operated under common ownership and management and unless each additional nontransplant tissue bank is sixty miles or less from all other nontransplant tissue banks held under the same common ownership.

(b) If, after initial registration, the nontransplant tissue bank appoints a new designee in accordance with subsection (2)(a) of this section, the nontransplant tissue bank shall notify the director within thirty days after appointing the designee.

(3) To register, a person must pay the fee set by the director. The director shall set the registration fee to offset the division's direct and indirect costs of implementing this article 54.5. The director shall transmit the fee to the state treasurer, who shall credit it to the division of professions and occupations cash fund created in section 24-34-105.

(4) This section is repealed, effective September 1, 2024. Before its repeal, this section is scheduled for review in accordance with section 24-34-104.

Source: L. 2018: Entire article added, (SB 18-234), ch. 332, p. 1995, § 3, effective August 8.

12-54.5-103. Records and receipts. (1) A nontransplant tissue bank shall furnish to a person who delivers human remains to the nontransplant tissue bank a receipt, which must be signed by both the nontransplant tissue bank and the person who delivers the human remains. The nontransplant tissue bank shall retain a copy of the receipt in its records in accordance with subsection (2) of this section. The receipt must include the following:

(a) The date and time of the delivery;

(b) The name of the person who delivered the human remains;

(c) The name of the decedent;

(d) The name of any businesses with which the person delivering the human remains is affiliated; and

(e) The name of the person who received the human remains on behalf of the nontransplant tissue bank.

(2) A nontransplant tissue bank shall maintain for at least three years at its registered location the following records:

(a) The donor's full name and address;

(b) The date of donation;

(c) Documentation of the decedent's informed consent or the consent of the person authorized by law to consent on behalf of the donor to the donation;

(d) A description of the human remains to be donated for scientific or educational purposes;

(e) Decedent medical history, including any of the following if used by the nontransplant tissue bank: Autopsy reports, donation questionnaires, and other donor or decedent solicitation materials; and

(f) Tracking documentation of the transport of and delivery of human remains.

(3) A nontransplant tissue bank shall keep complete and accurate records and make the records open for inspection by the director.

Source: L. 2018: Entire article added, (SB 18-234), ch. 332, p. 1996, § 3, effective August 8.

12-54.5-104. Standards of practice. (1) A nontransplant tissue bank shall:

(a) Handle human remains in a safe and sanitary manner;

(b) Be equipped with instruments and supplies necessary to protect the health and safety of the public and employees of the nontransplant tissue bank; and

(c) Affix identification to all human remains delivered to the nontransplant tissue bank and provide tracking paperwork to match the identification.

(2) A nontransplant tissue bank shall not commingle unidentified or unharvested human remains prior to transfer to a crematory or funeral establishment, as those terms are defined in section 12-54-102 (5) and (12), respectively.

(3) An incinerator that is used for the disposal of human remains and that is operated by a registered nontransplant tissue bank need not be registered under part 3 of article 54 of this title 12. The incinerator may commingle tissue from medical or educational research from multiple decedents.

Source: L. 2018: Entire article added, (SB 18-234), ch. 332, p. 1997, § 3, effective August 8.

12-54.5-105. Disclosure. (1) A nontransplant tissue bank shall disclose, in clear and unambiguous terms, the following information to the donor or to the person authorized by law to consent to donation:

(a) That the donated human remains may be distributed, in whole or in part, by the nontransplant tissue bank;

(b) That the donated human remains may be returned, in whole or in part, to the nontransplant tissue bank; and

(c) That the nontransplant tissue bank will be compensated for distribution of the human remains.

Source: L. 2018: Entire article added, (SB 18-234), ch. 332, p. 1998, § 3, effective August 8.

12-54.5-106. Discipline. (1) The director may deny, suspend, revoke, or place on probation a nontransplant tissue bank or issue a letter of admonition to an applicant for or holder of a nontransplant tissue bank registration if the nontransplant tissue bank or applicant:

(a) Violates an order of the director, this article 54.5, or the rules established under this article 54.5;

(b) Makes a material misstatement or omission in the registration or the application for a registration;

(c) Violates federal law, Colorado law, or an ordinance or resolution of a political subdivision of Colorado in the operation of the nontransplant tissue bank; or

(d) Has incurred disciplinary action related to the administration of a nontransplant tissue bank in another jurisdiction. Evidence of this disciplinary action is prima facie evidence for denial of registration or other disciplinary action if the violation would be grounds for disciplinary action in this state.

(2) To be valid, a proceeding to deny, suspend, revoke, or place on probation a registration must be conducted in accordance with sections 24-4-104 and 24-4-105. The director may use an administrative law judge employed by the office of administrative courts in the department of personnel to conduct a hearing.

Source: L. 2018: Entire article added, (SB 18-234), ch. 332, p. 1998, § 3, effective August 8.

12-54.5-107. Violations and penalties. A person who violates this article 54.5 is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than five thousand dollars, imprisonment in the county jail for not more than eighteen months, or both the fine and imprisonment.

Source: L. 2018: Entire article added, (SB 18-234), ch. 332, p. 1999, § 3, effective August 8.

ARTICLE 55

Notaries Public

PART 1

GENERAL PROVISIONS

12-55-101 to 12-55-124. (Repealed)

Editor's note: (1) This part 1 was numbered as article 1 of chapter 96, C.R.S. 1963. For amendments to this part 1 prior to its repeal in 2018, consult the 2017 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Section 12-55-124 provided for the repeal of this part 1, effective July 1, 2018. (See L. 2017, pp. 787, 809, and 1418.)

Cross references: For the "Revised Uniform Law on Notarial Acts", see part 5 of article 21 of title 24.

PART 2

UNIFORM RECOGNITION OF ACKNOWLEDGMENTS

12-55-201 to 12-55-212. (Repealed)

Editor's note: (1) This part 2 was numbered as article 2 of chapter 96, C.R.S. 1963. For amendments to this part 2 prior to its repeal in 2018, consult the 2017 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Section 12-55-212 provided for the repeal of this part 2, effective July 1, 2018. (See L. 2017, pp. 787, 809, and 1418.)

Cross references: For the "Revised Uniform Law on Notarial Acts", see part 5 of article 21 of title 24.

PART 3

UNIFORM UNSWORN DECLARATIONS ACT

12-55-301 to 12-55-308. (Repealed)

Source: L. 2018: Entire part repealed, (SB 18-032), ch. 8, p. 156, § 11, effective October 1.

Editor's note: This part 3 was added in 2009. For amendments to this part 3 prior to its repeal in 2018, consult the 2017 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume. This part 3 was relocated to article 27 of title 13 by SB 18-032. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this part 3, see the comparative tables located in the back of the index.

ARTICLE 55.5

Outfitters and Guides

Editor's note: This article was added in 1983. This article was repealed and reenacted in 1988, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1988, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

Cross references: For the regulation of river outfitters, see article 32 of title 33.

Law reviews: For article, "Recreational Use Of Agricultural Lands", see 23 Colo. Law. 529 (1994).

12-55.5-101. Legislative declaration. It is the intent of the general assembly to promote and encourage residents and nonresidents alike to participate in the enjoyment and use of the mountains, rivers, and streams of Colorado and the state's fish and game and, to that end, in the exercise of the police power of this state for the purpose of safeguarding the health, safety, welfare, and freedom from injury or danger of such residents and nonresidents, to register and regulate those persons who, for compensation, provide equipment or personal services to such residents and nonresidents for the purpose of hunting and fishing. It is neither the intent of the general assembly to interfere in any way with the business of livestock operations or to prevent livestock owners from loaning or leasing buildings or animals to persons, nor is it intended to prevent said owner from accompanying a person or persons on land that such person owns, nor is it the intent of the general assembly to interfere in any way with the general public's ability to enjoy the recreational value of Colorado's mountains, rivers, and streams when the services of commercial outfitters are not utilized nor to interfere with the right of the United States to manage the public lands under its control.

Source: L. 88: Entire article R&RE, p. 575, § 1, effective July 1. **L. 93:** Entire section amended, p. 1489, § 1, effective July 1.

12-55.5-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Compensation" means making, or attempting to make, a profit, salary, or increase in business or financial standing, or supporting any part of other programs or activities, to include receiving fees, charges, dues, service swaps, or something which is not strictly a sharing of actual expenses incurred from amounts received from or for outfitting services rendered or to be rendered.

(1.5) "Consultant" means a person who is hired by the director to assist in any investigation initiated under this article or any member of an advisory committee appointed pursuant to section 12-55.5-111.

(2) "Director" means the director of the division of professions and occupations in the department of regulatory agencies.

(3) "Division" means the division of professions and occupations in the department of regulatory agencies.

(3.5) "Entity" means an entity authorized by Colorado law to conduct business, including, but not limited to, a corporation, partnership, limited liability partnership, or limited liability company.

(4) "Guide" means any individual who:

(a) Accompanies an outfitter's client to assist the client in the taking or attempted taking of wildlife; and

(b) Either:

(I) Is employed for compensation by an outfitter; or

(II) Has independently contracted with an outfitter.

(5) "Outfitter" means a person soliciting to provide or providing, for compensation, outfitting services for the purpose of hunting or fishing on land that the person does not own.

(5.5) "Outfitting services" means providing transportation of individuals, equipment, supplies, or wildlife by means of vehicle, vessel, or pack animal, facilities including but not limited to tents, cabins, camp gear, food, or similar supplies, equipment, or accommodations, and guiding, leading, packing, protecting, supervising, instructing, or training persons or groups of persons in the take or attempted take of wildlife.

(6) "Peace officer" means a peace officer as described in section 16-2.5-101, C.R.S.

(7) (Deleted by amendment, L. 2004, p. 340, § 14, effective July 1, 2004.)

(8) "Person" means an individual or entity.

Source: L. 88: Entire article R&RE, p. 575, § 1, effective July 1. **L. 93:** (1) and (5) amended and (1.5) and (5.5) added, p. 1489, § 2, effective July 1. **L. 2003:** (6) amended, p. 1619, § 27, effective August 6. **L. 2004:** (3.5) added and (4), (5), and (7) amended, p. 340, § 14, effective July 1. **L. 2014:** (5) amended and (8) added, (HB 14-1180), ch. 360, p. 1687, § 2, effective July 1.

12-55.5-102.5. Applicability. (1) This article does not apply to a person who only authorizes a person to hunt, fish, or take wildlife on property the person owns, rents, or leases, including providing the authorization for compensation.

(2) This article does not require a person to register as an outfitter if the person only rents motor vehicles, livestock, or equipment.

Source: L. 2004: Entire section added, p. 336, § 3, effective July 1. **L. 2014:** Entire section amended, (HB 14-1180), ch. 360, p. 1688, § 3, effective July 1.

12-55.5-103. Registration required - fees. (1) A person shall not engage in activities as an outfitter, advertise in any publication as an outfitter, or represent himself, herself, or itself as an outfitter unless the person first obtains a registration from the division and unless the registration is in full force and effect and in the person's immediate possession. A person shall not continue to act as an outfitter if the person's registration has been suspended or revoked or has expired.

(2) An applicant for registration as an outfitter shall follow the procedures provided in section 12-55.5-105 and any other procedures required by the director. All applicants shall pay a nonrefundable registration fee to be determined by the director, which fee shall be adequate to cover the direct and indirect expenses incurred for implementation of the provisions of this article. Such registration shall be renewable pursuant to the provisions of this article and upon payment of said fee.

Source: L. 88: Entire article R&RE, p. 576, § 1, effective July 1. **L. 2014:** (1) amended, (HB 14-1180), ch. 360, p. 1688, § 4, effective July 1.

12-55.5-103.5. Guide qualifications. (1) An individual who works as a guide must be eighteen years of age or older and hold either a valid first aid or first aid instructor's card issued by the American red cross or evidence of equivalent training as approved by the director. An individual who violates this subsection (1) is guilty of a misdemeanor and shall be punished by a fine of one hundred dollars.

(2) It is a violation of this article for an individual whose outfitter registration has been revoked or suspended to work as a guide.

Source: L. 2004: Entire section added, p. 338, § 8, effective July 1. **L. 2014:** Entire section amended, (HB 14-1180), ch. 360, p. 1688, § 5, effective July 1.

12-55.5-104. Powers and duties of the director. (1) In addition to all other powers and duties conferred or imposed upon the director by this article or by any other law, the director:

(a) May promulgate rules under section 24-4-103, C.R.S., to govern the registration of outfitters and to carry out the purposes of this article;

(b) (I) May administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the director. The director may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to perform the functions of this subparagraph (I) and to take evidence and to make findings and report them to the director.

(II) 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 resides or conducts business, upon application by the director with notice to the subpoenaed person or registrant, may issue to the person or registrant an order requiring that person or registrant to appear before the director; to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence relevant to the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(c) Is authorized to apply for injunctive relief, in the manner provided by the Colorado rules of civil procedure, to enforce the provisions of this article or to restrain any violation thereof. In such proceedings, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist or that substantial or irreparable damage would result from the continued violation thereof.

Source: L. 88: Entire article R&RE, p. 576, § 1, effective July 1. **L. 2004:** (1)(b) amended, p. 1852, § 105, effective August 4. **L. 2014:** (1)(a) and (1)(b) amended, (HB 14-1180), ch. 360, p. 1688, § 6, effective July 1.

12-55.5-105. Issuance of registration - violations. (1) Except as otherwise provided in this article, the director shall issue an initial or renewed registration as an outfitter to an individual who pays the required fee and furnishes evidence satisfactory to the director that the individual:

(a) Is eighteen years of age or older;

(b) Holds a valid first aid card or first aid instructor's card issued by the American red cross or evidence of equivalent training;

(c) Possesses minimum liability insurance coverage in the amount of fifty thousand dollars for bodily injury to one individual in a single accident and one hundred thousand dollars for bodily injury to all individuals in a single accident;

(d) Has submitted to the director a surety bond in the minimum sum of ten thousand dollars, executed by the applicant as principal and by a surety company qualified and authorized

to do business in this state as surety. The bond must be conditioned upon compliance with this article and with the rules promulgated under this article.

(e) Repealed.

(f) Has, or will have before providing outfitting services, all the required permits or written permission on the land where the outfitter provides outfitting services.

(2) and (3) (Deleted by amendment, L. 93, p. 1490, § 3, effective July 1, 1993.)

(4) An individual or entity may register as an outfitter. An application for registration of an entity shall include the names of all officers, directors, members, partners, owners of at least ten percent of the entity, and other persons who have managing or controlling authority in the entity. The entity shall designate on the application for outfitter registration one of its officers, directors, members, partners, or other controlling or managing individuals to be the responsible party and agent for the entity for all communications with the division. If the entity changes its responsible party and agent, it shall notify the division within ten working days after the name change and provide contact information for the new responsible party and agent. If such responsible party and agent does not provide guide services, he or she shall not be required to comply with paragraph (b) of subsection (1) of this section.

(5) (a) Renewals and reinstatement of a registration are made under a schedule established by the director, and registrations must be renewed or reinstated in accordance with section 24-34-102 (8), C.R.S.

(b) The director may establish renewal fees and delinquency fees for reinstatement in accordance with section 24-34-105, C.R.S.

(c) If a person fails to renew a registration in accordance with the schedule established by the director, the registration expires.

(d) A person whose registration has expired and who offers or provides outfitter services is subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

Source: L. 88: Entire article R&RE, p. 577, § 1, effective July 1. **L. 90:** (2) amended, p. 983, § 1, effective April 24. **L. 93:** (1), (2), and (3) amended, p. 1490, § 3, effective July 1. **L. 2004:** (1)(e) and (1)(f) added and (4) amended, pp. 338, 337, §§ 6, 4, effective July 1; (5) added, p. 1853, § 106, effective August 4. **L. 2014:** IP(1), (1)(b) to (1)(d), and (5) amended and (1)(e) repealed, (HB 14-1180), ch. 360, p. 1689, § 7, effective July 1.

12-55.5-106. Disciplinary actions - grounds for discipline. (1) The director may deny, suspend, revoke, or place on probation an outfitter's registration or issue a letter of admonition to an applicant for or holder of an outfitter's registration if the applicant or holder:

(a) Violates any order of the division or the director or any provision of this article or the rules established under this article;

(b) Fails to meet the requirements of section 12-55.5-105 or uses fraud, misrepresentation, or deceit in applying for or attempting to apply for registration;

(c) Violates any local, state, or federal law or regulation concerning public land management, wildlife, health, or cruelty to animals, including, but not limited to, section 33-6-113, C.R.S.;

(d) Is convicted of or has entered a plea of nolo contendere or guilty to a felony; except that the director shall be governed by the provisions of section 24-5-101, C.R.S., in considering such conviction or plea;

(e) Uses false, deceptive, or misleading advertising;

(f) Misrepresents his services, facilities, or equipment to a client or prospective client;

(g) Uses alcohol or any controlled substance as defined in section 18-18-102 (5), C.R.S., to the extent that the use places the user or other persons at risk while providing outfitting services or is a habitual user of alcohol or a controlled substance as defined in section 18-18-102 (5), C.R.S., to the extent that the use places the user or other persons at risk while providing outfitting services;

(h) Has incurred disciplinary action related to the practice of outfitting in another jurisdiction. Evidence of such disciplinary action shall be prima facie evidence for denial of registration or other disciplinary action if the violation would be grounds for such disciplinary action in this state.

(i) Has been convicted of second or third degree criminal trespass pursuant to section 18-4-503 or 18-4-504, C.R.S.; except that the director shall be governed by the provisions of section 24-5-101, C.R.S., in considering such conviction;

(j) Hires an individual as a guide who fails to meet the requirements of section 12-55.5-103.5, unless such hiring is a result of an emergency situation, as defined by rules promulgated by the director, in which case the outfitter may hire a guide who does not possess a valid first aid card or first aid instructor's card;

(k) Serves or consumes alcohol while engaged in the activities of an outfitter, if the applicant or holder is under twenty-one years of age;

(l) Violates section 18-4-503 or 18-4-504, C.R.S., resulting in two or more second or third degree criminal trespass convictions within any three- to five-year period while acting as an outfitter or guide; or

(m) Fails to respond to a complaint against the registered outfitter.

(2) To be valid, a proceeding to deny, suspend, revoke, or place on probation a registration must be conducted in accordance with sections 24-4-104 and 24-4-105, C.R.S. The director may use an administrative law judge employed by the office of administrative courts in the department of personnel to conduct hearings.

(3) (a) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the director, does not warrant formal action by the director but that should not be dismissed as being without merit, the director may issue and send a letter of admonition to the registrant.

(b) When a letter of admonition is sent by the director to a registrant, the letter must advise the registrant that the registrant has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(c) If the request for adjudication is timely made, the letter of admonition shall be deemed vacated and the matter shall be processed by means of formal disciplinary proceedings.

(3.5) When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the director and, in the opinion of the director, should be dismissed, but the director has noticed possible errant conduct by the registrant that could lead to serious consequences if not corrected, the director may send the registrant a confidential letter of concern.

(4) Notwithstanding any other provision of this article, the director may deny an initial application for registration if:

(a) The applicant is an individual who was previously listed as participating in an entity pursuant to section 12-55.5-105 (4), and such entity was subjected to discipline under this article;

(b) The applicant is an entity, the entity lists an individual as participating in the entity pursuant to section 12-55.5-105 (4), and that individual was previously listed as a participating person in an entity that was subjected to discipline under this article; or

(c) The applicant is an entity, the entity lists an individual as a participating person pursuant to section 12-55.5-105 (4), and that individual was previously subjected to discipline under this article.

(4.5) The director may discipline an applicant or registrant under this section for the acts of a person who:

(a) Is acting on behalf of the applicant or registrant; and

(b) (I) Is an officer, director, member, or partner of, or owner of at least a ten-percent interest in, the applicant or registrant;

(II) Has managing or controlling authority of the applicant or registrant; or

(III) Is an employee, contractor, or authorized booking agent of the applicant or registrant.

(5) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the director, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(6) If a person's registration is revoked under this section or surrendered in lieu of discipline, the person is ineligible to submit a new application for registration or register for two years after the date the registration is revoked.

Source: L. 88: Entire article R&RE, p. 578, § 1, effective July 1. **L. 89:** (1)(i) amended, p. 1642, § 2, effective June 5. **L. 93:** (1)(i) and (1)(j) amended and (1)(k) added, p. 1491, § 4, effective July 1. **L. 95:** (2) amended, p. 637, § 21, effective July 1. **L. 2004:** (1)(c), (1)(g), (1)(j), and (3) amended and (1)(l) and (4) added, pp. 337, 339, §§ 5, 10, effective July 1; (3) amended and (5) added, p. 1854, §§ 108, 109, effective August 4. **L. 2005:** (2) amended, p. 857, § 20, effective June 1. **L. 2006:** (1)(j) amended, p. 228, § 1, effective March 31. **L. 2014:** (1)(a), (1)(c), (1)(g), (1)(j) to (1)(l), (2), (3)(a), (3)(b), and IP(4) amended and (1)(m), (3.5), (4.5), and (6) added (HB 14-1180), ch. 360, p. 1690, § 8, effective July 1.

12-55.5-107. Penalties - distribution of fines. (1) Any person who violates the provisions of this article or the rules of the director promulgated under this article may be penalized by the director upon a finding of a violation subject to article 4 of title 24, C.R.S., as follows:

(a) In the first administrative proceeding against any person, a fine of not less than one hundred dollars but not more than five hundred dollars per violation;

(b) In any subsequent administrative proceeding against any person for transactions occurring after a final agency action determining that a violation of this article has occurred, a fine of not less than one thousand dollars but not more than two thousand dollars per violation;

(c) In an administrative proceeding against a person for a violation of section 12-55.5-103 (1), a fine of not less than one thousand dollars but not more than five thousand dollars per violation.

(1.5) Repealed.

(2) In addition to the penalties provided in subsection (1) of this section, the director, upon a finding of a violation, may deny, suspend, revoke, or place on probation an outfitter's registration or take other disciplinary action as provided in section 12-55.5-106 (3).

(3) A person who engages in activities as an outfitter shall maintain all applicable documents, records, and other items, for the current year and the preceding four years at the address listed on the registration, required to be maintained by this article or by the rules of the director when requested to do so by the director or a peace officer. A registrant who refuses to permit the inspection of documents, records, or items is guilty of a misdemeanor and shall be punished by a fine of one hundred dollars.

(4) (Deleted by amendment, L. 93, p. 1491, § 5, effective July 1, 1993.)

(5) All fines collected pursuant to this article shall be distributed as follows:

(a) Fifty percent divided by the court between any federal, state, or local law enforcement agency assisting with an investigation;

(b) Fifty percent to the division for the cost of administering this article.

Source: L. 88: Entire article R&RE, p. 579, § 1, effective July 1. **L. 93:** IP(1) and (4) amended, p. 1491, § 5, effective July 1. **L. 2004:** (1) amended, p. 339, § 9, effective July 1. **L. 2006:** (1.5) repealed and (5) added with relocated provisions, pp. 97, 95, §§ 68, 56, effective August 7. **L. 2014:** (3) amended, (HB 14-1180), ch. 360, p. 1691, § 9, effective July 1.

Editor's note: This section is similar to former § 12-55.5-107.5 (2) as it existed prior to 2006.

12-55.5-107.5. Violations - penalties - distribution of fines collected. (Repealed)

Source: L. 93: Entire section added, p. 1492, § 6, effective July 1. **L. 2002:** (1) amended, p. 1485, § 111, effective October 1. **L. 2006:** (1) and (2) repealed, p. 95, §§ 58, 57, effective August 7.

Editor's note: Subsection (2) was relocated to § 12-55.5-107 (5) in 2006.

12-55.5-108. Cease-and-desist orders - unauthorized practice - penalties. (1) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a registrant 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, the director may issue an order to cease and desist such activity. 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 practices immediately cease.

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

(2) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this article, then,

in addition to any specific powers granted pursuant to this article, the director may issue to such person an order to show cause as to why the director should not issue a final order directing such person to cease and desist from the unlawful act or unregistered practice.

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

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

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (2) does not appear at the hearing, the director may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (2) and such other evidence related to the matter as the director deems appropriate. The director shall issue the order within ten days after the director's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(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, or has or is about to engage in acts or practices constituting violations of this article, a final cease-and-desist order may be issued, directing such person to cease and desist from further unlawful acts or unregistered practices.

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

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

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

(5) A person aggrieved by the final cease-and-desist order may seek judicial review of the director's determination or of the director's final order as provided in section 12-55.5-115.

(6) Any person who engages or offers or attempts to engage in activities as an outfitter without an active registration 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 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: L. 88: Entire article R&RE, p. 579, § 1, effective July 1. **L. 93:** (3) added, p. 1492, § 7, effective July 1. **L. 2004:** (1)(d), (2), and (3) repealed, p. 338, § 7, effective July 1. **L. 2006:** Entire section amended, p. 814, § 40, effective July 1; (6) added, p. 95, § 55, effective August 7.

Editor's note: Subsection (6) was originally enacted as subsection (4) in House Bill 06-1048. Said subsection (4) was harmonized with the amendments to this section in House Bill 06-1264 and relocated to subsection (6).

12-55.5-109. Contracts for outfitting services - writing required. (1) Prior to engaging in any activity as an outfitter, an outfitter shall provide a written contract to the client signed by both the outfitter and the client, stating at least the following terms:

(a) Type of services to be provided;

(b) Dates of service;

(c) Transportation arrangements;

(d) Costs of the services;

(e) Ratio of clients to guides; and

(f) The outfitter's policy regarding cancellation of the contract and refund of any deposit.

(2) No action may be maintained by an outfitter for breach of a contract or agreement to provide outfitting services or for the recovery of compensation for services rendered under such contract or agreement if the outfitter has failed to comply with the provisions of this article.

(3) Any written contract provided in accordance with this section must also contain a written statement that pursuant to section 12-55.5-105 (1)(c) and (1)(d) outfitters are bonded and required to possess the minimum level of liability insurance and that the activities of outfitters are regulated by the director.

Source: L. 88: Entire article R&RE, p. 580, § 1, effective July 1. **L. 93:** Entire section amended, p. 1492, § 8, effective July 1. **L. 2014:** (3) amended, (HB 14-1180), ch. 360, p. 1692, § 10, effective July 1.

12-55.5-110. Other remedies - contracts void - public nuisance - seizure of equipment. (1) Every agreement or contract for the services of an outfitter shall be void and unenforceable by the outfitter unless such outfitter is duly registered with the division under the provisions of this article when such services are contracted for and performed.

(2) Every motor vehicle, trailer, vessel, firearm, weapon, trap, equipment, livestock, or other personal property used in outfitting services in violation of the provisions of this article is declared to be a class 2 public nuisance. Unless in conflict with the specific provisions of this

section, the provisions of article 13 of title 16, C.R.S., shall apply to any action taken pursuant to this section.

(3) (a) Any personal property subject to seizure under this section which is seized as a part of or incident to a criminal proceeding for violation of this article and for which disposition is not provided by another statute of this state shall be disposed of as provided in this section.

(b) The court may order the property sold in the manner provided for sales on execution.

(c) The proceeds of such sale shall be applied as follows:

(I) To the fees and costs of removal and sale;

(II) To the payment of any costs the state has incurred from such action; and

(III) The balance, if any, to the office of the district attorney who has brought such action.

Source: L. 88: Entire article R&RE, p. 580, § 1, effective July 1. **L. 93:** (2) amended, p. 1493, § 9, effective July 1. **L. 2014:** (3)(b) amended, (HB 14-1180), ch. 360, p. 1692, § 11, effective July 1.

12-55.5-111. Advisory committee. The director shall appoint an advisory committee to make recommendations concerning outfitters, which committee shall serve at the request and pleasure of the director. The members of the advisory committee shall receive no compensation but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties under this article.

Source: L. 88: Entire article R&RE, p. 581, § 1, effective July 1. **L. 93:** Entire section amended, p. 1493, § 10, effective July 1.

12-55.5-112. Immunity. The director, the director's staff, any person acting as a witness or consultant to the director, any witness testifying in a proceeding authorized under this article, and any person who files a complaint under this article is immune from liability in a civil action brought against him or her for acts occurring while acting in his or her capacity as director, staff, consultant, or witness, respectively, if the person was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in filing a complaint or participating in any investigative or administrative proceeding under this article is immune from civil or criminal liability resulting from the participation.

Source: L. 88: Entire article R&RE, p. 581, § 1, effective July 1. **L. 2004:** Entire section amended, p. 1855, § 110, effective August 4. **L. 2014:** Entire section amended, (HB 14-1180), ch. 360, p. 1692, § 12, effective July 1.

12-55.5-113. Enforcement. Every peace officer, as defined in section 12-55.5-102 (6), is hereby authorized to assist the director in the enforcement of the provisions of this article and the rules and regulations prescribed by the director.

Source: L. 88: Entire article R&RE, p. 581, § 1, effective July 1. **L. 89:** Entire section amended, p. 1643, § 3, effective June 5.

12-55.5-114. Fees - cash fund. Except as otherwise provided in this article and in section 12-55.5-110, all fees collected pursuant to this article shall be transmitted to the state treasurer, who shall credit the same to the division of professions and occupations cash fund created pursuant to section 24-34-105 (2)(b), C.R.S. The general assembly shall make annual appropriations from the division of professions and occupations cash fund for expenditures of the division incurred in the performance of its duties under this article.

Source: L. 88: Entire article R&RE, p. 581, § 1, effective July 1. **L. 2003:** Entire section amended, p. 2590, § 4, effective July 1.

12-55.5-115. Judicial review. The court of appeals shall have initial jurisdiction to review all final actions and orders that are subject to judicial review. Such proceedings shall be conducted in accordance with section 24-4-106 (11), C.R.S.

Source: L. 88: Entire article R&RE, p. 582, § 1, effective July 1.

12-55.5-116. Persons licensed under previous law. (Repealed)

Source: L. 88: Entire article R&RE, p. 582, § 1, effective July 1. **L. 2004:** Entire section repealed, p. 340, § 12, effective July 1.

12-55.5-116.5. Notice - hunting and fishing license. The division and the division of parks and wildlife shall develop a system to provide a written notice with each hunting or fishing license, at the time of issuance, stating that it is illegal to provide outfitting services in Colorado without registering with the division.

Source: L. 2004: Entire section added, p. 340, § 11, effective January 1, 2005.

12-55.5-117. Repeal of article - review of functions. Unless continued by the general assembly, this article is repealed, effective September 1, 2025, and those powers, duties, and functions of the division specified in this article are abolished. The provisions of section 24-34-104 (2) to (8), C.R.S., concerning a wind-up period, an analysis and evaluation, public hearings, and claims by or against an agency apply to the powers, duties, and functions of the division specified in this article.

Source: L. 88: Entire article R&RE, p. 582, § 1, effective July 1. **L. 93:** Entire section amended, p. 1494, § 11, effective July 1. **L. 2003:** Entire section amended, p. 2589, § 1, effective July 1. **L. 2004:** Entire section amended, p. 341, § 15, effective July 1. **L. 2014:** Entire section amended, (HB 14-1180), ch. 360, p. 1692, § 13, effective July 1. **L. 2016:** Entire section amended, (HB 16-1192), ch. 83, p. 233, § 11, effective April 14.

12-55.5-118. Applicability. (Repealed)

Source: L. 2004: Entire section added, p. 340, § 13, effective July 1. **L. 2014:** Entire section repealed, (HB 14-1180), ch. 360, p. 1692, § 14, effective July 1.

ARTICLE 56

Pawnbrokers

12-56-101 to 12-56-104. (Repealed)

Source: L. 2017: Entire article repealed, (SB 17-228), ch. 246, p. 1042, § 9, effective August 9.

Editor's note: This article 56 was numbered as article 58 of chapter 139, C.R.S. 1963. For amendments to this article 56 prior to its repeal in 2017, consult the 2016 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume. This article 56 was relocated to article 11.9 of title 29. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

ARTICLE 57

Pet Shops and Boarding Kennels

12-57-101 to 12-57-118. (Repealed)

Source: L. 83: Entire article repealed, p. 1069, § 4, effective March 1, 1984.

Editor's note: This article was numbered as article 30 of chapter 66, C.R.S. 1963. For amendments to this article prior to its repeal in 1983, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For regulation of pet animal and psittacine bird facilities, see part 7 of article 4 of title 25.

ARTICLE 58

Plumbers

Editor's note: This article was numbered as article 1 of chapter 142, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1982, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1982, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

12-58-101. Legislative declaration. (1) The general assembly hereby finds that:

(a) Improper plumbing can adversely affect the health of the public and that faulty plumbing is potentially lethal and can cause widespread disease and an epidemic of disastrous consequences;

(b) To protect the health of the public, it is essential that plumbing be installed by persons who have proven their knowledge of the sciences of pneumatics and hydraulics and their skill in installing plumbing.

(2) Consistent with its duty to safeguard the health of the people of this state, the general assembly hereby declares that individuals who plan, install, alter, extend, repair, and maintain plumbing systems should be individuals of proven skill. To provide standards of skill for those in the plumbing trade and to authoritatively establish what shall be good plumbing practice, the general assembly hereby provides for the licensing of plumbers and for the promulgation of a model plumbing code of standards by the examining board of plumbers, and this article is therefore declared to be essential to the public interest.

(3) The general assembly encourages the examining board of plumbers to adopt and incorporate by reference appendix C of the "International Plumbing Code" (I.P.C.), 2009 edition, promulgated by the international code council, first printing (January 2009), or the graywater provisions within a newer edition of the I.P.C., whether the provisions are contained in appendix C or elsewhere.

Source: L. 82: Entire article R&RE, p. 267, § 1, effective July 1. **L. 2013:** (3) added, (HB 13-1044), ch. 228, p. 1091, § 11, effective May 15.

Cross references: For the legislative declaration in the 2013 act adding subsection (3), see section 1 of chapter 228, Session Laws of Colorado 2013.

12-58-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Board" means the state plumbing board.

(1.5) "Gas piping" means any arrangement of piping used to convey fuel gas, supplied by one meter, and each arrangement of gas piping serving a building, structure, or premises, whether individually metered or not. "Gas piping" or "gas piping system" does not include the installation of gas appliances where existing service connections are already installed, nor does such term include the installations, alterations, or maintenance of gas utilities owned by a public utility certified pursuant to article 5 of title 40, C.R.S., or a public utility owned or acquired by a city or town pursuant to article 32 of title 31, C.R.S.

(2) "Journeyman plumber" means any person other than a master plumber, residential plumber, or plumber's apprentice who engages in or works at the actual installation, alteration, repair, and renovation of plumbing in accordance with the standards, rules, and regulations established by the board.

(3) "Master plumber" means a person who has the necessary qualifications, training, experience, and technical knowledge to properly plan, lay out, and install and repair plumbing apparatus and equipment including the supervision of such in accordance with the standards, rules, and regulations established by the board.

(4) "Colorado plumbing code" or "the code" means a code established by the board that consists of standards for plumbing installation, plumbing materials, conservation, medical gas, sanitary drainage systems, and solar plumbing that could directly affect the potable water supply.

(4.1) "Colorado fuel gas code" means a code adopted by rule by the board for the inspection of plumbing fuel gas pipe installations.

(4.5) (a) "Conservation" means efficiency measures that meet national guidelines and standards and are tested and approved by a nationally recognized testing laboratory, including:

(I) Water-efficient devices and fixtures; and

(II) The use of locally produced materials, when practicable, to reduce transportation impacts.

(b) When conservation conflicts with safety, the board shall give primary consideration to safety.

(c) Nothing in this subsection (4.5) affects the board's authority to establish the Colorado plumbing code as specified in section 12-58-104.5.

(5) (a) "Plumbing" includes the following items located within the building or extending five feet from the building foundation, excluding any service line extending from the first joint to the property line: All potable water supply and distribution pipes and piping; all plumbing fixtures and traps; all drainage and vent pipes; all water conditioning appliances connected to the potable water system; all building drains, including their respective joints and connections, devices, receptacles, and appurtenances; all multipurpose residential fire sprinkler systems in one- and two-family dwellings and townhouses that are part of the potable water supply; and all medical gas and vacuum systems in health care facilities.

(b) Notwithstanding paragraph (a) of this subsection (5), the following is not included within the definition of "plumbing":

(I) Installations, extensions, improvements, remodeling, additions, and alterations in water and sewer systems owned or acquired by counties pursuant to article 20 of title 30, C.R.S., cities and towns pursuant to article 35 of title 31, C.R.S., or water and sanitation districts pursuant to article 1 or article 4 of title 32, C.R.S.; or

(II) Installations, extensions, improvements, remodeling, additions, and alterations performed by contractors employed by counties, cities, towns, or water and sewer districts which connect to the plumbing system within a property line; or

(III) Performance, location, construction, alteration, installation, and use of on-site wastewater treatment systems pursuant to article 10 of title 25, C.R.S., which are located within a property line.

(6) "Plumbing apprentice" means any person other than a master, journeyman, or residential plumber who, as his principal occupation, is engaged in learning and assisting in the installation of plumbing.

(7) "Plumbing contractor" means any person, firm, partnership, corporation, association, or other organization that undertakes or offers to undertake for another the planning, laying out, supervising, installing, or making of additions, alterations, and repairs in the installation of plumbing. In order to act as a plumbing contractor, the person, firm, partnership, corporation, association, or other organization must either be or employ full-time a master plumber. "Plumbing contractor" does not include a water conditioning contractor, a water conditioning installer, or a water conditioning principal.

(8) "Potable water" means water which is safe for drinking, culinary, and domestic purposes and which meets the requirements of the department of health.

(8.5) "Qualified state institution of higher education" means:

(a) One of the state institutions of higher education established under, specified in, and located upon the campuses described in sections 23-20-101 (1)(a) and 23-31-101, C.R.S., limited to the buildings owned or leased by those institutions on said campuses;

(b) The institution whose campus is established under and specified in section 23-20-101 (1)(b), C.R.S., but limited to the buildings located in Denver at 1380 Lawrence street, 1250 Fourteenth street, and 1475 Lawrence street; and

(c) The institution whose campus is established under and specified in section 23-20-101 (1)(d), C.R.S., but limited to current and future buildings owned or leased or built on land owned on or before January 1, 2015, by the university of Colorado on the campus described in section 23-20-101 (1)(d), C.R.S.

(9) "Residential plumber" means any person other than a master or journeyman plumber or plumbing apprentice who has the necessary qualifications, training, experience, and technical knowledge, as specified by the board, to install plumbing and equipment in one-, two-, three-, and four-family dwellings, which shall not extend more than two stories aboveground.

(10) (a) "Water conditioning contractor" means a person that:

(I) Undertakes or offers to undertake for another the planning, laying out, supervising, installing, or making of additions, alterations, or repairs in the installation of water conditioning appliances in one-, two-, three-, or four-family dwellings, which must not extend more than two stories aboveground; and

(II) Is required to be registered pursuant to section 12-58-105 (4).

(b) "Water conditioning contractor" does not include a plumbing contractor.

(11) (a) "Water conditioning installer" means a person that:

(I) Has the necessary qualifications, training, experience, and technical knowledge to properly plan, lay out, and install water conditioning appliances in one-, two-, three-, and four-family dwellings, which must not extend more than two stories aboveground, in accordance with the standards and rules established by the board;

(II) Is certified by a national water conditioning association recognized by the board, with the type of certification specified by the board; and

(III) Is required to be registered pursuant to section 12-58-105 (5).

(b) "Water conditioning installer" does not include a licensed plumber.

(12) (a) "Water conditioning principal" means a person that:

(I) Has the necessary qualifications, training, experience, and technical knowledge to properly plan, lay out, and install water conditioning appliances in one-, two-, three-, and four-family dwellings, which must not extend more than two stories aboveground, including the supervision of such work in accordance with the standards and rules established by the board;

(II) Is certified by a national water conditioning association recognized by the board, with the type of certification specified by the board; and

(III) Is required to be registered pursuant to section 12-58-105 (6).

(b) "Water conditioning principal" does not include a licensed plumber.

Source: L. 82: Entire article R&RE, p. 268, § 1, effective July 1. **L. 88:** (5) amended, p. 583, § 1, effective July 1; (5)(b)(I) amended, p. 1438, § 42, effective July 1. **L. 94:** (5)(a)

amended, p. 6, § 1, effective February 17. **L. 2007:** (4) and (5)(a) amended, p. 946, § 1, effective January 1, 2008. **L. 2010:** (4) amended and (4.5) added, (HB 10-1204), ch. 67, p. 235, § 1, effective August 11; IP(5)(a) and (5)(a)(I) amended, (HB 10-1241), ch. 354, p. 1646, § 5, effective July 1, 2011. **L. 2012:** IP(5)(b) and (5)(b)(III) amended, (HB 12-1126), ch. 137, p. 494, § 2, effective August 8. **L. 2013:** (1), (4), and (5)(a) amended and (4.1) added, (SB 13-162), ch. 280, p. 1453, § 2, effective May 24. **L. 2014:** (8.5) added, (HB 14-1387), ch. 378, p. 1826, § 28, effective June 6. **L. 2015:** (8.5) amended, (HB 15-1295), ch. 118, p. 358, § 6, effective April 24; (7) amended and (10) to (12) added, (SB 15-202), ch. 300, p. 1231, § 1, effective June 5.

Cross references: (1) For the legislative declaration in the 2010 act amending the introductory portion to subsection (5)(a) and subsection (5)(a)(I), see section 1 of chapter 354, Session Laws of Colorado 2010.

(2) For the legislative declaration in HB 14-1387, see section 1 of chapter 378, Session Laws of Colorado 2014.

12-58-103. Examining board of plumbers - repeal of article. (1) There is hereby established within the division of professions and occupations of the department of regulatory agencies the state plumbing board. The board shall exercise its powers and perform its duties and functions in the department of regulatory agencies as if it were transferred to the department by a type 1 transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.

(2) (a) The board shall consist of seven appointed members as follows, one a journeyman plumber, one a master plumber, two engaged in the construction of residential or commercial buildings as plumbing contractors, one engaged in the construction of residential or commercial buildings as a general contractor, one a member or employee of a local government agency conducting plumbing inspections, and one appointed from the public at large. A representative of the department of public health and environment shall serve as an ex officio nonvoting member. At least one member shall be a resident of the western slope of the state, defined as that western part of the state separated from the eastern part of the state by the continental divide.

(b) A majority of the board shall constitute a quorum for the transaction of all business.

(3) (a) The governor, with power of removal, shall appoint the members of the board, subject to confirmation by the senate. Board members are appointed for four-year terms. Any vacancy occurring in the membership of the board shall be filled by the governor by appointment for the unexpired term of such member.

(b) The governor may remove any member of the board for misconduct, incompetence, or neglect of duty.

(4) No major political party shall be represented on the board by more than one member more than the other major political party.

(5) This article is repealed, effective September 1, 2024. Prior to such repeal, the state plumbing board, including provisions related to qualified state institutions of higher education, shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: L. 82: Entire article R&RE, p. 269, § 1, effective July 1. **L. 88:** (2) and (3) amended, p. 584, § 2, effective July 1. **L. 91:** (5) amended, p. 684, § 38, effective April 20. **L.**

94: (2)(a) amended, p. 2730, § 345, effective July 1. **L. 98:** (5) amended, p. 250, § 1, effective April 13. **L. 2003:** (5) amended, p. 1591, § 3, effective May 2. **L. 2013:** (1), (3)(a), and (5) amended, (SB 13-162), ch. 280, p. 1454, § 3, effective May 24. **L. 2015:** (5) amended, (HB 15-1295), ch. 118, p. 359, § 7, effective April 24.

12-58-104. Powers of board - fees - rules. (1) In addition to all other powers and duties conferred or imposed upon the board by this article 58, the board is authorized and empowered to:

(a) Elect its own officers and prescribe their duties;

(b) Conduct examinations as required by this article;

(c) Grant the licenses of duly qualified applicants for residential plumbers, journeymen plumbers, and master plumbers as provided in this article and pursuant to the provisions of article 4 of title 24, C.R.S.;

(c.5) Establish fees for the issuance of a new registration and for each renewal of registration, pursuant to section 24-34-105, C.R.S.;

(d) Promulgate, adopt, amend, and repeal such rules, not inconsistent with the laws of this state, as may be necessary for the orderly conduct of its affairs and for the administration of this article, pursuant to the provisions of article 4 of title 24, C.R.S.;

(e) In accordance with article 4 of title 24, C.R.S., prescribe, enforce, amend, and repeal rules governing the plumbing systems of all buildings in this state;

(e.5) Promulgate rules governing the installation and inspection of toilet and urinal systems and structures for which reclaimed domestic wastewater is used pursuant to section 25-8-205.8 (2)(c)(IV).

(f) Employ plumbers licensed under this article as journeyman or master plumbers as state plumbing inspectors and charge fees for making inspections of plumbing work covered by the Colorado plumbing code in those areas where the local jurisdiction does not conduct inspections and issue permits;

(g) (I) Administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board. The board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to perform the functions of this paragraph (g) and to take evidence and to make findings and report them to the board.

(II) Upon failure of any witness to comply with such subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board or director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or 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 to obey the order of the court may be punished by the court as a contempt of court.

(h) Conduct hearings in accordance with the provisions of section 24-4-105, C.R.S.; except that the board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to conduct such hearings;

(i) Cause the enjoinder, in any court of competent jurisdiction, of all persons violating this article. When seeking an injunction, the board shall not be required to prove that an adequate

remedy at law does not exist or that substantial or irreparable damages would result if an injunction is not granted.

(j) Inspect gas piping installations pursuant to the provisions of section 12-58-114.5;

(k) Repealed.

(l) Find, upon holding a hearing, that an incorporated town or city, county, city and county, or qualified state institution of higher education fails to meet the minimum requirements of this article if a local inspection authority or qualified state institution of higher education has failed to adhere to the minimum standards required by this article within twelve months after the board has adopted the standards by rule pursuant to this subsection (1);

(m) Issue an order to cease and desist from issuing permits or performing inspections under this article to an incorporated town or city, county, city and county, or qualified state institution of higher education upon finding that the public entity or qualified state institution of higher education fails to meet the minimum requirements of this article under this subsection (1);

(n) Apply to a court to enjoin an incorporated town or city, county, city and county, or qualified state institution of higher education from violating an order issued pursuant to paragraph (m) of this subsection (1).

(2) Notwithstanding any other provisions to the contrary, the board may, with regard to manufactured housing which is subject to part 7 of article 32 of title 24, C.R.S.:

(a) Promulgate, adopt, amend, and repeal such rules and regulations pursuant to the provisions of article 4 of title 24, C.R.S., as may be necessary for the inspection of manufactured housing water and sewer hookups;

(b) Employ inspectors and charge fees for making inspections of manufactured housing water and sewer hookups.

Source: L. 82: Entire article R&RE, p. 269, § 1, effective July 1. **L. 84:** (1)(f) added, p. 444, § 1, effective April 30. **L. 88:** (2) added, p. 595, § 1, effective March 18; IP(1) and (1)(e) amended and (1)(g) to (1)(j) added, p. 585, § 3, effective July 1. **L. 2004:** (1)(g) amended, p. 1855, § 111, effective August 4. **L. 2007:** (1)(d) amended, p. 551, § 1, effective August 3; (1)(c.5) added, p. 947, § 2, effective January 1, 2008. **L. 2010:** (1)(k) added, (HB 10-1241), ch. 354, p. 1644, § 2, effective July 1, 2011. **L. 2012:** (1)(k) amended, (HB 12-1283), ch. 240, p. 1131, § 36, effective July 1. **L. 2013:** (1)(e) and (1)(f) amended, (1)(k) repealed, and (1)(l) to (1)(n) added (SB 13-162), ch. 280, p. 1455, § 4, effective May 24. **L. 2014:** (1)(l) to (1)(n) amended, (HB 14-1387), ch. 378, p. 1826, § 29, effective June 6. **L. 2018:** IP(1) amended and (1)(e.5) added, (HB 18-1069), ch. 179, p. 1224, § 5, effective August 8.

Cross references: (1) For the legislative declaration in the 2010 act adding subsection (1)(k), see section 1 of chapter 354, Session Laws of Colorado 2010. For the legislative declaration in the 2012 act amending subsection (1)(k), see section 1 of chapter 240, Session Laws of Colorado 2012.

(2) For the legislative declaration in HB 14-1387, see section 1 of chapter 378, Session Laws of Colorado 2014.

12-58-104.5. Colorado plumbing code - amendments - variances - Colorado fuel gas code. (1) In accordance with article 4 of title 24, C.R.S., the board shall establish a Colorado plumbing code, as defined in section 12-58-102 (4). Such code shall represent the minimum

standards for installation, alteration, and repair of plumbing equipment and systems throughout the state.

(2) Local governments are permitted to amend the code for their jurisdictions as long as such amendments are at least equal to the minimum requirements set forth in the Colorado plumbing code.

(3) If petitioned, the board shall annually hold public hearings to consider amendments to the Colorado plumbing code.

(4) The board is authorized to review and approve or disapprove requests for exceptions to the code in unique construction situations where a strict interpretation of the code would result in unreasonable operational conditions or unreasonable economic burdens as long as public safety is not compromised.

(5) The board shall adopt a Colorado fuel gas code for the gas piping installations inspection requirement of section 12-58-104 (1)(j).

Source: L. 88: Entire section added, p. 585, § 4, effective July 1. **L. 2013:** (1) and (2) amended and (5) added, (SB 13-162), ch. 280, p. 1455, § 5, effective May 24.

12-58-104.6. Program administrator. The director of the division of professions and occupations may appoint a program administrator pursuant to section 13 of article XII of the state constitution to work with the board in carrying out its duties under this article.

Source: L. 88: Entire section added, p. 586, § 4, effective July 1.

12-58-105. Plumber must have license - registration - control and supervision. (1) (a) A person shall not engage in or work at the business, trade, or calling of a residential, journeyman, or master plumber in this state until he or she has received a license from the division of professions and occupations, upon written notice from the board or its authorized agent, or a temporary permit from the board or its authorized agent; except that a person may practice as a water conditioning contractor if the person is registered pursuant to subsection (4) of this section, as a water conditioning installer if the person is registered pursuant to subsection (5) of this section, or as a water conditioning principal if the person is registered pursuant to subsection (6) of this section.

(b) Nothing in this section limits the ability of a licensed residential, journeyman, or master plumber, a plumbing apprentice, or a registered plumbing contractor to practice within his or her respective area as authorized by this article with regard to water conditioning appliances.

(2) (a) All plumbing apprentices working for plumbing contractors pursuant to this article and all apprentices working under the supervision of any licensed plumber pursuant to section 12-58-117 shall, within thirty days after the date of initial employment, be registered with the board.

(b) The employer of a plumbing apprentice shall be responsible for such apprentice's registration with the board.

(c) No apprentice shall be registered until payment of a registration or registration renewal fee, as determined by the board, has been made.

(3) No person, firm, partnership, corporation, or association shall operate as a plumbing contractor until such contractor has obtained registration from the board. The board shall register a plumbing contractor upon payment of the fee as provided in section 12-58-104 and presentation of evidence that the applicant has complied with the applicable workers' compensation and unemployment compensation laws of this state. In order to act as a plumbing contractor, the person, firm, partnership, corporation, association, or other organization must either be, or employ full-time, a master plumber, who shall be in charge of the supervision of all plumbing work performed by such contractor. A master plumber shall be responsible for no more than one plumbing contractor at a time. The master plumber shall be required to notify the board within fifteen days after his or her termination as a master plumber for that plumbing contractor. The master plumber is responsible for all plumbing work performed by the plumbing contractor. Failure to comply with a notification may lead to suspension or revocation of the master plumber license as provided in section 12-58-110.

(4) Except as specified in paragraph (b) of subsection (1) of this section, effective April 1, 2016, a person shall not operate as a water conditioning contractor unless the person:

(a) Is currently registered with the board pursuant to this subsection (4) as specified in rules promulgated and forms adopted by the board. The board shall register a water conditioning contractor upon payment of the fee as provided in section 12-58-104 and presentation of evidence that the applicant has complied with the applicable workers' compensation and unemployment compensation laws of this state.

(b) Is, or employs full-time, a water conditioning principal, who shall be responsible for all water conditioning appliance work performed by the contractor.

(5) Except as specified in paragraph (b) of subsection (1) of this section, effective April 1, 2016, a person shall not engage in or work at the business, trade, or calling of a water conditioning installer unless the person is currently registered with the board pursuant to this subsection (5) as specified in rules promulgated and forms adopted by the board. The board shall register a water conditioning installer upon payment of the fee as provided in section 12-58-104 and submission of proof that the applicant is certified by a national water conditioning association recognized by the board, with the type of certification as specified by the board.

(6) (a) Except as specified in paragraph (b) of subsection (1) of this section, effective April 1, 2016, a person shall not engage in or work at the business, trade, or calling of a water conditioning principal unless the person is currently registered with the board pursuant to this subsection (6) as specified in rules promulgated and forms adopted by the board. The board shall register a water conditioning principal upon payment of the fee as provided in section 12-58-104 and submission of proof that the applicant is certified by a national water conditioning association recognized by the board, with the type of certification as specified by the board.

(b) A water conditioning principal shall be responsible for no more than one water conditioning contractor at a time. The water conditioning principal shall notify the board within fifteen days after his or her termination as a water conditioning principal for a water conditioning contractor. Failure to provide the notice may lead to suspension or revocation of the water conditioning principal's registration as provided in section 12-58-110.

Source: L. 82: Entire article R&RE, p. 270, § 1, effective July 1. **L. 87:** (2) amended, p. 377, § 2, effective May 20. **L. 88:** (2) amended, p. 586, § 5, effective July 1. **L. 2007:** (3) added,

p. 947, § 3, effective January 1, 2008. **L. 2015:** (1) amended and (4) to (6) added, (SB 15-202), ch. 300, p. 1232, § 2, effective June 5.

12-58-106. Unauthorized advertising - use of title of plumber. (1) A person shall not advertise in any manner or use the title or designation of master plumber, journeyman plumber, or residential plumber unless the person is qualified and licensed under this article.

(2) A person shall not advertise in any manner that the person is a water conditioning contractor, water conditioning installer, or a water conditioning principal unless the person is registered as such pursuant to this article.

Source: L. 82: Entire article R&RE, p. 270, § 1, effective July 1. **L. 88:** Entire section amended, p. 586, § 6, effective July 1. **L. 2015:** Entire section amended, (SB 15-202), ch. 300, p. 1234, § 3, effective June 5.

12-58-106.5. Unauthorized use of title of plumbing contractor. No person shall advertise in any manner that such person is a plumbing contractor or use the title or designation of plumbing contractor unless such person meets the definition of plumbing contractor set out in section 12-58-102 (7).

Source: L. 92: Entire section added, p. 2012, § 1, effective April 9.

12-58-107. License issuance - examination. (1) (a) The board shall issue licenses to persons who have, by examination and experience, shown themselves competent and qualified to engage in the business, trade, or calling of a residential plumber, journeyman plumber, or master plumber. The board shall establish the minimum level of experience required for an applicant to receive a residential, journeyman, or master plumber's license. The maximum experience the board may require for an applicant to qualify to test for a residential plumber's license is three thousand four hundred hours of practical experience. The maximum experience the board may require for an applicant to qualify to test for a journeyman plumber's license is six thousand eight hundred hours of practical experience. The maximum experience the board may require for an applicant to test for a master plumber's license is eight thousand five hundred hours of practical experience.

(b) Any applicant for such license shall be permitted to substitute for required practical experience evidence of academic training in the plumbing field, which shall be credited as follows:

(I) If he is a graduate of a community college or trade school plumbing program approved by the board, he shall receive one year of work experience credit.

(II) If he has academic training, including military training, in the plumbing field which is not sufficient to qualify under subparagraph (I) of this paragraph (b), the board shall provide work experience credit for such training according to a uniform ratio established by rule and regulation.

(c) No license shall be issued until the applicant has paid a license fee set by the board pursuant to section 24-34-105, C.R.S.

(2) An applicant for a license under this section shall file an application on forms prepared and furnished by the board, together with the examination fee. The time and place of

examination shall be designated in advance by the board, and examinations shall be held at least four times each calendar year and at such other times as, in the opinion of the board, the number of applicants warrants.

(3) The contents of the examinations provided for in this section shall be determined by the board. The examination shall be administered by the board or its authorized agent pursuant to rules prescribed by the board. Each examination shall be designed and given in such a manner as to fairly test the applicant's knowledge of plumbing and rules and regulations governing plumbing. Examinations may include written tests and applied tests of the practices which the license will qualify the applicant to perform and such related studies or subjects as the board may determine are necessary for the proper and efficient performance of such practices. Such examinations shall be consistent with current practical and theoretical requirements of the practice of plumbing and shall be reviewed, revised, and updated on an annual basis by the board. The board shall ensure that the examination passing grade reflects a minimum level of competency.

Source: L. 82: Entire article R&RE, p. 270, § 1, effective July 1. **L. 88:** (1) and (3) amended, p. 586, § 7, effective July 1. **L. 89:** (1)(b) R&RE, p. 652, § 4, effective June 7. **L. 2013:** (1)(a) amended, (SB 13-162), ch. 280, p. 1456, § 6, effective May 24.

12-58-107.5. Credit for experience received outside of Colorado. For all applicants seeking work experience credit toward licensure for plumbing work experience received outside of Colorado, the board shall give credit for such work experience if the applicant can show to the satisfaction of the board that the particular experience is adequate to comply with the requirements of this article.

Source: L. 88: Entire section added, p. 587, § 8, effective July 1. **L. 89:** Entire section R&RE, p. 653, § 5, effective June 7. **L. 2013:** Entire section R&RE, (SB 13-162), ch. 280, p. 1456, § 7, effective May 24.

12-58-108. License renewal - reinstatement. (1) All license and registration renewal and renewal fees shall be in accordance with sections 24-34-102 and 24-34-105, C.R.S.

(2) Any license or registration that has lapsed is deemed to have expired. Prior to reinstatement, the board is authorized to require the licensee to demonstrate competency. Licenses and registrations shall be renewed or reinstated pursuant to a schedule established by the director of the division of professions and occupations within the department of regulatory agencies and pursuant to section 24-34-102 (8), C.R.S. The director of the division of professions and occupations within the department of regulatory agencies may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license or registration pursuant to the schedule established by the director of the division of professions and occupations, the license or registration shall expire. Any person whose license or registration has expired is subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

Source: L. 82: Entire article R&RE, p. 271, § 1, effective July 1. **L. 88:** Entire section R&RE, p. 587, § 9, effective July 1. **L. 2004:** (2) amended, p. 1856, § 112, effective August 4. **L.**

2013: Entire section amended, (SB 13-162), ch. 280, p. 1456, § 8, effective May 24. **L. 2015:** Entire section amended, (SB 15-202), ch. 300, p. 1234, § 4, effective June 5.

Cross references: For the authority of the executive director of the department of regulatory agencies to change the period of validity and renewal date of any license or certificate issued by any examining or licensing board or commission in the division of professions and occupations, see § 24-34-102 (7) and (8).

12-58-109. License reinstatement. (Repealed)

Source: L. 82: Entire article R&RE, p. 271, § 1, effective July 1. **L. 88:** Entire section repealed, p. 593, § 21, effective July 1.

12-58-110. Disciplinary action by board - licenses or registrations denied, suspended, or revoked - cease-and-desist orders. (1) The board may deny, suspend, revoke, or refuse to renew any license or registration issued or applied for under the provisions of this article 58 or place a licensee or a registrant on probation for any of the following reasons:

(a) Violation of any of the provisions of this article;

(b) Violation of the rules and regulations or orders promulgated by the board in conformity with the provisions of this article or aiding or abetting in such violation;

(c) Failure or refusal to remove within a reasonable time the cause for disapproval of any plumbing installation as reported on the notice of disapproval, but such reasonable time shall include time for appeal to and a hearing before the board;

(d) Any cause for which the issuance of the license could have been refused had it then existed and been known to the board;

(e) Commitment of any act or omission that does not meet generally accepted standards of plumbing practice;

(f) Conviction of or acceptance of a plea of guilty or nolo contendere by a court to a felony. In considering the disciplinary action, the board shall be governed by the provisions of section 24-5-101, C.R.S.

(g) Advertising by any licensee or registrant which is false or misleading;

(h) Deception, misrepresentation, or fraud in obtaining or attempting to obtain a license;

(i) Failure of any such licensee to adequately supervise an apprentice who is working at the trade pursuant to section 12-58-117;

(j) Failure of any licensee to report to the board:

(I) Known violations of this article;

(II) Civil judgments and settlements which arose from such licensee's work performance;

(k) Employment of any person required by this article to be licensed or to obtain a permit who has not obtained such license or permit;

(l) An alcohol use disorder, as defined in section 27-81-102, or a substance use disorder, as defined in section 27-82-102, or excessive use of any habit-forming drug, any controlled substance, as defined in section 18-18-102 (5), or any alcoholic beverage;

(m) Any use of a schedule I controlled substance, as defined in section 18-18-203, C.R.S.;

(n) Disciplinary action against a license or registration in another jurisdiction. Evidence of such disciplinary action is prima facie evidence for denial of licensure or registration or other disciplinary action if the violation would be grounds for such disciplinary action in this state.

(o) Practicing as a water conditioning contractor, water conditioning installer, water conditioning principal, or a residential, journeyman, or master plumber during a period when the person's license or registration has been suspended or revoked;

(p) Selling or fraudulently obtaining or furnishing a license or registration to practice as a residential, journeyman, or master plumber, water conditioning contractor, water conditioning installer, water conditioning principal, or plumbing contractor or aiding or abetting in such activity;

(q) In connection with a construction or building project requiring the services of a person regulated by this article, willfully disregarding or violating:

(I) Any building or construction law of this state or any of its political subdivisions;

(II) Any safety or labor law;

(III) Any health law;

(IV) Any workers' compensation insurance law;

(V) Any state or federal law governing withholdings from employee income, including, but not limited to, income taxes, unemployment taxes, or social security taxes; or

(VI) Any reporting, notification, or filing law of this state or the federal government.

(2) (a) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the board, does not warrant formal action by the board but that should not be dismissed as being without merit, a letter of admonition may be issued and sent, by certified mail, to the licensee.

(b) When a letter of admonition is sent by the board, by certified mail, to a licensee, such licensee shall be advised that he or she has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(c) If the request for adjudication is timely made, the letter of admonition shall be deemed vacated and the matter shall be processed by means of formal disciplinary proceedings.

(2.5) When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the board and, in the opinion of the board, the complaint should be dismissed, but the board has noticed indications of possible errant conduct by the licensee or registrant that could lead to serious consequences if not corrected, a confidential letter of concern may be issued and sent to the licensee or registrant.

(3) Any disciplinary action taken by the board and judicial review of such action shall be in accordance with the provisions of article 4 of title 24, C.R.S., and the hearing and opportunity for review shall be conducted pursuant to said article by the board or an administrative law judge at the board's discretion.

(4) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(5) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a licensee or registrant 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 license or registration, the board may issue an order to cease and desist such activity.

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 unlicensed or unregistered practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (5), the respondent may request a hearing on the question of whether acts or practices in violation of this article have occurred. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(6) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this article, then, in addition to any specific powers granted pursuant to this article, the board may issue to such person an order to show cause as to why the board should not issue a final order directing such person to cease and desist from the unlawful act or unlicensed or unregistered practice.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (6) shall be promptly notified by the board of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the board for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order is issued. Personal service or mailing of an order or document pursuant to this subsection (6) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the board as provided in paragraph (b) of this subsection (6). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (6) does not appear at the hearing, the board may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (6) and such other evidence related to the matter as the board deems appropriate. The board shall issue the order within ten days after the board's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the board reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required license or registration, or has or is about to engage in acts or practices constituting violations of this article, a final cease-and-desist order may be issued, directing such person to cease and desist from further unlawful acts or unlicensed or unregistered practices.

(IV) The board shall provide notice, in the manner set forth in paragraph (b) of this subsection (6), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

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

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

(9) A person aggrieved by the final cease-and-desist order may seek judicial review of the board's determination or of the board's final order as provided in section 12-58-110.4.

Source: L. 82: Entire article R&RE, p. 271, § 1, effective July 1. **L. 88:** Entire section R&RE, p. 587, § 10, effective July 1. **L. 92:** (1)(m) amended, p. 391, § 15, effective July 1. **L. 2003:** (2) amended, p. 1592, § 4, effective May 2. **L. 2004:** (1)(l) amended, p. 1196, § 45, effective August 4; (2) amended and (4) added, p. 1856, § 113, effective August 4. **L. 2006:** (2.5) and (5) to (9) added, p. 816, § 41, effective July 1; (1)(o) and (1)(p) added with relocated provisions, p. 95, § 59, effective August 7. **L. 2007:** IP(1) amended and (1)(q) added, p. 947, § 4, effective January 1, 2008. **L. 2008:** IP(1)(q) amended, p. 1883, § 18, effective August 5. **L. 2012:** (1)(l) amended, (HB 12-1311), ch. 281, p. 1616, § 32, effective July 1. **L. 2013:** (1)(p) amended, (SB 13-162), ch. 280, p. 1457, § 9, effective May 24. **L. 2015:** (1)(n) to (1)(p) amended, (SB 15-202), ch. 300, p. 1234, § 5, effective June 5. **L. 2017:** IP(1) and (1)(l) amended, (SB 17-242), ch. 263, p. 1291, § 102, effective May 25.

Editor's note: Subsections (1)(o) and (1)(p) are similar to former § 12-58-116 (1)(b) and (1)(c) as they existed prior to 2006.

Cross references: (1) For an alternative disciplinary action for persons licensed pursuant to this article, see § 24-34-106.

(2) For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-58-110.1. Reapplication after revocation of licensure or registration. A person whose license or registration has been revoked is not allowed to reapply for licensure or registration earlier than two years from the effective date of the revocation.

Source: L. 88: Entire section added, p. 589, § 11, effective July 1. **L. 2015:** Entire section amended, (SB 15-202), ch. 300, p. 1235, § 6, effective June 5.

12-58-110.2. Reconsideration and review of board action. The board, on its own motion or upon application, at any time after the imposition of any discipline as provided for in section 12-58-110, may reconsider its prior action and reinstate or restore such license or terminate probation or reduce the severity of its prior disciplinary action. The taking of any such

further action or the holding of a hearing with respect thereto shall rest in the sole discretion of the board.

Source: L. 88: Entire section added, p. 589, § 11, effective July 1.

12-58-110.3. Immunity. Any member of the board, any member of the board's staff, any person acting as a witness or consultant to the board, 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 liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as board member, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this article shall be immune from any civil or criminal liability that may result from such participation.

Source: L. 88: Entire section added, p. 589, § 11, effective July 1. **L. 2004:** Entire section amended, p. 1857, § 114, effective August 4.

12-58-110.4. Judicial review. The court of appeals shall have initial jurisdiction to review all final actions and orders that are subject to judicial review of the board. Such proceedings shall be conducted in accordance with section 24-4-106 (11), C.R.S.

Source: L. 88: Entire section added, p. 589, § 11, effective July 1.

12-58-111. License by endorsement. The board may issue a plumber's license by endorsement in this state to any person who is licensed to practice in another jurisdiction if such person presents proof satisfactory to the board that, at the time of application for a Colorado license by endorsement, the person possesses credentials and qualifications which are substantially equivalent to requirements in Colorado for licensure by examination. The board may specify by rule and regulation what shall constitute substantially equivalent credentials and qualifications and may further require a waiting period of six months after the issuance of a license in another state before issuing a license in Colorado.

Source: L. 82: Entire article R&RE, p. 271, § 1, effective July 1. **L. 88:** Entire section R&RE, p. 589, § 12, effective July 1. **L. 89:** Entire section amended, p. 653, § 6, effective June 7.

12-58-112. Temporary permits. (1) The board or its authorized agent may issue a temporary permit to engage in the work of a journeyman plumber or a residential plumber to any applicant who has furnished satisfactory evidence to the board that he has the required experience to qualify for the examination, as provided in the rules and regulations promulgated by the board, and who has applied for an examination to entitle him to such license.

(2) Such permits shall be issued only upon payment of a fee established by the board and may be revoked by the board at any time.

(3) Any permit issued pursuant to this section shall expire no later than thirty days after the date of the examination for which the applicant has applied or upon written notice by the board of the results of the examination, whichever date is earlier. No permit shall be issued pursuant to this section to any person who has twice previously failed an examination or who has received two temporary permits.

(4) Notwithstanding the requirements set forth in section 12-58-107 (1), a temporary master permit may be issued to an existing plumbing contractor who has lost the services of his master plumber for completion of a current project underway as long as he has a journeyman plumber in his full-time employ. This shall only be valid until the next regularly scheduled examination.

Source: L. 82: Entire article R&RE, p. 272, § 1, effective July 1.

12-58-113. Exemptions. (1) Any person selling or dealing in plumbing materials or supplies, but not engaged in the installation, alteration, repairing, or removal of plumbing, shall not be required to employ or have a licensed plumber in charge.

(2) Nothing in this article shall be construed to require any individual to hold a license to perform plumbing work on his own property or residence, nor shall it prevent a person from employing an individual on either a full- or a part-time basis to do routine repair, maintenance, and replacement of sinks, faucets, drains, showers, tubs, toilets, and domestic appliances and equipment equipped with backflow preventers; except that, if such property or residence is intended for sale or resale by a person engaged in the business of constructing or remodeling such facilities or structures or is rental property which is occupied or is to be occupied by tenants for lodging, either transient or permanent, or is a commercial or industrial building, the owner shall be responsible for and the property shall be subject to all of the provisions of this article pertaining to licensing, unless specifically exempted therein.

(3) Nothing in this article shall be construed to apply to the manufacture of housing which is subject to the provisions of part 7 of article 32 of title 24, C.R.S., or the installation of individual residential or temporary construction units of manufactured housing water and sewer hookups inspected pursuant to section 12-58-104.

(4) Persons who are engaged in the business of inspecting, testing, and repairing backflow prevention devices shall be exempt from licensure under this article, except when such persons engage in the installation and removal of such devices.

(5) Nothing in this article shall be construed to require either that employees of the federal government who perform plumbing work on federal property shall be required to be licensed before doing plumbing work on such property or that the plumbing work performed on such property shall be regulated pursuant to this article.

(6) (a) Nothing in this article requires a plumbing license, registration, or permit to perform:

(I) The installation, extension, alteration, or maintenance, including the related water piping and the indirect waste piping, of domestic appliances equipped with backflow preventers, including lawn sprinkling systems; residential ice makers, humidifiers, electrostatic filter washers, or water heating appliances; building heating appliances and systems; fire protection

systems except for multipurpose residential fire sprinkler systems in one- and two-family dwellings and townhouses that are part of the potable water supply; air conditioning installations; process and industrial equipment and piping systems; or indirect drainage systems not a part of a sanitary sewer system; or

(II) The repair and replacement of garbage disposal units and dishwashers directly connected to the sanitary sewer system, including the necessary replacement of all tail pipes and traps, or the repair, maintenance, and replacement of sinks, faucets, drains, showers, tubs, and toilets.

(b) Notwithstanding paragraph (a) of this subsection (6), "plumbing" does not include:

(I) Installations, extensions, improvements, remodeling, additions, and alterations in water and sewer systems owned or acquired by counties pursuant to article 20 of title 30, C.R.S., cities and towns pursuant to article 35 of title 31, C.R.S., or water and sanitation districts pursuant to article 1 or article 4 of title 32, C.R.S.;

(II) Installations, extensions, improvements, remodeling, additions, and alterations performed by contractors employed by counties, cities, towns, or water and sewer districts that connect to the plumbing system within a property line; or

(III) Performance, location, construction, alteration, installation, and use of on-site wastewater treatment systems pursuant to article 10 of title 25, C.R.S., which are located within a property line.

Source: L. 82: Entire article R&RE, p. 272, § 1, effective July 1. **L. 88:** (3) amended, p. 595, § 2, effective March 13; (4) and (5) added, p. 590, § 13, effective July 1. **L. 2013:** (6) added, (SB 13-162), ch. 280, p. 1457, § 10, effective May 24. **L. 2015:** IP (6)(a) amended, (SB 15-202), ch. 300, p. 1235, § 7, effective June 5.

12-58-114. Disposition of fees. All fees shall be transmitted to the state treasurer, who shall credit the same pursuant to section 24-34-105, C.R.S., and the general assembly shall make annual appropriations pursuant to said section for the expenditures of the board incurred in the performance of its duties under this article, which expenditures shall be made out of such appropriations upon vouchers and warrants drawn pursuant to law.

Source: L. 82: Entire article R&RE, p. 272, § 1, effective July 1.

12-58-114.2. Plumbing inspectors - qualifications. (1) The director of the division of professions and occupations is authorized to appoint or employ competent persons licensed under this article as journeyman or master plumbers as state plumbing inspectors.

(2) Such inspectors may be employed either on a full-time or on a part-time basis as the circumstances in each case warrant. State plumbing inspectors have the right of ingress and egress to and from all public and private premises during reasonable working hours where this article applies for the purpose of making plumbing inspections or otherwise determining compliance with the provisions of this article.

(3) (a) Beginning July 1, 2014, persons licensed under this article or who are certified as residential plumbing inspectors by a nationally recognized model code organization are authorized to inspect residential plumbing. Any newly hired inspectors not licensed under this article or certified by a nationally recognized model code organization have one year from the

date of hire to acquire the necessary license or certification or meet the hiring requirements of the hiring authority, whichever is more stringent.

(b) Beginning July 1, 2014, persons licensed under this article or who are certified as commercial plumbing inspectors by a nationally recognized model code organization are authorized to inspect commercial plumbing. Any newly hired inspectors not licensed under this article or certified by a nationally recognized model code organization have one year from the date of hire to acquire the necessary license or certification or meet the hiring requirements of the hiring authority, whichever is more stringent.

(4) (a) Plumbing inspectors performing inspections who are employed by a qualified state institution of higher education shall be certified as commercial plumbing inspectors by a nationally recognized model code organization and possess a valid journeyman or master plumber license issued by the state. In addition, such plumbing inspectors shall possess the same qualifications required of state plumbing inspectors under this article, shall be registered with the board prior to the assumption of their duties, shall not inspect any plumbing work in which the inspector has any financial or other personal interest, and shall not be engaged in the plumbing business by contracting, supplying material, or performing plumbing work as defined in this article. In addition, any such plumbing inspector inspecting a medical gas installation shall hold the national inspection certification ASSE 6020 or recognized equivalent.

(b) As part of their duties, plumbing inspectors performing inspections who are employed by a qualified state institution of higher education have the authority to verify the plumbing licenses or apprenticeship registration cards issued by the state for those people performing the plumbing work on a project.

Source: L. 88: Entire section added, p. 590, § 14, effective July 1. **L. 2013:** (1) amended and (3) added, (SB 13-162), ch. 280, p. 1458, § 11, effective May 24. **L. 2014:** (4) added, (HB 14-1387), ch. 378, p. 1827, § 30, effective June 6. **L. 2015:** (4)(a) amended, (HB 15-1295), ch. 118, p. 359, § 8, effective April 24.

Cross references: For the legislative declaration in HB 14-1387, see section 1 of chapter 378, Session Laws of Colorado 2014.

12-58-114.5. Inspection - application - standards. (1) Any plumbing or gas piping installation in any new construction or remodeling or repair, other than manufactured units inspected in accordance with the provisions of part 7 of article 32 of title 24, C.R.S., except for such new construction or remodeling or repair in any incorporated town or city, county, city and county, or in a building owned or leased or on land owned by a qualified state institution of higher education where such local entity or qualified state institution of higher education conducts inspections and issues permits, must be inspected by a state plumbing inspector. A state plumbing inspector shall inspect any new construction, remodeling, or repair subject to the provisions of this subsection (1) within three working days after the receipt of the application for inspection. Prior to the commencement of any such plumbing or gas piping installation, the person making such installation shall apply for a permit and pay the required fee. Every mobile home or movable structure owner shall have the plumbing and gas piping hookup for such mobile home or movable structure inspected prior to obtaining new or different plumbing or gas service. A qualified state institution of higher education with a building department that meets or

exceeds the minimum standards adopted by the board under this article shall process applications for permits and inspections only from the institution and from contractors working for the benefit of the institution, and shall conduct inspections only of work performed for the benefit of the institution. Each inspection must include a contemporaneous review to ensure that the requirements of section 12-58-105 have been met. A qualified state institution of higher education shall enforce standards that are at least as stringent as any minimum standards adopted by the board.

(2) A state plumbing inspector shall inspect the work performed, and, if such work meets the minimum standards set forth in the Colorado plumbing code referred to in section 12-58-104.5, a certificate of approval shall be issued by the inspector. If such installation is disapproved, written notice thereof together with the reasons for such disapproval shall be given by the inspector to the applicant. If such installation is hazardous to life or property, the inspector disapproving it may order the plumbing or gas service thereto discontinued until such installation is rendered safe. The applicant may appeal such disapproval to the board and shall be granted a hearing by the board within seven days after notice of appeal is filed with the board. After removal of the cause of such disapproval, the applicant shall make application for reinspection in the same manner as for the original inspection and pay the required reinspection fee.

(3) (a) All inspection permits issued by the board are valid for a period of twelve months. The board shall close a permit and mark its status as "expired" at the end of the twelve-month renewal period, except in the following circumstances:

(I) If an applicant makes a showing at the time of application for a permit that the plumbing or gas piping work is substantial and is likely to take longer than twelve months, the board may issue a permit to be valid for a period longer than twelve months, but not exceeding three years.

(II) If the applicant notifies the board prior to the expiration of the twelve-month period of extenuating circumstances, as determined by the board, during the twelve-month period, the board may extend the validity of the permit for a period not to exceed six months.

(b) If an inspection is requested by an applicant after a permit has expired or has been cancelled, a new permit must be applied for and granted before an inspection is performed.

(4) Each application, certificate of approval, and notice of disapproval shall contain the name of the property owner, if known, the location and a brief description of the installation, the name of the general contractor if any, the name of the plumbing contractor or licensed plumber and state license number in the case of any plumbing installation, the name of the installer in the case of any liquefied petroleum gas piping installation, the state plumbing inspector, and the inspection fee charged for the inspection. The original of a notice of disapproval and written reasons for disapproval and corrective actions to be taken shall be mailed to the board, and a copy of such notice shall be mailed to the plumbing contractor in the case of any plumbing installation or the installer in the case of any liquefied petroleum gas piping installation, within two working days after the date of inspection, and a copy of the notice shall be posted at the installation site. Such forms shall be furnished by the board, and a copy of each application, certificate, and notice made or issued shall be filed with the board.

(5) Notwithstanding the fact that any incorporated town or city, any county, or any city and county in which a public school is located or is to be located has its own plumbing code and

inspection authority, any plumbing or gas piping installation in any new construction or remodeling or repair of a public school shall be inspected by a state plumbing inspector.

(6) If an incorporated town or city, county, city and county, or qualified state institution of higher education intends to commence or cease performing plumbing or gas piping inspections in its respective jurisdiction, or for its buildings owned or leased or on its land, written notice of such intent must be given to the board.

(7) (a) Any person claiming to be aggrieved by the failure of a state plumbing inspector to inspect his property after proper application or by notice of disapproval without setting forth the reasons for denying the inspection permit may request the program administrator to review the actions of the plumbing inspector or the manner of the inspection. Such request may be made by his authorized representative and shall be in writing.

(b) Upon the filing of such a request, the program administrator shall cause a copy thereof to be served upon the state plumbing inspector complained of, together with an order requiring such inspector to answer the allegations of said request within a time fixed by the program administrator.

(c) If the request is not granted within ten days after it is filed, it may be treated as rejected. Any person aggrieved by the action of the program administrator in refusing the review requested or in failing or refusing to grant all or part of the relief requested may file a written complaint and request for a hearing with the board, specifying the grounds relied upon.

(d) Any hearing before the board shall be held pursuant to the provisions of section 24-4-105, C.R.S.

(8) (a) If an incorporated town or city, county, city and county, or qualified state institution of higher education intends to commence or cease performing plumbing inspections in its jurisdiction or for the buildings owned or leased by or on land of a qualified state institution of higher education, it shall commence or cease the same only as of July 1 of any year, and written notice of such intent must be given to the board on or before October 1 of the preceding calendar year. If such notice is not given and the use of state plumbing inspectors is required within the respective jurisdiction or building affected by the notice requirement, the respective local government or qualified state institution of higher education of the respective jurisdiction or building requiring such inspections shall reimburse the board for any expenses incurred in performing such inspections, in addition to transmitting the required permit fees.

(b) Repealed.

(9) A qualified state institution of higher education may choose not to require fees as part of the permitting process. A documented permitting and inspection system must be instituted by each qualified state institution of higher education as a tracking system that is available to the board for the purpose of investigating any alleged violation of this article. The permitting and inspection system must include information specifying the project, the name of the inspector, the date of the inspection, the job site address, the scope of the project, the type of the inspection, the result of the inspection, the reason and applicable code sections for partially passed or failed inspections, and the names of the contractors on the project who are subject to inspection.

Source: L. 88: Entire section added, p. 590, § 14, effective July 1. **L. 89:** (4) amended, p. 732, § 1, effective June 7. **L. 2013:** (1) and IP(3)(a) amended and (8) added, (SB 13-162), ch. 280, p. 1458, § 13, effective May 24. **L. 2014:** (1), (6), and (8) amended and (9) added, (HB 14-

1387), ch. 378, p. 1827, § 31, effective June 6. **L. 2015:** (1), (6), and (8) amended, (HB 15-1295), ch. 118, p. 359, § 9, effective April 24.

Editor's note: Subsection (8)(b)(II) provided for the repeal of subsection (8)(b), effective July 1, 2016. (See L. 2015, p. 359.)

Cross references: For the legislative declaration in HB 14-1387, see section 1 of chapter 378, Session Laws of Colorado 2014.

12-58-115. Municipal and county regulations. (1) Any city, town, county, or city and county of this state may provide for the licensing of plumbing contractors or water conditioning contractors. Contractors who obtain local licensing must also register with the board in accordance with section 12-58-105.

(2) A local government agency shall not promulgate rules or regulations or provide for licenses that would preclude the holder of a valid license or registration issued under this article from practicing the holder's trade.

Source: L. 82: Entire article R&RE, p. 273, § 1, effective July 1. **L. 88:** Entire section R&RE, p. 592, § 15, effective July 1. **L. 2013:** (1) amended, (SB 13-162), ch. 280, p. 1459, § 14, effective May 24. **L. 2015:** Entire section amended, (SB 15-202), ch. 300, p. 1235, § 8, effective June 5.

12-58-116. Unauthorized practice - penalties.

(1) Repealed.

(2) Any person who engages in or works at or offers or attempts to engage in or work at the business, trade, or calling of a residential, journeyman, master, or apprentice plumber without an active license, permit, or registration 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 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(3) Effective April 1, 2016, a person who engages in or works at or offers or attempts to engage in or work at the business, trade, or calling of a water conditioning contractor, water conditioning installer, or water conditioning principal without an active registration 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 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.; except that nothing in this subsection (3) limits the ability of a licensed residential, journeyman, or master plumber, a plumbing apprentice, or a registered plumbing contractor to practice within his or her respective area as authorized by this article with regard to water conditioning appliances.

Source: L. 82: Entire article R&RE, p. 273, § 1, effective July 1. **L. 88:** Entire section R&RE, p. 592, § 16, effective July 1. **L. 2002:** (2) amended, p. 1486, § 113, effective October 1. **L. 2006:** IP(1) and (1)(a) to (1)(c) repealed and (2) amended, p. 96, §§ 62, 61, 60, effective August 7. **L. 2015:** (3) added, (SB 15-202), ch. 300, p. 1235, § 9, effective June 5.

Editor's note: Subsections (1)(b) and (1)(c) were relocated to § 12-58-110 (1)(o) and (1)(p) in 2006.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-58-116.5. Violation - fines - rules. (1) (a) If the board concludes that any licensee, registrant, or applicant for licensure has violated any provision of section 12-58-110 and that disciplinary action is appropriate, the program administrator or the program administrator's designee may issue a citation in accordance with subsection (2.5) of this section to such licensee, registrant, or applicant.

(b) (I) The licensee, registrant, or applicant to whom a citation has been issued may make a request to negotiate a stipulated settlement agreement with the program administrator or the program administrator's designee, if such request is made in writing within ten working days after issuance of the citation which is the subject of the settlement agreement.

(II) All stipulated settlement agreements shall be conducted pursuant to rules adopted by the board pursuant to section 12-58-104 (1)(d). The board shall adopt a rule to allow any licensee, registrant, or applicant unable, in good faith, to settle with the program administrator to request an administrative hearing pursuant to paragraph (c) of this subsection (1).

(III) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(c) (I) The licensee, registrant, or applicant to whom a citation has been issued may request an administrative hearing to determine the propriety of such citation if such request is made in writing within ten working days after issuance of the citation which is the subject of the hearing or within a reasonable period after negotiations for a stipulated settlement agreement pursuant to paragraph (b) of this subsection (1) have been deemed futile by the program administrator.

(II) For good cause the board may extend the period of time in which a person who has been cited may request a hearing.

(III) All hearings conducted pursuant to subparagraph (I) of this paragraph (c) shall be conducted in compliance with section 24-4-105, C.R.S.

(d) Any action taken by the board pursuant to this section shall be deemed final after the period of time extended to the licensee, registrant, or applicant to contest such action pursuant to this subsection (1) has expired.

(2) (a) The board shall adopt a schedule of fines pursuant to paragraph (b) of this subsection (2) as penalties for violating section 12-58-110. Such fines shall be assessed in conjunction with the issuance of a citation, pursuant to a stipulated settlement agreement, or following an administrative hearing. Such schedule shall be adopted by rule in accordance with section 12-58-104 (1)(d).

(b) In developing the schedule of fines, the board shall:

(I) Provide that a first offense may carry a fine of up to one thousand dollars;

(II) Provide that a second offense may carry a fine of up to two thousand dollars;

(III) Provide that any subsequent offense may carry a fine of up to two thousand dollars for each day that any provision of section 12-58-110 is violated;

(IV) Consider how the violation impacts the public, including any health and safety considerations;

(V) Consider whether to provide for a range of fines for any particular violation or type of violation; and

(VI) Provide uniformity in the fine schedule.

(2.5) (a) (I) Any citation issued pursuant to this section shall be in writing, shall adequately describe the nature of the violation, and shall reference the statutory or regulatory provision or order alleged to have been violated.

(II) Any citation issued pursuant to this section shall clearly state whether a fine is imposed, the amount of such fine, and that payment for such fine must be remitted within the time specified in such citation if such citation is not contested pursuant to subsection (1) of this section.

(III) Any citation issued pursuant to this section shall clearly set forth how such citation may be contested pursuant to subsection (1) of this section, including any time limitations.

(b) A citation or copy of a citation issued pursuant to this section may be served by certified mail or in person by a program administrator or the administrator's designee upon a person or the person's agent in accordance with C.R.C.P. 4.

(c) If the recipient fails to give written notice to the board that the recipient intends to contest such citation or to negotiate a stipulated settlement agreement within ten working days after service of a citation by the board, such citation shall be deemed a final order of the board.

(d) The board may suspend or revoke a license or registration or may refuse to renew any license or registration issued or may place on probation any licensee or registrant if the licensee or registrant fails to comply with the requirements set forth in a citation deemed final pursuant to paragraph (c) of this subsection (2.5).

(e) The failure of an applicant for licensure to comply with a citation deemed final pursuant to paragraph (c) of this subsection (2.5) is grounds for denial of a license.

(f) No citation may be issued under this section unless the citation is issued within the six-month period following the occurrence of the violation.

(3) All fines shall be imposed in accordance with the provisions of section 24-4-105, C.R.S.

(4) (a) Any fine collected pursuant to this section shall be transmitted to the state treasurer, who shall credit one-half of the amount of any such fine to the general fund, and one-half of the amount of any such fine shall be shared with the appropriate city, town, county, or city and county, which amounts shall be transmitted to any such entity on an annual basis.

(b) Any fine assessed in a citation or an administrative hearing or any amount due pursuant to a stipulated settlement agreement that is not paid may be collected by the program administrator through a collection agency or in an action in the district court of the county in which the person against whom the fine is imposed resides or in the county in which the office of the program administrator is located.

(c) The attorney general shall provide legal assistance and advice to the program administrator in any action to collect an unpaid fine.

(d) In any action brought to enforce this subsection (4), reasonable attorney fees and costs shall be awarded.

Source: L. 88: Entire section added, p. 592, § 17, effective July 1. **L. 2004:** (4) added, p. 1857, § 115, effective August 4. **L. 2007:** (1), (2), and (4) amended and (2.5) added, p. 948, § 5, effective January 1, 2008.

12-58-117. Apprentices. (1) Any person may work as a plumbing apprentice for a registered plumbing contractor but shall not do any plumbing work for which a license is required pursuant to this article except under the supervision of a licensed plumber. Supervision requires that a licensed plumber supervise apprentices at the jobsite. One licensed journeyman plumber, master plumber, or residential plumber shall not supervise more than three apprentice plumbers at the same jobsite.

(2) Any master, journeyman, or residential plumber who is the supervisor of any plumbing apprentice shall be responsible for the work performed by such apprentice. The license of any plumber may be revoked, suspended, or denied under the provisions of section 12-58-110 for any improper work performed by a plumbing apprentice while under the supervision of such licensee.

Source: L. 82: Entire article R&RE, p. 273, § 1, effective July 1. **L. 2007:** (1) amended, p. 951, § 6, effective January 1, 2008. **L. 2013:** (1) amended, (SB 13-162), ch. 280, p. 1458, § 12, effective May 24.

ARTICLE 58.5

Private Investigators

Editor's note: This article was added in 2011 and was not amended prior to 2014. It was repealed and reenacted in 2014, resulting in the addition, relocation, or elimination of sections as well as subject matter. For the text of this article prior to 2014, consult the 2013 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

12-58.5-101. Short title. This article shall be known and may be cited as the "Private Investigators Licensure Act".

Source: L. 2014: Entire article R&RE, (SB 14-133), ch. 389, p. 1944, § 1, effective June 6.

Editor's note: This section is similar to former § 12-58.5-101 as it existed prior to 2014.

12-58.5-102. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Private investigators often perform investigations of a sensitive nature, delving into matters impacting personal privacy;

(b) While most private investigators perform investigations in an ethical and professional manner, lack of mandatory regulation of private investigators in this state permits

any person, regardless of his or her criminal history or knowledge of laws impacting private investigations, to present himself or herself to the public as a private investigator and perform private investigations for others;

(c) Imposing mandatory regulation on private investigators conducting private investigations in this state is necessary to protect consumers by ensuring private investigators have the appropriate knowledge and ability to perform investigations in an ethical and professional manner;

(d) Balancing consumer protection with the interests of private businesses and individuals desiring to engage in the private investigation profession is likewise important;

(e) It is in the interests of consumers and private investigators for the state to develop the appropriate level of regulation of private investigators that protects consumers without creating unnecessary barriers to entry into the profession.

(2) The general assembly therefore finds that in order to protect the citizens of the state and to ensure that needless requirements are not imposed that restrict access into the profession, it is important to create the licensure program established in this article to require private investigators to obtain a state-issued license to conduct private investigations in this state.

(3) The general assembly further finds that:

(a) The number of private investigators licensed under the "Private Investigators Voluntary Licensure Act", enacted by House Bill 11-1195 in 2011, which allows private investigators the option to obtain a state-issued license, is insufficient to justify continuing the voluntary program;

(b) The voluntary licensure program is currently operating at a loss as the license fees based on the number of licensees are inadequate to fully fund the program, and increasing the fees to a level that would sustain the program results in unaffordable fees, and consequently, fewer and fewer private investigators are participating in the voluntary program;

(c) While the voluntary program is unsustainable, it is important to protect consumers by establishing minimum standards for and requirements for licensure of private investigators;

(d) By repealing the voluntary program and replacing it with a mandatory licensure program, the intent is to continue regulating private investigators operating in this state to ensure private investigators are engaging in the profession in an ethical manner and have the appropriate knowledge and ability to perform investigations;

(e) As the mandatory program will regulate the same types of professionals who could have chosen to be regulated under the voluntary program, it is appropriate that private investigators licensed under the mandatory program share in the repayment of the deficit that resulted from the voluntary program; and

(f) To avoid cost-prohibitive license fees, it is the intent of the general assembly for the division to spread the repayment of the deficit generated by the voluntary program over the life of the new mandatory program, which is scheduled to repeal on September 1, 2020.

Source: L. 2014: Entire article R&RE, (SB 14-133), ch. 389, p. 1944, § 1, effective June 6.

Editor's note: This section is similar to former § 12-58.5-102 as it existed prior to 2014.

12-58.5-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Applicant" means a private investigator who applies for an initial or renewal license pursuant to this article.

(2) "Director" means the director of the division or the director's designee.

(3) "Division" means the division of professions and occupations in the department of regulatory agencies.

(4) "Licensee" means a private investigator licensed by the director pursuant to this article as a level I or level II private investigator.

(5) "Private investigation" means undertaking an investigation for the purpose of obtaining information for others pertaining to:

(a) A crime, wrongful act, or threat against the United States or any state or territory of the United States;

(b) The identity, reputation, character, habits, conduct, business occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movements, whereabouts, affiliations, associations, or transactions of a person, group of persons, or organization;

(c) The credibility of witnesses or other persons;

(d) The whereabouts of missing persons;

(e) The determination of the owners of abandoned property;

(f) The causes and origin of, or responsibility for, libel, slander, a loss, an accident, damage, or an injury to a person or to real or personal property;

(g) The business of securing evidence to be used before an investigatory committee, board of award or arbitration, administrative body, or officer or in the preparation for or in a civil or criminal trial;

(h) The business of locating persons who have become delinquent in their lawful debts, when the private investigator locating the debtor is hired by an individual or collection agency;

(i) The location or recovery of lost or stolen property;

(j) The affiliation, connection, or relationship of any person, firm, or corporation with any organization, society, or association or with any official, representative, or member of an organization, society, or association;

(k) The conduct, honesty, efficiency, loyalty, or activities of employees, persons seeking employment, agents, contractors, or subcontractors; or

(l) The identity of persons suspected of crimes or misdemeanors.

(6) "Private investigator" or "private detective" means a natural person who, for a fee, reward, compensation, or other consideration, engages in business or accepts employment to conduct private investigations.

Source: L. 2014: Entire article R&RE, (SB 14-133), ch. 389, p. 1946, § 1, effective June 6.

Editor's note: This section is similar to former § 12-58.5-103 as it existed prior to 2014.

12-58.5-104. Licensure - title protection - unauthorized practice - penalty. (1) (a) By June 1, 2015, a private investigator conducting private investigations in this state is required to meet the qualifications set forth in section 12-58.5-106 and to obtain a license from the director.

(b) Only a private investigator who obtains a license pursuant to section 12-58.5-106 may present himself or herself as or use the title of a "licensed private investigator", "private investigator", "licensed private detective", or "private detective".

(c) Repealed.

(2) Any person who conducts private investigations or presents himself or herself as or uses the title "private investigator", "private detective", "licensed private detective", or "licensed private investigator" 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, commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 2014: Entire article R&RE, (SB 14-133), ch. 389, p. 1947, § 1, effective June 6.

Editor's note: (1) This section is similar to former § 12-58.5-104 as it existed prior to 2014.

(2) Subsection (1)(c)(III) provided for the repeal of subsection (1)(c), effective December 1, 2014. (See L. 2014, p. 1947.)

12-58.5-105. Exemptions. (1) This article 58.5 does not apply to:

(a) A collection agency or consumer reporting agency, as defined in section 5-16-103 (3) and (6), respectively;

(b) A person conducting an investigation on the person's own behalf, or an employee of an employer conducting an internal investigation on behalf of his or her employer;

(c) An attorney licensed to practice law in this state, an employee of a licensed attorney, or a person under contract to perform paralegal services for a licensed attorney;

(d) A certified peace officer of a law enforcement agency operating in his or her official capacity;

(e) (I) A certified public accountant certified or authorized to provide accounting services in the state pursuant to article 2 of this title;

(II) An employee of a certified public accountant;

(III) An employee or affiliate of an accounting firm registered pursuant to section 12-2-117; or

(IV) A person who conducts forensic accounting, fraud investigations, or other related analysis of financial transactions based on information that is either publicly available or provided by clients or other third parties and who is:

(A) An accountant or public accountant who is not regulated by the state;

(B) A certified fraud examiner; or

(C) An employee or independent contractor under the guidance of an accountant, public accountant, or certified fraud examiner;

(f) A person who aggregates public records and charges a fee for accessing the aggregated public records data;

(g) A person employed by an insurance company who is conducting claims adjustment or claims investigation for the purposes of an insurance claim;

(h) An investigator employed or contracted by a public or governmental agency;

(i) A journalist or genealogist;

(j) A person serving process within the state, performing his or her duties in compliance with the Colorado or federal rules of civil procedure or in accordance with applicable foreign state court rules or laws pertaining to service of foreign process within this state, or performing any task associated with effecting service of process, all of which includes inquiries related to effecting proper service of process and resulting supporting proofs, declarations, affidavits of service, or declarations or affidavits of due diligence to support alternative methods of service of process; except that a process server who performs private investigations outside the efforts to effect service of process is not exempt from the licensing requirements of this article and must obtain a license under this article in order to lawfully perform those private investigations;

(k) A person attempting to recover a fugitive when that person furnished bail and is licensed under article 2 or 23 of title 10 or is acting pursuant to a contract with or at the request of a person who furnished bail;

(l) An owner, employee, or independent contractor of an agency conducting an investigation to determine the origin and cause of a fire or explosion;

(m) An owner, employee, or independent contractor of an agency conducting an investigation for cause analysis or failure analysis where the investigation is conducted by an engineer licensed pursuant to part 1 of article 25 of this title acting within his or her area of expertise and within the scope of the practice of engineering; or

(n) Any other person licensed under this title who is practicing within the scope of his or her practice as defined in this title.

Source: L. 2014: Entire article R&RE, (SB 14-133), ch. 389, p. 1948, § 1, effective June 6. **L. 2017:** IP(1) and (1)(k) amended, (SB 17-249), ch. 283, p. 1550, § 22, effective June 1; IP(1) and (1)(a) amended, (HB 17-1238), ch. 260, p. 1172, § 17, effective August 9.

Editor's note: This section is similar to former § 12-58.5-103 (6)(b) as it existed prior to 2014.

12-58.5-106. Private investigator licenses - qualifications - fees - renewal - rules. (1) A private investigator applying for a license pursuant to this section must satisfy the requirements of the particular license for which application is made. The director may issue the following types of licenses to applicants who, upon application in the form and manner determined by the director, payment of the required fee, and satisfaction of the requirements of subsection (2) of this section, provide evidence satisfactory to the director that the applicant satisfies the qualifications for the particular license as follows:

(a) **Level I private investigator license.** An applicant for a level I private investigator license must:

(I) Be at least twenty-one years of age;

(II) Be lawfully present in the United States; and

(III) Demonstrate knowledge and understanding of the laws and rules affecting the ethics and activities of private investigators in this state by passing a jurisprudence examination developed and approved by the director.

(b) **Level II private investigator license.** An applicant for a level II private investigator license must:

(I) Satisfy the requirements for a level I private investigator license; and

(II) Have an amount of verifiable, applicable experience as a private investigator or equivalent experience with a local, state, or federal law enforcement agency, military police, the federal bureau of investigation, or other equivalent experience. The director shall determine, by rule, the amount and type of experience, which may include postsecondary education, completion of approved certificate programs, or such other experience the director deems appropriate, an applicant must have to satisfy the requirements of this section.

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

(3) An applicant for licensure under this section shall pay license, renewal, and reinstatement fees established by the director pursuant to section 24-34-105, C.R.S. A licensee must renew his or her license in accordance with a schedule established by the director pursuant to section 24-34-102 (8), C.R.S. If a licensee fails to renew his or her license pursuant to the schedule established by the director, the license expires, and the person shall not conduct private investigations in this state until the person pays the appropriate fees to reinstate the license and the director reinstates the license. A person whose license expires and who continues to do business as a private investigator is subject to the penalties provided in this article and section 24-34-102 (8), C.R.S.

Source: L. 2014: Entire article R&RE, (SB 14-133), ch. 389, p. 1949, § 1, effective June 6. **L. 2017:** (2) amended, (SB 17-189), ch. 149, p. 499, § 5, effective August 9.

Editor's note: This section is similar to former § 12-58.5-105 as it existed prior to 2014.

12-58.5-107. Surety bond required - rules. A licensee shall not engage in private investigation activities unless the licensee posts and maintains, or is covered by, a surety bond in an amount determined by the director by rule.

Source: L. 2014: Entire article R&RE, (SB 14-133), ch. 389, p. 1950, § 1, effective June 6.

12-58.5-108. Director's powers and duties - consult with stakeholders - rules. (1) The director may consult with private investigators, law enforcement, consumer groups, victim

advocacy groups, civil liberties groups, and other stakeholders to obtain recommendations and feedback concerning:

(a) The regulation of private investigators;

(b) Privacy laws and issues, new or changing technology, and the impact of new or changing technology on privacy; and

(c) Any continuing education that may be necessary to ensure private investigators maintain knowledge and understanding of laws and rules affecting the practice, particularly those concerning privacy issues and new or changing technology. If a stakeholder group recommends that continuing education requirements be imposed, nothing in this paragraph (c) abrogates the requirements of section 24-34-901, C.R.S., and the director is not authorized to impose, by rule or otherwise, any continuing education requirements absent an enactment of a bill imposing continuing education requirements or authorizing the director to establish continuing education requirements.

(2) In addition to all other powers and duties conferred or imposed upon the director by this article or by any other law, the director may:

(a) Promulgate rules pursuant to section 24-4-103, C.R.S., to implement this article, including rules to:

(I) Establish the form and manner for applying for a license under this article;

(II) Specify the requirements for satisfying the experience component for obtaining a level II private investigator license pursuant to section 12-58.5-106 (1)(b);

(III) Define generally accepted standards of the practice of private investigations;

(IV) Set the amount of the surety bond required by section 12-58.5-107; and

(V) Address any other matters determined necessary by the director to implement this article;

(b) Develop and conduct or contract for examinations as required by this article;

(c) Review and grant or deny applications for new or renewal licenses as provided in this article; and

(d) Establish fees for the issuance of a new license and for each license renewal pursuant to section 24-34-105, C.R.S.

Source: L. 2014: Entire article R&RE, (SB 14-133), ch. 389, p. 1950, § 1, effective June 6.

Editor's note: This section is similar to former § 12-58.5-106 as it existed prior to 2014.

12-58.5-109. Disciplinary actions - grounds for discipline - rules - cease-and-desist orders. (1) The director may deny, suspend, or revoke a license, place an applicant or licensee on probation, or issue a letter of admonition to an applicant or licensee if the applicant or licensee:

(a) Violates any order of the director, any provision of this article, or any rule adopted under this article;

(b) Fails to meet the requirements of section 12-58.5-106 or uses fraud, misrepresentation, or deceit in applying for or attempting to apply for a license;

(c) Is convicted of or has entered a plea of guilty or nolo contendere to a felony; to an offense, the underlying factual basis of which has been found by the court to involve unlawful

sexual behavior, domestic violence, as defined in section 18-6-800.3 (1), C.R.S., or stalking, as defined in section 18-3-602, C.R.S.; or to violation of a protection order, as defined in section 18-6-803.5, C.R.S. In considering the disciplinary action, the director is governed by section 24-5-101, C.R.S., in considering the conviction or plea.

(d) Has failed to report to the director the conviction of or plea to a crime specified in paragraph (c) of this subsection (1);

(e) Advertises or presents himself or herself as a licensed private investigator without holding an active license;

(f) Has been subject to discipline related to the practice of private investigations in another jurisdiction. Evidence of disciplinary action in another jurisdiction is prima facie evidence for denial of a license or other disciplinary action if the violation would be grounds for disciplinary action in this state.

(g) Commits an act or omission that fails to meet generally accepted standards of the practice of private investigations; or

(h) Fails to comply with surety bond requirements as specified in section 12-58.5-107.

(2) The director may adopt rules establishing fines that he or she may impose on a licensee. The rules must include a graduated fine structure, with a maximum allowable fine of not more than three thousand dollars per violation. The director shall transmit any fines he or she collects from a licensee to the state treasurer for deposit in the general fund.

(3) The director need not find that the actions that are grounds for discipline were willful but may consider whether the actions were willful when determining the nature of disciplinary sanctions to impose.

(4) (a) The director may commence a proceeding to discipline a licensee when the director has reasonable grounds to believe that the licensee has committed an act or omission specified in this section.

(b) In any proceeding held under this section, the director may accept as evidence of grounds for disciplinary action any disciplinary action taken against a licensee in another jurisdiction if the violation that prompted the disciplinary action in the other jurisdiction would be grounds for disciplinary action under this article.

(5) The director shall conduct disciplinary proceedings in accordance with article 4 of title 24, C.R.S. The director or an administrative law judge appointed by the director pursuant to paragraph (c) of subsection (6) of this section shall conduct the hearing and opportunity for review pursuant to that article. The director may exercise all powers and duties conferred by this article during the disciplinary proceedings.

(6) (a) The director may request that the attorney general seek an injunction in any court of competent jurisdiction to enjoin a person from committing an act prohibited by this article. When seeking an injunction under this paragraph (a), the attorney general is not 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.

(b) (I) The director may investigate, hold hearings, and gather evidence in all matters related to the exercise and performance of the powers and duties of the director.

(II) In any hearing or investigation instituted pursuant to this section, the director or an administrative law judge appointed pursuant to paragraph (c) of this subsection (6) may administer oaths, take affirmations of witnesses, and issue subpoenas compelling the attendance of witnesses and the production of all relevant records, papers, books, documentary evidence,

and materials in any hearing, investigation, accusation, or other matter before the director or an administrative law judge.

(III) Upon failure of any witness or licensee to comply with a subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring the person or 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. If the person or licensee fails to obey the order of the court, the court may hold the person or licensee in contempt of court.

(c) The director may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to conduct hearings, take evidence, make findings, and report the findings to the director.

(7) (a) The director, the director's staff, a person acting as a witness or consultant to the director, a witness testifying in a proceeding authorized under this article, or a person who lodges a complaint pursuant to this article is immune from liability in a civil action brought against him or her for acts occurring while acting in his or her capacity as director, staff, consultant, or witness, respectively, if the individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action he or she took was warranted by the facts.

(b) A person participating, in good faith, in making a complaint or report or in an investigative or administrative proceeding pursuant to this section is immune from any civil or criminal liability that otherwise might result by reason of the participation.

(8) A final action of the director is subject to judicial review by the court of appeals pursuant to section 24-4-106 (11), C.R.S. The director may institute a judicial proceeding in accordance with section 24-4-106, C.R.S., to enforce an order of the director.

(9) 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 by a deferred settlement, action, judgment, or prosecution.

(10) (a) If it appears to the director, based upon credible evidence as presented in a written complaint, that a licensee is acting in a manner that is an imminent threat to the health and safety of the public, or if a person is conducting private investigations or presenting himself or herself as or is using the title "private investigator", "private detective", or "licensed private investigator" without having obtained a license, the director may issue an order to cease and desist the activity. The director shall set forth in the order 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 unlicensed practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (10), the respondent may request a hearing on the question of whether acts or practices in violation of this article have occurred. The director or administrative law judge, as applicable, shall conduct the hearing pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(11) (a) If it appears to the director, based upon credible evidence as presented in a written complaint, that a person has violated any other portion of this article, in addition to any specific powers granted pursuant to this article, the director may issue to the person an order to

show cause as to why the director should not issue a final order directing the person to cease and desist from the unlawful act or unlicensed practice.

(b) The director shall promptly notify the person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (11) of the issuance of the order and shall include in the notice a copy of the order, the factual and legal basis for the order, and the date set by the director for a hearing on the order. The director may serve the notice on the person against whom the order has been issued by personal service, by first-class, postage-prepaid United States mail, or in another manner as may be practicable. Personal service or mailing of an order or document pursuant to this paragraph (b) constitutes notice of the order to the person.

(c) (I) The director shall hold the hearing on an order to show cause no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the director as provided in paragraph (b) of this subsection (11). The director may continue the hearing by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the director hold the hearing later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (11) does not appear at the hearing, the director may present evidence that notification was properly sent or served on the person pursuant to paragraph (b) of this subsection (11) and such other evidence related to the matter as the director deems appropriate. The director must issue the order within ten days after the director's determination related to reasonable attempts to notify the respondent, and the order becomes final as to that person by operation of law. The hearing must be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(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 license or has or is about to engage in acts or practices constituting violations of this article, the director may issue a final cease-and-desist order directing the person to cease and desist from further unlawful acts or unlicensed practices.

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

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

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

(14) A person aggrieved by the final cease-and-desist order may seek judicial review of the director's determination or of the director's final order as provided in subsection (8) of this section.

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

(b) When the director sends a letter of admonition to a licensee, the director shall advise the licensee that he or she has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(c) If the licensee timely requests adjudication, the director shall vacate the letter of admonition and process the matter by means of formal disciplinary proceedings.

(16) When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the director and, in the opinion of the director, the complaint should be dismissed, but the director has noticed indications of possible errant conduct by the licensee that could lead to serious consequences if not corrected, the director may send the licensee a confidential letter of concern.

Source: L. 2014: Entire article R&RE, (SB 14-133), ch. 389, p. 1952, § 1, effective June 6.

Editor's note: This section is similar to former § 12-58.5-107 as it existed prior to 2014.

12-58.5-110. Revocation. A person whose license is revoked or who surrenders a license to avoid discipline is ineligible to apply for a license under this article until at least two years after the date of revocation or surrender of the license. The director shall treat a subsequent application for licensure from a person whose license was revoked or surrendered as an application for a new license under this article.

Source: L. 2014: Entire article R&RE, (SB 14-133), ch. 389, p. 1956, § 1, effective June 6.

Editor's note: This section is similar to former § 12-58.5-108 as it existed prior to 2014.

12-58.5-111. Fees - cash fund. The division shall transmit all fees collected pursuant to this article to the state treasurer, who shall credit the fees to the division of professions and occupations cash fund created in section 24-34-105 (2)(b), C.R.S. The general assembly shall make annual appropriations from the division of professions and occupations cash fund for expenditures of the division incurred in the performance of its duties under this article.

Source: L. 2014: Entire article R&RE, (SB 14-133), ch. 389, p. 1956, § 1, effective June 6.

Editor's note: This section is similar to former § 12-58.5-109 as it existed prior to 2014.

12-58.5-112. Repeal of article - review of functions. This article is repealed, effective September 1, 2020. Prior to the repeal, the department of regulatory agencies shall review the powers, duties, and functions of the director regarding the licensure of private investigators under this article as provided in section 24-34-104, C.R.S.

Source: L. 2014: Entire article R&RE, (SB 14-133), ch. 389, p. 1944, § 1, effective June 6.

Editor's note: This section is similar to former § 12-58.5-108 as it existed prior to 2014.

ARTICLE 59

Private Occupational Schools

12-59-101 to 12-59-128. (Repealed)

Source: L. 2017: Entire article repealed, (HB 17-1239), ch. 261, p. 1207, § 20, effective August 9.

Editor's note: This article 59 was numbered as article 3 of chapter 146, C.R.S. 1963. For amendments to this article 59 prior to its repeal in 2017, consult the 2016 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume. This article 59 was relocated to article 64 of title 23. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article 59, see the comparative tables located in the back of the index.

ARTICLE 60

Racing

12-60-101 to 12-60-901. (Repealed)

Source: L. 2018: Entire article repealed, (HB 18-1024), ch. 26, p. 321, § 3, effective October 1.

Editor's note: (1) This article 60 was numbered as article 2 of chapter 129, C.R.S. 1963. For amendments to this article 60 prior to its repeal in 2018, consult the 2017 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume. This article 60 was relocated to article 32 of title 44 by HB 18-1024. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article 60, see the comparative tables located in the back of the index.

(2) (a) Changes by SB 18-172 to §§ 12-60-101, 12-60-501 (1)(b) and (2)(a), and 12-60-503 (1) were harmonized with HB 18-1024 and relocated to §§ 44-32-101, 44-32-501 (1)(b) and (2)(a), and 44-32-503 (1), respectively.

(b) (I) Changes by SB 18-182 to §§ 12-60-202 (3)(h) and 12-60-702 (1)(f)(III) were harmonized with HB 18-1024 and relocated to §§ 44-32-202 (3)(h) and 44-32-702 (1)(f)(II), respectively.

(II) Section 12-60-202 IP(3) was amended in SB 18-182. Those amendments were superseded by the repeal of that section in HB 18-1024.

(c) (I) Changes by SB 18-035 to §§ 12-60-507 (1)(w)(I) and 12-60-513 (1) were harmonized with HB 18-1024 and relocated to §§ 44-32-507 (1)(w) and 44-32-514, respectively.

(II) Section 12-60-507 IP(1) was amended in SB 18-035. Those amendments were superseded by the repeal of that section in HB 18-1024.

ARTICLE 60.1

Racing - Sweepstakes Races Act

12-60.1-101 to 12-60.1-106. (Repealed)

Source: L. 82: Entire article repealed, p. 387, § 8, effective April 30.

Editor's note: (1) The 1977 sweepstakes legislation contained in this article was declared to be void and of no effect. (See In re Interrogatories of Governor Regarding Sweepstakes Races Act, 196 Colo. 353, 585 P.2d 595 (1978).) Subsequent to this decision, the Colorado Constitution was amended to allow the General Assembly to establish a state-supervised lottery. (See section 2 (7) of article XVIII, Colo. Const.)

(2) In 1982, the General Assembly authorized the implementation of a state-supervised lottery under the direction of the department of revenue. (See article 35 of title 24.)

(3) This article was added in 1977 and was not amended prior to its repeal in 1982. For the text of this article prior to 1982, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 61

Real Estate

Cross references: For the penalty for selling land twice, see § 18-5-302.

PART 1

BROKERS AND SALESPERSONS

12-61-101. Definitions. As used in this part 1, unless the context otherwise requires:

(1) "Employing real estate broker" or "employing broker" means a broker who is shown in real estate commission records as employing or engaging another broker.

(1.2) "HOA" or "homeowners' association" means an association or unit owners' association formed before, on, or after July 1, 1992, as part of a common interest community as defined in section 38-33.3-103, C.R.S.

(1.3) "Limited liability company" shall have the same meaning as it is given in section 7-80-102 (7), C.R.S.

(1.5) "Option dealer" means any person, firm, partnership, limited liability company, association, or corporation who, directly or indirectly, takes, obtains, or uses an option to purchase, exchange, rent, or lease real property or any interest therein with the intent or for the purpose of buying, selling, exchanging, renting, or leasing said real property or interest therein to another or others whether or not said option is in that person's or its name and whether or not title to said property passes through the name of said person, firm, partnership, limited liability company, association, or corporation in connection with the purchase, sale, exchange, rental, or lease of said real property or interest therein.

(1.7) "Partnership" includes, but is not limited to, a registered limited liability partnership.

(2) (a) "Real estate broker" or "broker" means any person, firm, partnership, limited liability company, association, or corporation who, in consideration of compensation by fee, commission, salary, or anything of value or with the intention of receiving or collecting such compensation, engages in or offers or attempts to engage in, either directly or indirectly, by a continuing course of conduct or by any single act or transaction, any of the following acts:

(I) Selling, exchanging, buying, renting, or leasing real estate, or interest therein, or improvements affixed thereon;

(II) Offering to sell, exchange, buy, rent, or lease real estate, or interest therein, or improvements affixed thereon;

(III) Selling or offering to sell or exchange an existing lease of real estate, or interest therein, or improvements affixed thereon;

(IV) Negotiating the purchase, sale, or exchange of real estate, or interest therein, or improvements affixed thereon;

(V) Listing, offering, attempting, or agreeing to list real estate, or interest therein, or improvements affixed thereon for sale, exchange, rent, or lease;

(VI) Auctioning or offering, attempting, or agreeing to auction real estate, or interest therein, or improvements affixed thereon;

(VII) Buying, selling, offering to buy or sell, or otherwise dealing in options on real estate, or interest therein, or improvements affixed thereon or acting as an "option dealer";

(VIII) Performing any of the foregoing acts as an employee of, or in behalf of, the owner of real estate, or interest therein, or improvements affixed thereon at a salary or for a fee, commission, or other consideration;

(IX) Negotiating or attempting or offering to negotiate the listing, sale, purchase, exchange, or lease of a business or business opportunity or the goodwill thereof or any interest therein when such act or transaction involves, directly or indirectly, any change in the ownership or interest in real estate, or in a leasehold interest or estate, or in a business or business opportunity which owns an interest in real estate or in a leasehold unless such act is performed by any broker-dealer licensed under the provisions of article 51 of title 11, C.R.S., who is actually engaged generally in the business of offering, selling, purchasing, or trading in

securities or any officer, partner, salesperson, employee, or other authorized representative or agent thereof;

(X) Soliciting a fee or valuable consideration from a prospective tenant for furnishing information concerning the availability of real property, including apartment housing which may be leased or rented as a private dwelling, abode, or place of residence. Any person, firm, partnership, limited liability company, association, or corporation or any employee or authorized agent thereof engaged in the act of soliciting a fee or valuable consideration from any person other than a prospective tenant for furnishing information concerning the availability of real property, including apartment housing which may be leased or rented as a private dwelling, abode, or place of residence, is exempt from this definition of "real estate broker" or "broker". This exemption applies only in respect to the furnishing of information concerning the availability of real property.

(b) "Real estate broker" does not apply to any of the following:

(I) Any attorney-in-fact acting without compensation under a power of attorney, duly executed by an owner of real estate, authorizing the consummation of a real estate transaction;

(II) Any public official in the conduct of his or her official duties;

(III) Any receiver, trustee, administrator, conservator, executor, or guardian acting under proper authorization;

(IV) Any person, firm, partnership, limited liability company, or association acting personally or a corporation acting through its officers or regular salaried employees, on behalf of that person or on its own behalf as principal in acquiring or in negotiating to acquire any interest in real estate;

(V) An attorney-at-law in connection with his or her representation of clients in the practice of law;

(VI) Any person, firm, partnership, limited liability company, association, or corporation, or any employee or authorized agent thereof, engaged in the act of negotiating, acquiring, purchasing, assigning, exchanging, selling, leasing, or dealing in oil and gas or other mineral leases or interests therein or other severed mineral or royalty interests in real property, including easements, rights-of-way, permits, licenses, and any other interests in real property for or on behalf of a third party, for the purpose of, or facilities related to, intrastate and interstate pipelines for oil, gas, and other petroleum products, flow lines, gas gathering systems, and natural gas storage and distribution;

(VII) A natural person acting personally with respect to property owned or leased by that person or a natural person who is a general partner of a partnership, a manager of a limited liability company, or an owner of twenty percent or more of such partnership or limited liability company, and authorized to sell or lease property owned by such partnership or limited liability company, except as provided in subsection (1.5) of this section;

(VIII) A corporation with respect to property owned or leased by it, acting through its officers or regular salaried employees, when such acts are incidental and necessary in the ordinary course of the corporation's business activities of a non-real estate nature (but only if the corporation is not engaged in the business of land transactions), except as provided in subsection (1.5) of this section. For the purposes of this subparagraph (VIII), the term "officers or regular salaried employees" means persons regularly employed who derive not less than seventy-five percent of their compensation from the corporation in the form of salaries.

(IX) A principal officer of any corporation with respect to property owned by it when such property is located within the state of Colorado and when such principal officer is the owner of twenty percent or more of the outstanding stock of such corporation, except as provided in subsection (1.5) of this section, but this exemption does not include any corporation selling previously occupied one-family and two-family dwellings;

(X) A sole proprietor, corporation, partnership, or limited liability company, acting through its officers or partners, or through regular salaried employees, with respect to property owned or leased by such sole proprietor, corporation, partnership, or limited liability company on which has been or will be erected a commercial, industrial, or residential building which has not been previously occupied and where the consideration paid for such property includes the cost of such building, payable, less deposit or down payment, at the time of conveyance of such property and building;

(XI) (A) A corporation, partnership, or limited liability company acting through its officers, partners, managers, or regularly salaried employees receiving no additional compensation therefor, or its wholly owned subsidiary or officers, partners, managers, or regular salaried employees thereof receiving no additional compensation, with respect to property located in Colorado which is owned or leased by such corporation, partnership, or limited liability company and on which has been or will be erected a shopping center, office building, or industrial park when such shopping center, office building, or industrial park is sold, leased, or otherwise offered for sale or lease in the ordinary course of the business of such corporation, partnership, limited liability company, or wholly owned subsidiary.

(B) For the purposes of this subparagraph (XI), "shopping center" means land on which buildings are or will be constructed which are used for commercial and office purposes around or adjacent to which off-street parking is provided; "office building" means a building used primarily for office purposes; and "industrial park" means land on which buildings are or will be constructed for warehouse, research, manufacturing, processing, or fabrication purposes.

(XII) A regularly salaried employee of an owner of an apartment building or complex who acts as an on-site manager of such an apartment building or complex. This exemption applies only in respect to the customary duties of an on-site manager performed for his or her employer.

(XIII) A regularly salaried employee of an owner of condominium units who acts as an on-site manager of such units. For purposes of this subparagraph (XIII) only, the term "owner" includes a homeowners' association formed and acting pursuant to its recorded condominium declaration and bylaws. This exemption applies only in respect to the customary duties of an on-site manager performed for his or her employer.

(XIV) A real estate broker licensed in another state who receives a share of a commission or finder's fee on a cooperative transaction from a licensed Colorado real estate broker;

(XV) A sole proprietor, corporation, partnership, or limited liability company, acting through its officers, partners, or regularly salaried employees, with respect to property located in Colorado, where the purchaser of such property is in the business of developing land for residential, commercial, or industrial purposes;

(XVI) Any person, firm, partnership, limited liability company, association, or corporation, or any employee or authorized agent thereof, engaged in the act of negotiating, purchasing, assigning, exchanging, selling, leasing, or acquiring rights-of-way, permits, licenses,

and any other interests in real property for or on behalf of a third party for the purpose of, or facilities related to:

(A) Telecommunication lines;

(B) Wireless communication facilities;

(C) CATV;

(D) Electric generation, transmission, and distribution lines;

(E) Water diversion, collection, distribution, treatment, and storage or use; and

(F) Transportation, so long as such person, firm, partnership, limited liability company, association, or corporation, including any employee or authorized agent thereof, does not represent any displaced person or entity as an agent thereof in the purchase, sale, or exchange of real estate, or an interest therein, resulting from residential or commercial relocations required under any transportation project, regardless of the source of public funding.

Source: L. 29: p. 529, § 2. **CSA:** C. 15, § 29. **CRS 53:** § 117-1-2. **C.R.S. 1963:** § 117-1-2. **L. 65:** p. 934, § 1. **L. 72:** pp. 517, 616, §§ 1, 145. **L. 73:** p. 1145, § 1. **L. 75:** (4)(g), (4)(j), and (4)(k) amended, p. 516, § 1, effective July 16. **L. 77:** (4)(l) amended and (4)(m) and (4)(n) added, p. 772, § 1, effective June 9. **L. 79:** (2)(j) added, p. 559, § 1, effective June 18; (4)(l) and (4)(m) amended, p. 562, § 1, effective June 31. **L. 80:** (2)(j) amended, p. 793, § 43, effective June 5. **L. 82:** (4)(o) added, p. 265, § 2, effective March 25. **L. 83:** (4)(o) amended, p. 2047, § 2, effective October 14. **L. 85:** (4)(j) amended, p. 561, § 2, effective July 1. **L. 91:** (1), IP(2), (2)(i), (2)(j), (3), IP(4), (4)(d), (4)(f), (4)(g), (4)(j), (4)(k), and (4)(o) amended and (1.5) added, p. 1619, § 1, effective July 1. **L. 92:** (2)(i), (3), (4)(g), (4)(h), and (4)(i) amended, p. 2169, § 12, effective June 2. **L. 94:** (4)(j) amended and (4)(p) added, p. 555, § 1, effective April 6; (4)(o) repealed, p. 704, § 4, effective April 19. **L. 95:** (1.7) added, p. 815, § 38, effective May 24. **L. 96:** (1) amended and (1.3) added, p. 414, § 1, effective January 1, 1997. **L. 99:** (4)(f) amended and (4)(q) added, p. 714, § 1, effective July 1. **L. 2008:** Entire section amended, p. 498, § 7, effective April 17. **L. 2010:** (1.2) added, (HB 10-1278), ch. 365, p. 1721, § 1, effective January 1, 2011.

Cross references: For the exemption of real estate brokers and sales representatives from certain provisions of the "Colorado Securities Act", see §§ 11-51-402 (3) and 11-51-405 (2).

12-61-102. License required. It is unlawful for any person, firm, partnership, limited liability company, association, or corporation to engage in the business or capacity of real estate broker in this state without first having obtained a license from the real estate commission. No person shall be granted a license until such person establishes compliance with the provisions of this part 1 concerning education, experience, and testing; truthfulness and honesty and otherwise good moral character; and, in addition to any other requirements of this section, competency to transact the business of a real estate broker in such manner as to safeguard the interest of the public and only after satisfactory proof of such qualifications, together with the application for such license, is filed in the office of the commission. In determining such person's character, the real estate commission shall be governed by section 24-5-101, C.R.S.

Source: L. 29: p. 528, § 1. **CSA:** C. 15, § 28. **CRS 53:** § 117-1-1. **C.R.S. 1963:** § 117-1-1. **L. 69:** p. 973, § 1. **L. 75:** Entire section amended, p. 517, § 2, effective July 16. **L. 81:** Entire

section amended, p. 861, § 1, effective May 28. **L. 85:** Entire section amended, p. 562, § 3, effective July 1. **L. 91:** Entire section amended, p. 1621, § 2, effective July 1. **L. 2008:** Entire section amended, p. 503, § 8, effective April 17.

12-61-103. Application for license - rules. (1) (a) All persons desiring to become real estate brokers shall apply to the real estate commission for a license under the provisions of this part 1. Application for a license as a real estate broker shall be made to the commission upon forms or in a manner prescribed by it.

(b) (I) Prior to submitting an application for a license pursuant to paragraph (a) of this subsection (1), each applicant shall submit a set of fingerprints to the Colorado bureau of investigation for the purpose of conducting a state and national fingerprint-based criminal history record check utilizing records of the Colorado bureau of investigation and the federal bureau of investigation. The applicant shall pay the fee established by the Colorado bureau of investigation for conducting the fingerprint-based criminal history record check to the bureau. Upon completion of the criminal history record check, the bureau shall forward the results to the real estate commission. The real estate commission may acquire a name-based criminal history record check for an applicant who has twice submitted to a fingerprint-based criminal history record check and whose fingerprints are unclassifiable.

(II) For purposes of this paragraph (b), "applicant" means an individual, or any person designated to act as broker for any partnership, limited liability company, or corporation pursuant to subsection (7) of this section.

(2) Every real estate broker licensed under this part 1 shall maintain a place of business within this state, except as provided in section 12-61-107. In case a real estate broker maintains more than one place of business within the state, the broker shall be responsible for supervising all licensed activities originating in such offices.

(3) The commission is authorized by this section to require and procure any such proof as is necessary in reference to the truthfulness, honesty, and good moral character of any applicant for a real estate broker's license or, if the applicant is a partnership, limited liability company, or corporation, of any partner, manager, director, officer, member, or stockholder if such person has, either directly or indirectly, a substantial interest in such applicant prior to the issuance of such license.

(4) (a) An applicant for a broker's license shall be at least eighteen years of age. The applicant must furnish proof satisfactory to the commission that the applicant has either received a degree from an accredited degree-granting college or university with a major course of study in real estate or has successfully completed courses of study, approved by the commission, at any accredited college or university or any private occupational school that has a certificate of approval from the private occupational school division in accordance with the provisions of article 59 of this title or that has been approved by the commission or licensed by an official state agency of any other state as follows:

(I) Forty-eight hours of classroom instruction or equivalent correspondent hours in real estate law and real estate practice; and

(II) Forty-eight hours of classroom instruction or equivalent correspondent hours in understanding and preparation of Colorado real estate contracts; and

(III) A total of seventy-two hours of instruction or equivalent correspondence hours from the following areas of study:

(A) Trust accounts and record keeping;

(B) Real estate closings;

(C) Current legal issues; and

(D) Practical applications.

(b) An applicant for a broker's license who has been licensed as a real estate broker in another jurisdiction shall be required to complete only the course of study comprising the subject matter areas described in subparagraphs (II) and (III)(B) of paragraph (a) of this subsection (4).

(c) An applicant for a broker's license who has been licensed as a real estate salesperson in another jurisdiction shall be required to complete only the course of study required in subparagraphs (II) and (III) of paragraph (a) of this subsection (4).

(d) (Deleted by amendment, L. 96, p. 414, § 2, effective January 1, 1997.)

(5) (Deleted by amendment, L. 96, p. 414, § 2, effective January 1, 1997.)

(6) (a) The applicant for a broker's license shall submit to and pass an examination designated to determine the competency of the applicant and prepared by or under the supervision of the real estate commission or its designated contractor. The commission may contract with an independent testing service to develop, administer, or grade examinations or to administer licensee records. The contract may allow the testing service to recover the costs of the examination and the costs of administering exam and license records from the applicant. The commission may contract separately for these functions and allow recovered costs to be collected and retained by a single contractor for distribution to other contractors. The commission shall have the authority to set the minimum passing score that an applicant must receive on the examination, and said score shall reflect the minimum level of competency required to be a broker. Said examination shall be given at such times and places as the commission prescribes. The examination shall include, but not be limited to, ethics, reading, spelling, basic mathematics, principles of land economics, appraisal, financing, a knowledge of the statutes and law of this state relating to deeds, trust deeds, mortgages, listing contracts, contracts of sale, bills of sale, leases, agency, brokerage, trust accounts, closings, securities, the provisions of this part 1, and the rules of the commission. The examination for a broker's license shall also include the preparation of a real estate closing statement.

(b) An applicant for a broker's license who has held a real estate license in another jurisdiction that administers a real estate broker's examination and who has been licensed for two or more years prior to applying for a Colorado license may be issued a broker's license if the applicant establishes that he or she possesses credentials and qualifications that are substantively equivalent to the requirements in Colorado for licensure by examination.

(c) In addition to all other applicable requirements, the following provisions apply to brokers that did not hold a current and valid broker's license on December 31, 1996:

(I) No such broker shall engage in an independent brokerage practice without first having served actively as a real estate broker for at least two years. The commission shall adopt rules requiring an employing broker to ensure that a high level of supervision is exercised over such a broker during such two-year period.

(II) No such broker shall employ another broker without first having completed twenty-four clock hours of instruction, or the equivalent in correspondence hours, as approved by the commission, in brokerage administration.

(III) Effective January 1, 2019, a broker shall not act as an employing broker without first demonstrating, in accordance with rules of the commission, experience and knowledge

sufficient to enable the broker to employ and adequately supervise other brokers, as appropriate to the broker's area of supervision. The commission's rules must set forth the method or methods by which the broker may demonstrate such experience and knowledge, either by documenting a specified number of transactions that the broker has completed or by other methods.

(7) (a) Real estate brokers' licenses may be granted to individuals, partnerships, limited liability companies, or corporations. A partnership, limited liability company, or corporation, in its application for a license, shall designate a qualified, active broker to be responsible for management and supervision of the licensed actions of the partnership, limited liability company, or corporation and all licensees shown in the commission's records as being in the employ of such entity. The application of the partnership, limited liability company, or corporation and the application of the broker designated by it shall be filed with the real estate commission.

(b) No license shall be issued to any partnership, limited liability company, or corporation unless and until the broker so designated by the partnership, limited liability company, or corporation submits to and passes the examination required by this part 1 on behalf of the partnership, limited liability company, or corporation. Upon such broker's successfully passing the examination and upon compliance with all other requirements of law by the partnership, limited liability company, or corporation, as well as by the designated broker, the commission shall issue a broker's license to the partnership, limited liability company, or corporation, which shall bear the name of such designated broker, and thereupon the broker so designated shall conduct business as a real estate broker only through the said partnership, limited liability company, or corporation and not for the broker's own account.

(c) If the person so designated is refused a license by the real estate commission or ceases to be the designated broker of such partnership, limited liability company, or corporation, such entity may designate another person to make application for a license. If such person ceases to be the designated broker of such partnership, limited liability company, or corporation, the director may issue a temporary license to prevent hardship for a period not to exceed ninety days to the licensed person so designated. The director may extend a temporary license for one additional period not to exceed ninety days upon proper application and a showing of good cause; if the director refuses, no further extension of a temporary license shall be granted except by the commission. If any broker or employee of any such partnership, limited liability company, or corporation, other than the one designated as provided in this section, desires to act as a real estate broker, such broker or employee shall first obtain a license as a real estate broker as provided in this section and shall pay the regular fee therefor.

(8) The broker designated to act as broker for any partnership, limited liability company, or corporation is personally responsible for the handling of any and all earnest money deposits or escrow or trust funds received or disbursed by said partnership, limited liability company, or corporation. In the event of any breach of duty by the said partnership, limited liability company, or corporation as a fiduciary, any person aggrieved or damaged by the said breach of fiduciary duty shall have a claim for relief against such partnership, limited liability company, or corporation, as well as against the designated broker, and may pursue said claim against the partnership, limited liability company, or corporation and the designated broker personally. The said broker may be held responsible and liable for damages based upon such breach of fiduciary duty as may be recoverable against the said partnership, limited liability company, or

corporation, and any judgment so obtained may be enforced jointly or severally against said broker personally and the said partnership, limited liability company, or corporation.

(9) No license for a broker registered as being in the employ of another broker shall be issued to a partnership, a limited liability company, or a corporation or under a fictitious name or trade name; except that a married woman may elect to use her birth name.

(10) No person shall be licensed as a real estate broker under more than one name, and no person shall conduct or promote a real estate brokerage business except under the name under which such person is licensed.

(11) Repealed.

(12) A licensed attorney shall take and pass the examination referred to in this section after having completed twelve hours of classroom instruction or equivalent correspondent hours in trust accounts, record keeping, and real estate closings.

Source: L. 29: p. 531, § 4. **CSA:** C. 15, § 32. **CRS 53:** § 117-1-5. **L. 55:** p. 711, § 1. **L. 63:** p. 763, § 3. **C.R.S. 1963:** § 117-1-5. **L. 69:** p. 974, § 4. **L. 75:** (2), (4), (6), (9), and (10) amended, p. 517, § 3, effective July 1; (4) R&RE, (5) amended, and (11) added, pp. 524, 525, §§ 1, 2, 3, effective July 1. **L. 77:** (11)(b) R&RE, p. 772, § 2, effective June 9. **L. 79:** (7)(c) R&RE and (9) amended, pp. 562, 563, §§ 2, 3, effective May 31; (11) repealed, p. 568, § 5, effective July 1. **L. 81:** IP(4)(a) and (5) amended, p. 851, § 25, effective July 1. **L. 85:** (3), IP(4)(a), (5), and (7)(c) amended, p. 562, § 4, effective July 1. **L. 86:** IP(4)(a), (4)(a)(II), (5), and (6) amended, (4)(a)(III) and (4)(b) R&RE, and (4)(c) and (4)(d) added, pp. 668, 670, §§ 1, 2, effective July 1. **L. 89:** (6)(a) amended, p. 734, § 1, effective July 1. **L. 90:** IP(4)(a) and IP(5)(a) amended, p. 1171, § 30, effective July 1. **L. 91:** Entire section amended, p. 1622, § 3, effective July 1. **L. 96:** (1), (2), (3), (4), (5), (6)(a), (6)(c), and (7)(c) amended and (12) added, p. 414, § 2, effective January 1, 1997. **L. 96:** (1) amended and (1.3) added, p. 414, § 1, effective January 1, 1997. **L. 99:** (6)(b) amended, p. 715, § 3, effective July 1. **L. 2001:** (1), IP(4)(a), (7), and (8) amended, p. 22, § 1, effective March 9. **L. 2002:** (1) amended, p. 973, § 7, effective June 1. **L. 2004:** (6)(a) amended, p. 1253, § 4, effective May 27. **L. 2005:** (1)(b)(I) amended, p. 1055, § 1, effective August 8. **L. 2008:** (1)(b)(I), (6)(b), (6)(c)(I), (6)(c)(II), (9), and (10) amended, pp. 514, 512, 503, §§ 37, 34, 9, effective April 17. **L. 2017:** (6)(c)(III) added, (SB 17-215), ch. 282, p. 1535, § 5, effective June 30.

Editor's note: Amendments to subsection (4) by House Bill 75-1402 and Senate Bill 75-274 were harmonized.

12-61-103.5. Transitional provisions - holders of existing salesperson's licenses. (Repealed)

Source: L. 96: Entire section added, p. 418, § 3, effective January 1, 1997. **L. 2008:** Entire section repealed, p. 503, § 10, effective April 17.

12-61-103.6. Errors and omissions insurance required - rules. (1) Every licensee under this part 1, except an inactive broker or an attorney licensee who maintains a policy of professional malpractice insurance that provides coverage for errors and omissions for their activities as a licensee under this part 1, shall maintain errors and omissions insurance to cover

all activities contemplated under parts 1 to 8 of this article. The division of real estate shall make the errors and omissions insurance available to all licensees by contracting with an insurer for a group policy after a competitive bid process in accordance with article 103 of title 24, C.R.S. A group policy obtained by the division of real estate must be available to all licensees with no right on the part of the insurer to cancel a licensee. A licensee may obtain errors and omissions insurance independently if the coverage complies with the minimum requirements established by the division of real estate.

(2) (a) If the division of real estate is unable to obtain errors and omissions insurance coverage to insure all licensees who choose to participate in the group program at a reasonable annual premium, as determined by the division of real estate, a licensee shall independently obtain the errors and omissions insurance required by this section.

(b) The division of real estate shall solicit and consider information and comments from interested persons when determining the reasonableness of annual premiums.

(3) The division of real estate shall determine the terms and conditions of coverage required under this section based on rules promulgated by the commission. The commission shall notify each licensee of the required terms and conditions at least thirty days before the annual premium renewal date as determined by the commission. Each licensee shall file a certificate of coverage showing compliance with the required terms and conditions with the commission by the annual premium renewal date, as determined by the division of real estate.

(4) In addition to all other powers and duties conferred upon the commission by this article, the commission shall adopt such rules as it deems necessary or proper to carry out the provisions of this section.

(5) (Deleted by amendment, L. 2008, p. 497, § 4, effective April 17, 2008.)

Source: L. 96: Entire section added, p. 1563, § 1, effective July 1. **L. 99:** (5) added, p. 716, § 4, effective July 1. **L. 2003:** (2) amended, p. 1971, § 1, effective August 6. **L. 2006:** (1) amended, p. 1588, § 4, effective July 1; (2)(a) amended, p. 1069, § 1, effective January 1, 2007. **L. 2008:** (1) and (5) amended, p. 497, § 4, effective April 17. **L. 2012:** (1) to (3) amended, (HB 12-1110), ch. 277, p. 1472, § 14, effective July 1, 2013.

12-61-104. Licenses - issuance - contents - display. (1) The commission shall make available for each licensee a license in such form and size as said commission shall prescribe and adopt. The real estate license shall show the name of the licensee and shall have imprinted thereon the seal, or a facsimile, of the department of regulatory agencies and, in addition to the foregoing, shall contain such other matter as said commission shall prescribe.

(2) and (3) (Deleted by amendment, L. 2001, p. 24, § 2, effective March 9, 2001.)

Source: L. 25: p. 427, § 7. **CSA:** C. 15, § 33. **CRS 53:** § 117-1-6. **L. 55:** p. 712, § 2. **L. 61:** p. 633, § 1. **L. 63:** p. 766, § 4. **C.R.S. 1963:** § 117-1-6. **L. 69:** p. 974, § 5. **L. 79:** (2) amended, p. 563, § 4, effective May 31. **L. 91:** Entire section amended, p. 1626, § 4, effective July 1. **L. 2001:** Entire section amended, p. 24, § 2, effective March 9.

12-61-105. Commission - compensation - immunity - subject to termination. (1) There is hereby created a commission of five members, appointed by the governor, which shall administer parts 1 and 4 of this article 61. This commission is known as the real estate

commission, also referred to in this part 1 as the "commission", and consists of three real estate brokers who have had not less than five years' experience in the real estate business in Colorado, one of whom has substantial experience in property management, and two representatives of the public at large. Members of the commission hold office for a period of three years. Upon the death, resignation, removal, or otherwise of any member of the commission, the governor shall appoint a member to fill out the unexpired term. The governor may remove any member for misconduct, neglect of duty, or incompetence.

(2) Each member of the commission shall receive the same compensation and reimbursement of expenses as those provided for members of boards and commissions in the division of professions and occupations pursuant to section 24-34-102 (13), C.R.S. Payment for all such per diem compensation and expenses shall be made out of annual appropriations from the division of real estate cash fund provided for in section 12-61-111.5.

(2.5) Members of the commission, consultants, expert witnesses, and complainants shall be immune from suit in any civil action based upon any disciplinary proceedings or other official acts they performed in good faith.

(3) No real estate broker's license shall be denied, suspended, or revoked except as determined by a majority vote of the members of the commission.

(4) The provisions of section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the real estate commission created by this section.

Source: L. 29: p. 530, § 3. **CSA:** C. 15, § 30. **CRS 53:** § 117-1-3. **L. 63:** p. 762, § 1. **C.R.S. 1963:** § 117-1-3. **L. 69:** p. 973, § 2. **L. 76:** (4) added, p. 625, § 31, effective July 1. **L. 79:** (1) amended, p. 567, § 3, and (2) repealed, p. 912, § 16, effective July 1. **L. 80:** (2) RC&RE, p. 793, § 44, effective June 5. **L. 83:** (3) amended, p. 588, § 1, effective April 26. **L. 89:** (2.5) added, p. 734, § 2, effective July 1. **L. 91:** (3) amended, p. 1627, § 5, effective July 1. **L. 2008:** (1) and (3) amended, pp. 512, 504, §§ 33, 11, effective April 17. **L. 2017:** (1) amended, (SB 17-294), ch. 264, p. 1387, § 17, effective May 25; (1) amended, (SB 17-215), ch. 282, p. 1535, § 6, effective June 30.

Editor's note: Amendments to subsection (1) by SB 17-215 and SB 17-294 were harmonized.

12-61-106. Division of real estate - director, clerks, and assistants. (1) The executive director of the department of regulatory agencies is authorized by this section to employ, subject to the provisions of the state personnel system laws of the state, a director of the division of real estate, who in turn shall employ such attorneys, deputies, investigators, clerks, and assistants as are necessary to discharge the duties imposed by parts 1 and 4 of this article 61. The division of real estate, which is a division in the department of regulatory agencies, and the director of the division shall exercise their powers and perform their duties and functions under the department of regulatory agencies as if they were transferred to the department by a **type 2** transfer.

(2) It is the duty of the director, personally, or his designee to aid in the administration and enforcement of parts 1 and 4 of this article 61 and in the prosecution of all persons charged with violating any of their provisions, to conduct audits of business accounts of licensees, to

perform such duties of the commission as the commission prescribes, and to act in behalf of the commission on such occasions and in such circumstances as the commission directs.

Source: L. 25: p. 432, § 11. **CSA:** C. 15, § 37. **CRS 53:** § 117-1-10. **L. 63:** p. 769, § 8. **C.R.S. 1963:** § 117-1-10. **L. 69:** p. 976, § 9. **L. 75:** Entire section amended, p. 518, § 4, effective July 16. **L. 79:** (1) and (2) amended, p. 559, § 2, effective May 18; (2) amended, p. 563, § 5, effective May 31. **L. 2008:** (1) amended, p. 516, § 43, effective April 17. **L. 2010:** (1) amended, (HB 10-1141), ch. 280, p. 1283, § 1, effective August 11. **L. 2017:** Entire section amended, (SB 17-294), ch. 264, p. 1388, § 18, effective May 25.

Editor's note: Amendments to subsection (2) by Senate Bill 79-119 and House Bill 79-1268 were harmonized.

12-61-107. Resident licensee - nonresident licensee - consent to service. (1) A nonresident of the state may become a real estate broker in this state by conforming to all the conditions of this part 1; except that the nonresident broker shall not be required to maintain a place of business within this state if that broker maintains a definite place of business in another state.

(2) If a broker has no registered agent registered in this state, such registered agent is not located under its registered agent name at its registered agent address, or the registered agent cannot with reasonable diligence be served, the broker may be served by registered mail or by certified mail, return receipt requested, addressed to the entity at its principal address. Service is perfected under this subsection (2) at the earliest of:

(a) The date the broker receives the process, notice, or demand;

(b) The date shown on the return receipt, if signed by or on behalf of the broker; or

(c) Five days after mailing.

(3) All such applications shall contain a certification that the broker is authorized to act for the corporation.

Source: L. 25: p. 436, § 18. **CSA:** C. 15, § 44. **CRS 53:** § 117-1-17. **L. 55:** p. 716, § 6. **C.R.S. 1963:** § 117-1-17. **L. 75:** (2) and (3) amended, p. 518, § 5, effective July 16. **L. 79:** (3) amended, p. 439, § 23, effective July 1. **L. 89:** (1) amended, p. 735, § 3, effective July 1. **L. 91:** (1) amended, p. 1627, § 6, effective July 1. **L. 96:** (1) amended, p. 419, § 4, effective January 1, 1997. **L. 2001:** (2) and (3) amended, p. 24, § 3, effective March 9. **L. 2008:** (2) and (3) amended, p. 497, § 5, effective April 17.

12-61-108. Record of licensees - publications. The commission shall maintain a record of the names and addresses of all licensees licensed under the provisions of parts 1 and 4 of this article, together with such other information relative to the enforcement of said provisions as deemed by the commission to be necessary. Publication of the record and of any other information circulated in quantity outside the executive branch shall be in accordance with the provisions of section 24-1-136, C.R.S.

Source: L. 25: p. 437, § 19. **CSA:** C. 15, § 45. **CRS 53:** § 117-1-18. **L. 63:** p. 774, § 14. **C.R.S. 1963:** § 117-1-18. **L. 64:** p. 167, § 126. **L. 69:** p. 977, § 13. **L. 75:** Entire section

amended, p. 518, § 6, effective July 16. **L. 79:** Entire section amended, p. 560, § 3, effective May 18; entire section amended, p. 563, § 6, effective May 31; entire section amended, p. 440, § 24, effective July 1. **L. 83:** Entire section amended, p. 831, § 28, effective July 1. **L. 2001:** Entire section amended, p. 25, § 4, effective March 9.

Editor's note: Amendments to this section by Senate Bill 79-119 were harmonized with Senate Bill 79-293 and House Bill 79-1268.

12-61-108.5. Compilation and publication of passing rates per educational institution for real estate licensure examinations - rules. (1) The commission shall have the authority to obtain information from each educational institution authorized to offer courses in real estate for the purpose of compiling the number of applicants who pass the real estate licensure examination from each educational institution. The information shall include the name of each student who attended the institution and a statement of whether the student completed the necessary real estate courses required for licensure. The commission shall have access to such other information as necessary to accomplish the purpose of this section. For the purposes of this section, an "applicant" is a student who completed the required education requirements and who applied for and sat for the licensure examination.

(2) The commission shall compile the information obtained in subsection (1) of this section with applicant information retained by the commission. Specifically, the commission shall compile whether the student applied for the licensure examination and whether the applicant passed the licensure examination. The commission shall create statistical data setting forth:

(a) The name of the educational institution;

(b) The number of students who completed the necessary real estate course required for licensure;

(c) Whether the student registered and sat for the licensure examination; and

(d) The number of those applicants who passed the licensure examination.

(3) The commission shall publish this statistical data and make it available to the public quarterly.

(4) The commission shall retain the statistical data for three years.

(5) Specific examination scores for an applicant will be kept confidential by the commission unless the applicant authorizes release of such information.

(6) The commission may promulgate rules for the administration of this section.

Source: L. 99: Entire section added, p. 716, § 5, effective July 1.

12-61-109. Change of license status - inactive - cancellation. (1) Immediate notice shall be given in a manner acceptable to the commission by each licensee of any change of business location or employment. A change of business address or employment without notification to the commission shall automatically inactivate the licensee's license.

(2) A broker who transfers to the address of another broker or a broker applicant who desires to be employed by another broker shall inform the commission if said broker is to be in the employ of the other broker. The employing broker shall have the control and custody of the employed broker's license. The employed broker may not act on behalf of said broker or as

broker for a partnership, limited liability company, or corporation during the term of such employment; but this shall not affect the employed broker's right to transfer to another employing broker or to a location where the employed broker may conduct business as an independent broker or as a broker acting for a partnership, limited liability company, or corporation.

(3) In the event that any licensee is discharged by or terminates employment with a broker, it shall be the joint duty of both such parties to immediately notify the commission. Either party may furnish such notice in a manner acceptable to the commission. The party giving notice shall notify the other party in person or in writing of the termination of employment.

(4) It is unlawful for any such licensee to perform any of the acts authorized under the license in pursuance of this part 1, either directly or indirectly, on or after the date that employment has been terminated. When any real estate broker whose employment has been terminated is employed by another real estate broker, the commission shall, upon proper notification, enter such change of employment in the records of the commission. Not more than one employer or place of employment shall be shown for any real estate broker for the same period of time.

Source: L. 25: p. 428, § 8. **CSA:** C. 15, § 34. **CRS 53:** § 117-1-7. **L. 55:** p. 713, § 3. **L. 63:** p. 767, § 5. **C.R.S. 1963:** § 117-1-7. **L. 69:** p. 974, § 6. **L. 75:** (2) and (4) amended, p. 519, § 7, effective July 16. **L. 79:** (3) R&RE and (4) amended, p. 564, §§ 7, 8, effective May 31. **L. 91:** Entire section amended, p. 1627, § 7, effective July 1. **L. 2001:** (1) and (3) amended, p. 25, § 5, effective March 9. **L. 2008:** (2) and (4) amended, p. 504, § 12, effective April 17.

12-61-110. License fees - partnership, limited liability company, and corporation licenses - rules. (1) Fees established pursuant to section 12-61-111.5 shall be charged by and paid to the commission or the agent for the commission for the following:

(a) and (b) (Deleted by amendment, L. 96, p. 419, § 5, effective January 1, 1997.)

(c) Each broker's examination;

(d) Each broker's original application and license;

(e) (Deleted by amendment, L. 96, p. 419, § 5, effective January 1, 1997.)

(f) Each renewal of a broker's license;

(g) (Deleted by amendment, L. 96, p. 419, § 5, effective January 1, 1997.)

(h) Any change of name, address, or employing broker requiring a change in commission records;

(i) A new application which shall be submitted when a licensed real estate broker wishes to become the broker acting for a partnership, a limited liability company, or a corporation.

(2) The proper fee shall accompany each application for licensure. The fee shall not be refundable. Failure by the person taking an examination to file the appropriate broker's application within one year of the date such person passed the examination will automatically cancel the examination, and all rights to a passing score will be terminated.

(3) Each real estate broker's license granted to an individual shall entitle such individual to perform all the acts contemplated by this part 1, without any further application on his part and without the payment of any fee other than the fees specified in this section.

(4) (a) (I) The commission shall require that any person licensed under this part 1, whether on an active or inactive basis, renew the license on or before December 31 of every third

year after issuance; except that an initial license issued under this part 1 on or after April 23, 2018, expires at 12 midnight on December 31 of the year in which it was issued.

(II) Renewal is conditioned upon fulfillment of the continuing education requirements set forth in section 12-61-110.5. For persons renewing or reinstating an active license, written certification verifying completion for the previous licensing period of the continuing education requirements set forth in section 12-61-110.5 must accompany and be submitted to the commission with the application for renewal or reinstatement. For persons who did not submit certification verifying compliance with section 12-61-110.5 at the time a license was renewed or reinstated on an inactive status, written certification verifying completion for the previous licensing period of the continuing education requirements set forth in that section must accompany and be submitted with any future application to reactivate the license. The commission may, by rule, establish procedures to facilitate such a renewal. In the absence of any reason or condition that might warrant the refusal of the granting of a license or the revocation thereof, the commission shall issue a new license upon receipt by the commission of the written request of the applicant and the appropriate fees required by this section. Applications for renewal will be accepted thirty days prior to January 1.

(III) A person who fails to renew a license before January 1 of the year succeeding the year of the expiration of the license may reinstate the license as follows:

(A) If proper application is made within thirty-one days after the date of expiration, by payment of the regular renewal fee;

(B) If proper application is made more than thirty-one days but within one year after the date of expiration, by payment of the regular renewal fee and payment of a reinstatement fee equal to one-half the regular renewal fee;

(C) If proper application is made more than one year but within three years after the date of expiration, by payment of the regular renewal fee and payment of a reinstatement fee equal to the regular renewal fee.

(IV) The commission may, by rule, establish procedures to facilitate the transition of the reinstatement license periods described in subsections (4)(a)(III)(A) to (4)(a)(III)(C) of this section from an anniversary expiration date to a December 31 expiration date.

(a.5) Repealed.

(b) Any reinstated license shall be effective only as of the date of reinstatement. Any person who fails to apply for reinstatement within three years after the expiration of a license shall, without exception, be treated as a new applicant for licensure.

(c) All reinstatement fees shall be transmitted to the state treasurer, who shall credit same to the division of real estate cash fund, as established by section 12-61-111.5.

(5) The suspension, expiration, or revocation of a real estate broker's license shall automatically inactivate every real estate broker's license where the holder of such license is shown in the commission records to be in the employ of the broker whose license has expired or has been suspended or revoked pending notification to the commission by the employed licensee of a change of employment.

(6) (Deleted by amendment, L. 91, p. 1628, § 8, effective July 1, 1991.)

Source: L. 25: p. 429, § 9. **CSA:** C. 15, § 35. **CRS 53:** § 117-1-8. **L. 55:** p. 714, § 4. **L. 61:** pp. 634, 635, §§ 2, 3. **L. 63:** pp. 768, 775, §§ 6, 17. **C.R.S. 1963:** § 117-1-8. **L. 69:** p. 975, § 7. **L. 75:** (4) and (5) amended, p. 519, § 8, effective July 16. **L. 77:** (4) amended, p. 775, § 1,

effective June 9. **L. 79:** (4) amended, p. 564, § 9, effective May 31; (1) R&RE, p. 570, § 1, effective July 1. **L. 83:** (2) and (4) amended, p. 588, § 2, effective April 26. **L. 85:** (2) amended, p. 563, § 5, effective July 1. **L. 86:** (4) amended, p. 671, § 3, effective July 1. **L. 88:** (4)(a)(II) amended, p. 1430, § 7, effective June 11. **L. 89:** (4)(a.5) amended, p. 735, § 4, effective July 1. **L. 90:** IP(4)(a) and (4)(a)(III) amended, p. 831, § 1, and (4)(a.5) repealed, p. 834, § 4, effective April 24. **L. 91:** IP(1), (1)(a), (1)(b), (1)(e), (1)(h), (1)(i), (2), (5), and (6) amended, pp. 1627, 1628, § 8, effective July 1. **L. 96:** (1), (2), and (4)(b) amended, p. 419, § 5, effective January 1, 1997. **L. 2001:** (5) amended, p. 25, § 6, effective March 9. **L. 2005:** (4)(c) amended, p. 625, § 6, effective May 27; IP(4)(a) amended, p. 1290, § 1, effective July 1. **L. 2008:** IP(4)(a) and (5) amended, pp. 514, 505, §§ 38, 13, effective April 17. **L. 2017:** IP(4)(a) amended, (SB 17-215), ch. 282, p. 1535, § 7, effective June 30. **L. 2018:** (1)(f) and (4)(a) amended, (HB 18-1227), ch. 154, p. 1088, § 1, effective April 23.

12-61-110.5. Renewal of license - continuing education requirement. (1) A broker applying for renewal of a license pursuant to section 12-61-110 (4) shall include with such application a certified statement verifying successful completion of real estate courses in accordance with the following schedule:

(a) and (b) Repealed.

(c) For licensees applying for renewal of a three-year license, passage within the previous three years of the Colorado portion of the real estate exam or completion of a minimum of twenty-four hours of credit, twelve of which must be the credits developed by the commission pursuant to subsection (2) of this section.

(d) For licensees applying for renewal of a license that expires less than three years after it was issued, passage within the license period of the Colorado portion of the real estate exam or completion of a minimum of twenty-four hours of credit, at least eight of which must be the credits developed by the commission pursuant to subsection (2) of this section.

(2) The real estate commission shall develop twelve hours of credit designed to assure reasonable currency of real estate knowledge by licensees, which credits shall include an update of the current statutes and the rules promulgated by the commission that affect the practice of real estate. If a licensee takes a course pursuant to rule 260 of the Colorado rules of civil procedure and the course concerns real property law, the licensee shall receive credit for the course toward the fulfillment of the licensee's continuing education requirements pursuant to this section. The credits shall be taken from an accredited Colorado college or university; a Colorado community college; a Colorado private occupational school holding a certificate of approval from the state board for community colleges and occupational education; or an educational institution or an educational service described in section 23-64-104. Successful completion of such credits shall require satisfactory passage of a written examination or written examinations of the materials covered. The examinations shall be audited by the commission to verify their accuracy and the validity of the grades given. The commission shall set the standards required for satisfactory passage of the examinations.

(3) All credits, other than the credits specified in subsection (2) of this section, shall be acquired from educational courses approved by the commission that contribute directly to the professional competence of a licensee. Such credits may be acquired through successful completion of instruction in one or more of the following subjects:

(a) Real estate law;

(b) Property exchanges;
(c) Real estate contracts;
(d) Real estate finance;
(e) Real estate appraisal;
(f) Real estate closing;
(g) Real estate ethics;
(h) Condominiums and cooperatives;
(i) Real estate time-sharing;
(j) Real estate marketing principles;
(k) Real estate construction;
(l) Land development;
(m) Real estate energy concerns;
(n) Real estate geology;
(o) Water and waste management;
(p) Commercial real estate;
(q) Real estate securities and syndications;
(r) Property management;
(s) Real estate computer principles;
(t) Brokerage administration and management;
(u) Agency; and
(v) Any other subject matter as approved by the real estate commission.

(4) A licensee applying for renewal of a license which expires on December 31 of the year in which it was issued is not subject to the education requirements set forth in subsection (1) of this section.

(5) The real estate commission shall promulgate rules and regulations to implement this section.

Source: L. 90: Entire section added, p. 832, § 2, effective April 24. **L. 91:** IP(1) and (2) amended, p. 1629, § 9, effective July 1. **L. 2004:** (1)(a) and (1)(b) repealed, p. 192, § 3, effective August 4. **L. 2007:** (2) amended, p. 52, § 1, effective March 14. **L. 2008:** IP(1), (1)(c), (2), and IP(3) amended, p. 511, § 32, effective April 17. **L. 2017:** (2) amended, (HB 17-1239), ch. 261, p. 1203, § 6, effective August 9. **L. 2018:** IP(1) and (1)(c) amended and (1)(d) added, (HB 18-1227), ch. 154, p. 1089, § 2, effective April 23.

12-61-110.6. Study - repeal. (Repealed)

Source: L. 99: Entire section added, p. 715, § 2, effective July 1.

Editor's note: Subsection (3) provided for the repeal of this section, effective July 1, 2001. (See L. 99, p. 715.)

12-61-110.8. Renewal of license - fingerprint-based criminal history record check - repeal. (Repealed)

Source: L. 2005: Entire section added, p. 1291, § 2, effective July 1. **L. 2008:** (1) amended, p. 505, § 14, effective April 17.

Editor's note: Subsection (3) provided for the repeal of this section, effective July 1, 2008. (See L. 2005, p. 1291.)

12-61-111. Disposition of fees. All fees collected by the real estate commission under parts 1 and 4 of this article, not including administrative fees that are in the nature of an administrative fine and fees retained by contractors pursuant to contracts entered into in accordance with section 12-61-103 or 24-34-101, C.R.S., shall be transmitted to the state treasurer, who shall credit the same to the division of real estate cash fund. Pursuant to section 12-61-111.5, the general assembly shall make annual appropriations from said fund for expenditures of the commission incurred in the performance of its duties under parts 1 and 4 of this article. The commission may request an appropriation specifically designated for educational and enforcement purposes. The expenditures incurred by the commission under parts 1 and 4 of this article shall be made out of such appropriations upon vouchers and warrants drawn pursuant to law.

Source: L. 29: p. 533, § 5. **L. 35:** p. 963, § 1. **CSA:** C. 15, § 36. **L. 41:** p. 626, § 6. **CRS 53:** § 117-1-9. **L. 55:** p. 715, § 5. **L. 63:** p. 768, § 7. **C.R.S. 1963:** § 117-1-9. **L. 69:** p. 976, § 8. **L. 73:** p. 1376, § 40. **L. 75:** Entire section amended, p. 520, § 9, effective July 16. **L. 79:** Entire section amended, p. 560, § 4, effective May 18; entire section amended, p. 570, § 5, effective July 1. **L. 91:** Entire section amended, p. 1629, § 10, effective July 1. **L. 2004:** Entire section amended, p. 1254, § 5, effective May 27. **L. 2008:** Entire section amended, p. 515, § 39, effective April 17.

Editor's note: Amendments to this section by Senate Bill 79-119 and House Bill 79-1231 were harmonized.

12-61-111.5. Fee adjustments - cash fund created. (1) This section applies to all activities of the division under parts 1, 4, 7, 9, and 10 of this article 61.

(2) (a) (I) The division shall propose, as part of its annual budget request, an adjustment in the amount of each fee that it is authorized by law to collect under parts 1, 4, 7, 9, and 10 of this article 61. The budget request and the adjusted fees for the division must reflect direct and indirect costs.

(II) The costs of the HOA information and resource center, created in section 12-61-406.5, shall be paid from the division of real estate cash fund created in this section. The division of real estate shall estimate the direct and indirect costs of operating the HOA information and resource center and shall establish the amount of the annual registration fee to be collected under section 38-33.3-401. The amount of the registration fee shall be sufficient to recover these costs, subject to a maximum limit of fifty dollars.

(b) (I) Based upon the appropriation made and subject to the approval of the executive director of the department of regulatory agencies, the division of real estate shall adjust its fees so that the revenue generated from the fees approximates its direct and indirect costs incurred in administering the programs and activities from which the fees are derived. The fees shall remain

in effect for the fiscal year for which the budget request applies. All fees collected by the division, not including fees retained by contractors pursuant to contracts entered into in accordance with section 12-61-103 or 24-34-101, shall be transmitted to the state treasurer, who shall credit the same to the division of real estate cash fund, which fund is hereby created. All money credited to the division of real estate cash fund shall be used as provided in this section or in section 12-61-111 and shall not be deposited in or transferred to the general fund of this state or any other fund.

(II) Repealed.

(c) Beginning July 1, 1979, and each July 1 thereafter, whenever moneys appropriated to the division for its activities for the prior fiscal year are unexpended, said moneys shall be made a part of the appropriation to the division for the next fiscal year, and such amount shall not be raised from fees collected by the division. If a supplemental appropriation is made to the division for its activities, its fees, when adjusted for the fiscal year next following that in which the supplemental appropriation was made, shall be adjusted by an additional amount which is sufficient to compensate for such supplemental appropriation. Funds appropriated to the division in the annual long appropriations bill shall be designated as a cash fund and shall not exceed the amount anticipated to be raised from fees collected by the division.

Source: L. 79: Entire section added, p. 571, § 6, effective July 1. **L. 89:** (1) and (2)(a) amended, p. 735, § 5, effective July 1. **L. 90:** Entire section amended, p. 845, § 2, effective July 1. **L. 2004:** (2)(b) amended, p. 1254, § 6, effective May 27. **L. 2010:** (2)(a) amended, (HB 10-1278), ch. 365, p. 1721, § 2, effective January 1, 2011. **L. 2013:** (1) and (2)(a)(I) amended, (HB 13-1277), ch. 352, p. 2054, § 5, effective January 1, 2015. **L. 2015:** (2)(a)(II) amended, (SB 15-264), ch. 259, p. 948, § 26, effective August 5. **L. 2017:** (1) and (2)(a)(I) amended, (SB 17-294), ch. 264, p. 1389, § 20, effective May 25; (1), (2)(a), and (2)(b) amended, (SB 17-215), ch. 282, p. 1536, § 8, effective June 30. **L. 2018:** (2)(b)(II)(A) repealed, (HB 18-1291), ch. 273, p. 1688, § 2, effective May 29.

Editor's note: (1) Amendments to subsections (1) and (2)(a)(I) by SB 17-215 and SB 17-294 were harmonized.

(2) Subsection (2)(b)(II)(B) provided for the repeal of subsection (2)(b)(II), effective July 1, 2018. (See L. 2017, p. 1536.)

12-61-112. Records - evidence - inspection. (1) The executive director of the department of regulatory agencies shall adopt a seal by which all proceedings authorized under parts 1 and 4 of this article 61 shall be authenticated. Copies of records and papers in the office of the commission or department of regulatory agencies relating to the administration of parts 1 and 4 of this article 61, when duly certified and authenticated by the seal, shall be received as evidence in all courts equally and with like effect as the originals. All records kept in the office of the commission or department of regulatory agencies, under authority of parts 1 and 4 of this article 61, must be open to public inspection at such time and in such manner as may be prescribed by rules formulated by the commission.

(2) Repealed.

(3) The commission shall not be required to maintain or preserve licensing history records of any person licensed under the provisions of this part 1 for any period of time longer than seven years.

Source: L. 27: p. 583, § 3. **CSA:** C. 15, § 31. **CRS 53:** § 117-1-4. **L. 63:** p. 763, § 2. **C.R.S. 1963:** § 117-1-4. **L. 64:** p. 167, § 125. **L. 69:** p. 974, § 3. **L. 75:** Entire section amended, p. 520, § 10, effective July 16. **L. 79:** (1) amended, p. 560, § 5, effective May 18. **L. 83:** (3) added, p. 589, § 3, effective April 26; (2) amended, p. 832, § 29, effective July 1. **L. 96:** (2) repealed, p. 1227, § 37, effective August 7. **L. 2017:** (1) amended, (SB 17-294), ch. 264, p. 1389, § 21, effective May 25.

Cross references: For the legislative declaration contained in the 1996 act repealing subsection (2), see section 1 of chapter 237, Session Laws of Colorado 1996.

12-61-113. Investigation - revocation - actions against licensee or applicant - definition - repeal. (1) The commission, upon its own motion, may, and, upon the complaint in writing of any person, shall, investigate the activities of any licensee or any person who assumes to act in the capacity of a licensee within the state, and the commission, after holding a hearing pursuant to section 12-61-114, has the power to impose an administrative fine not to exceed two thousand five hundred dollars for each separate offense and to censure a licensee, to place the licensee on probation and to set the terms of probation, or to temporarily suspend a license, or permanently revoke a license, when the licensee has performed, is performing, or is attempting to perform any of the following acts and is guilty of:

(a) Knowingly making any misrepresentation or knowingly making use of any false or misleading advertising;

(b) Making any promise of a character which influences, persuades, or induces another person when he could not or did not intend to keep such promise;

(c) Knowingly misrepresenting or making false promises through agents, advertising, or otherwise;

(c.5) Violating any provision of the "Colorado Consumer Protection Act", article 1 of title 6, C.R.S.;

(d) Acting for more than one party in a transaction without the knowledge of all parties thereto;

(e) Representing or attempting to represent a real estate broker other than the licensee's employer without the express knowledge and consent of that employer;

(f) In the case of a broker registered as in the employ of another broker, failing to place, as soon after receipt as is practicably possible, in the custody of that licensed broker-employer any deposit money or other money or fund entrusted to the employee by any person dealing with the employee as the representative of that licensed broker-employer;

(g) Failing to account for or to remit, within a reasonable time, any moneys coming into the licensee's possession that belong to others, whether acting as real estate brokers or otherwise, and failing to keep records relative to said moneys, which records shall contain such information as may be prescribed by the rules of the commission relative thereto and shall be subject to audit by the commission;

(g.5) Converting funds of others, diverting funds of others without proper authorization, commingling funds of others with the broker's own funds, or failing to keep such funds of others in an escrow or a trustee account with some bank or recognized depository in this state, which account may be any type of checking, demand, passbook, or statement account insured by an agency of the United States government, and to so keep records relative to the deposit which contain such information as may be prescribed by the rules and regulations of the commission relative thereto, which records shall be subject to audit by the commission;

(h) Failing to provide the purchaser and seller of real estate with a closing statement of the transaction, containing such information as may be prescribed by the rules and regulations of the commission or failing to provide a signed duplicate copy of the listing contract and the contract of sale or the preliminary agreement to sell to the parties thereto;

(i) Failing to maintain possession, for future use or inspection by an authorized representative of the commission, for a period of four years, of the documents or records prescribed by the rules and regulations of the commission or to produce such documents or records upon reasonable request by the commission or by an authorized representative of the commission;

(j) Paying a commission or valuable consideration for performing any of the functions of a real estate broker, as described in this part 1, to any person not licensed under this part 1; except that a licensed broker may pay a finder's fee or a share of any commission on a cooperative sale when such payment is made to a real estate broker licensed in another state or country. If a country does not license real estate brokers, then the payee must be a citizen or resident of said country and represent that the payee is in the business of selling real estate in said country.

(k) Disregarding or violating any provision of this part 1 or part 8 of this article, violating any reasonable rule or regulation promulgated by the commission in the interests of the public and in conformance with the provisions of this part 1 or part 8 of this article; violating any lawful commission orders; or aiding and abetting a violation of any rule, regulation, commission order, or provision of this part 1 or part 8 of this article;

(l) Repealed.

(m) (I) Conviction of, entering a plea of guilty to, or entering a plea of nolo contendere to any crime in article 3 of title 18; parts 1, 2, 3, and 4 of article 4 of title 18; part 1, 2, 3, 4, 5, 7, 8, or 9 of article 5 of title 18; article 5.5 of title 18; parts 3, 4, 6, 7, and 8 of article 6 of title 18; parts 1, 3, 4, 5, 6, 7, and 8 of article 7 of title 18; part 3 of article 8 of title 18; article 15 of title 18; article 17 of title 18; section 18-18-404, 18-18-405, 18-18-406, 18-18-411, 18-18-412.5, 18-18-412.7, 18-18-412.8, 18-18-415, 18-18-416, 18-18-422, or 18-18-423; or any other like crime under Colorado law, federal law, or the laws of other states. A certified copy of the judgment of a court of competent jurisdiction of such conviction or other official record indicating that such plea was entered shall be conclusive evidence of such conviction or plea in any hearing under this part 1.

(II) As used in this subsection (1)(m), "conviction" includes the imposition of a deferred judgment or deferred sentence.

(m.5) Violating or aiding and abetting in the violation of the Colorado or federal fair housing laws;

(m.6) Failing to immediately notify the commission in writing of a conviction, plea, or violation pursuant to paragraph (m) or (m.5) of this subsection (1);

(n) Having demonstrated unworthiness or incompetency to act as a real estate broker by conducting business in such a manner as to endanger the interest of the public;

(o) In the case of a broker licensee, failing to exercise reasonable supervision over the activities of licensed employees;

(p) Procuring, or attempting to procure, a real estate broker's license or renewing, reinstating, or reactivating, or attempting to renew, reinstate, or reactivate, a real estate broker's license by fraud, misrepresentation, or deceit or by making a material misstatement of fact in an application for such license;

(q) Claiming, arranging for, or taking any secret or undisclosed amount of compensation, commission, or profit or failing to reveal to the licensee's principal or employer the full amount of such licensee's compensation, commission, or profit in connection with any acts for which a license is required under this part 1;

(r) Using any provision allowing the licensee an option to purchase in any agreement authorizing or employing such licensee to sell, buy, or exchange real estate for compensation or commission, except when such licensee, prior to or coincident with election to exercise such option to purchase, reveals in writing to the licensee's principal or employer the full amount of the licensee's profit and obtains the written consent of such principal or employer approving the amount of such profit;

(s) (I) Repealed.

(II) Effective on and after August 26, 2013, fraud, misrepresentation, deceit, or conversion of trust funds that results in the entry of a civil judgment for damages.

(t) Any other conduct, whether of the same or a different character than specified in this subsection (1), which constitutes dishonest dealing;

(u) Repealed.

(v) Having had a real estate broker's or a subdivision developer's license suspended or revoked in any jurisdiction, or having had any disciplinary action taken against the broker or subdivision developer in any other jurisdiction if the broker's or subdivision developer's action would constitute a violation of this subsection (1). A certified copy of the order of disciplinary action shall be prima facie evidence of such disciplinary action.

(w) Failing to keep records documenting proof of completion of the continuing education requirements in accordance with section 12-61-110.5 for a period of four years from the date of compliance with said section;

(x) (I) Violating any provision of section 12-61-113.2.

(II) In addition to any other remedies available to the commission pursuant to this title, after notice and a hearing pursuant to section 24-4-105, C.R.S., the commission may assess a penalty for a violation of section 12-61-113.2 or of any rule promulgated pursuant to section 12-61-113.2. The penalty shall be the amount of remuneration improperly paid and shall be transmitted to the state treasurer and credited to the general fund.

(y) Within the last five years, having a license, registration, or certification issued by Colorado or another state revoked or suspended for fraud, deceit, material misrepresentation, theft, or the breach of a fiduciary duty, and such discipline denied the person authorization to practice as:

(I) A mortgage broker or mortgage loan originator;

(II) A real estate broker or salesperson;

(III) A real estate appraiser, as defined by section 12-61-702 (11);

(IV) An insurance producer, as defined by section 10-2-103 (6), C.R.S.;

(V) An attorney;

(VI) A securities broker-dealer, as defined by section 11-51-201 (2), C.R.S.;

(VII) A securities sales representative, as defined by section 11-51-201 (14), C.R.S.;

(VIII) An investment advisor, as defined by section 11-51-201 (9.5), C.R.S.; or

(IX) An investment advisor representative, as defined by section 11-51-201 (9.6), C.R.S.

(1.5) Every person licensed pursuant to section 12-61-101 (2)(a)(X) shall give a prospective tenant a contract or receipt; and such contract or receipt shall include the address and telephone number of the real estate commission in prominent letters and shall state that the regulation of rental location agents is under the purview of the real estate commission.

(2) In the event a firm, partnership, limited liability company, association, or corporation operating under the license of a broker designated and licensed as representative of said firm, partnership, limited liability company, association, or corporation is guilty of any of the foregoing acts, the commission may suspend or revoke the right of the said firm, partnership, limited liability company, association, or corporation to conduct its business under the license of said broker, whether or not the designated broker had personal knowledge thereof and whether or not the commission suspends or revokes the individual license of said broker.

(3) Upon request of the commission, when any real estate broker is a party to any suit or proceeding, either civil or criminal, arising out of any transaction involving the sale or exchange of any interest in real property or out of any transaction involving a leasehold interest in the real property and when such broker is involved in such transaction in such capacity as a licensed broker, it shall be the duty of said broker to supply to the commission a copy of the complaint, indictment, information, or other initiating pleading and the answer filed, if any, and to advise the commission of the disposition of the case and of the nature and amount of any judgment, verdict, finding, or sentence that may be made, entered, or imposed therein.

(4) This part 1 shall not be construed to relieve any person from civil liability or criminal prosecution under the laws of this state.

(5) Complaints of record in the office of the commission and commission investigations, including commission investigative files, are closed to public inspection. Stipulations and final agency orders are public records subject to sections 24-72-203 and 24-72-204, C.R.S.

(6) When a complaint or an investigation discloses an instance of misconduct which, in the opinion of the commission, does not warrant formal action by the commission but which should not be dismissed as being without merit, the commission may send a letter of admonition by certified mail, return receipt requested, to the licensee against whom a complaint was made and a copy thereof to the person making the complaint, but the letter shall advise the licensee that the licensee has the right to request in writing, within twenty days after proven receipt, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based. If such request is timely made, the letter of admonition shall be deemed vacated, and the matter shall be processed by means of formal disciplinary proceedings.

(7) All administrative fines collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the division of real estate cash fund.

(8) Any application for licensure from a person whose license has been revoked shall not be considered until the passage of one year from the date of revocation.

(9) When the division of real estate becomes aware of facts or circumstances that fall within the jurisdiction of a criminal justice or other law enforcement authority upon investigation of the activities of a licensee, the division shall, in addition to the exercise of its authority under this part 1, refer and transmit such information, which may include originals or copies of documents and materials, to one or more criminal justice or other law enforcement authorities for investigation and prosecution as authorized by law.

Source: L. 25: p. 432, § 13. **CSA:** C. 15, § 39. **CRS 53:** § 117-1-12. **L. 63:** p. 769, § 10. **C.R.S. 1963:** § 117-1-12. **L. 69:** p. 976, § 10. **L. 71:** p. 1111, § 1. **L. 72:** p. 566, § 41. **L. 73:** p. 1147, § 1. **L. 75:** IP(1), (1)(f), (1)(g), (1)(m), and (1)(q) amended and (1)(g.5) added, p. 521, §§ 11, 12, effective July 16. **L. 77:** IP(1), (1)(i), (1)(m), and (1)(p) amended, p. 773, § 3, effective June 9. **L. 79:** (1)(u) added, p. 560, § 6, effective May 18. **L. 83:** (1)(m) and (3) amended, p. 589, § 4, effective April 26; (1)(j) amended, p. 591, § 1, effective May 20. **L. 85:** IP(1) amended and (1)(v) and (6) added, pp. 563, 564, §§ 6, 7, effective July 1. **L. 86:** (1)(u) repealed and (1.5) added, p. 1217, §§ 11, 12, effective July 1. **L. 87:** IP(1) amended and (7) added, p. 533, § 1, effective July 1. **L. 89:** IP(1), (1)(a), (1)(c), (1)(k), (1)(m), (1)(s), and (1)(v) amended, (1)(c.5) and (1)(m.5) added, and (1)(l) repealed, pp. 735, 744, §§ 6, 25, effective July 1. **L. 90:** (1)(p) amended and (1)(w) added, p. 834, § 3, effective April 24. **L. 91:** (1)(c), (1)(e), (1)(f), (1)(g) (1)(g.5), (1)(i), (1)(j), (1)(n), (1)(o), (1)(p), (1)(q), (1)(r), (1)(v), (2), (3), and (6) amended and (1)(m.6) added, p. 1629, § 11, effective July 1. **L. 93:** (1)(k) amended, p. 992, § 2, effective January 1, 1994. **L. 99:** (8) added, p. 717, § 6, effective July 1. **L. 2001:** (1)(i), (1)(m), (1)(w), and (2) amended, p. 25, § 7, effective March 9. **L. 2005:** (1)(s) and (7) amended, p. 625, § 7, effective May 27. **L. 2006:** (1)(x) added, p. 272, § 6, effective July 1; (9) added, p. 1069, § 2, effective January 1, 2007. **L. 2008:** (1)(c), (1)(f), (1)(g), (1)(j), (1)(m), (1)(n), (1)(p), (1)(v), (1.5), and (3) amended and (1)(y) added, pp. 505, 513, §§ 15, 36, 35, effective April 17. **L. 2009:** (1)(y)(I) amended, (HB 09-1085), ch. 303, p. 1638, § 3, effective August 5. **L. 2012:** (5) amended, (HB 12-1110), ch. 277, p. 1473, § 15, effective July 1, 2013. **L. 2013:** (1)(m) amended, (HB 13-1154), ch. 372, p. 2192, § 4, effective July 1. **L. 2014:** (1)(y)(III) amended, (SB 14-117), ch. 385, p. 1918, § 3, effective July 1. **L. 2017:** (1)(s)(II) amended, (SB 17-294), ch. 264, p. 1389, § 22, effective May 25; IP(1) and (1)(m) amended, (SB 17-215), ch. 282, p. 1537, § 9, effective June 30.

Editor's note: Subsection (1)(s)(I) provided for the repeal of subsection (1)(s)(I), effective August 26, 2013. On August 26, 2013, the revisor received the notice referred to in subsection (1)(s)(I) related to the repeal. For more information about the repeal and notice, see HB 05-1264. (L. 2005, p. 625.)

Cross references: (1) For an alternative disciplinary action for persons licensed pursuant to this part 1, see § 24-34-106.

(2) For the legislative declaration in the 2013 act amending subsection (1)(m), see section 1 of chapter 372, Session Laws of Colorado 2013.

12-61-113.2. Affiliated business arrangements - definitions - disclosures - enforcement and penalties - reporting - rules - investigation information shared with the division of insurance. (1) As used in this section, unless the context otherwise requires:

(a) "Affiliated business arrangement" means an arrangement in which:

(I) A provider of settlement services or an associate of a provider of settlement services has either an affiliate relationship with or a direct beneficial ownership interest of more than one percent in another provider of settlement services; and

(II) A provider of settlement services or the associate of a provider directly or indirectly refers settlement service business to another provider of settlement services or affirmatively influences the selection of another provider of settlement services.

(b) "Associate" means a person who has one or more of the following relationships with a person in a position to refer settlement service business:

(I) A spouse, parent, or child of such person;

(II) A corporation or business entity that controls, is controlled by, or is under common control with such person;

(III) An employer, officer, director, partner, franchiser, or franchisee of such person, including a broker acting as an independent contractor; or

(IV) Anyone who has an agreement, arrangement, or understanding with such person, the purpose or substantial effect of which is to enable the person in a position to refer settlement service business to benefit financially from referrals of such business.

(c) "Settlement service" means any service provided in connection with a real estate settlement including, but not limited to, the following:

(I) Title searches;

(II) Title examinations;

(III) The provision of title certificates;

(IV) Title insurance;

(V) Services rendered by an attorney;

(VI) The preparation of title documents;

(VII) Property surveys;

(VIII) The rendering of credit reports or appraisals;

(IX) Real estate appraisal services;

(X) Home inspection services;

(XI) Services rendered by a real estate broker;

(XII) Pest and fungus inspections;

(XIII) The origination of a loan;

(XIV) The taking of a loan application;

(XV) The processing of a loan;

(XVI) Underwriting and funding of a loan;

(XVII) Escrow handling services;

(XVIII) The handling of the processing; and

(XIX) Closing of settlement.

(2) (a) An affiliated business arrangement is permitted where the person referring business to the affiliated business arrangement receives payment only in the form of a return on an investment and where it does not violate the provisions of section 12-61-113.

(b) If a licensee or the employing broker of a licensee is part of an affiliated business arrangement when an offer to purchase real property is fully executed, the licensee shall disclose to all parties to the real estate transaction the existence of the arrangement. The disclosure shall be written, shall be signed by all parties to the real estate transaction, and shall comply with the

federal "Real Estate Settlement Procedures Act of 1974", as amended, 12 U.S.C. sec. 2601 et seq.

(c) A licensee shall not require the use of an affiliated business arrangement or a particular provider of settlement services as a condition of obtaining services from that licensee for any settlement service. For the purposes of this paragraph (c), "require the use" shall have the same meaning as "required use" in 24 CFR 3500.2 (b).

(d) No licensee shall give or accept any fee, kickback, or other thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or part of a settlement service involving an affiliated business arrangement shall be referred to any provider of settlement services.

(e) Nothing in this section shall be construed to prohibit payment of a fee to:

(I) An attorney for services actually rendered;

(II) A title insurance company to its duly appointed agent for services actually performed in the issuance of a policy of title insurance;

(III) A lender to its duly appointed agent for services actually performed in the making of a loan.

(f) Nothing in this section shall be construed to prohibit payment to any person of:

(I) A bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed;

(II) A fee pursuant to cooperative brokerage and referral arrangements or agreements between real estate brokers.

(g) It shall not be a violation of this section for an affiliated business arrangement:

(I) To require a buyer, borrower, or seller to pay for the services of any attorney, credit reporting agency, or real estate appraiser chosen by the lender to represent the lender's interest in a real estate transaction; or

(II) If an attorney or law firm represents a client in a real estate transaction and issues or arranges for the issuance of a policy of title insurance in the transaction directly as agent or through a separate corporate title insurance agency that may be established by that attorney or law firm and operated as an adjunct to his or her law practice.

(h) No person shall be liable for a violation of this section if such person proves by a preponderance of the evidence that such violation was not intentional and resulted from a bona fide error notwithstanding maintenance of procedures that are reasonably adopted to avoid such error.

(3) On and after July 1, 2006, a licensee shall disclose at the time the licensee enters into or changes an affiliated business arrangement, in a form and manner acceptable to the commission, the names of all affiliated business arrangements to which the licensee is a party. The disclosure shall include the physical locations of the affiliated businesses.

(4) On and after July 1, 2006, an employing broker, in a form and manner acceptable to the commission, shall at least annually disclose the names of all affiliated business arrangements to which the employing broker is a party. The disclosure shall include the physical locations of the affiliated businesses.

(5) The commission may promulgate rules concerning the creation and conduct of an affiliated business arrangement, including, but not limited to, rules defining what constitutes a sham affiliated business arrangement. The commission shall adopt the rules, policies, or guidelines issued by the United States department of housing and urban development concerning

the federal "Real Estate Settlement Procedures Act of 1974", as amended, 12 U.S.C. sec. 2601 et seq. Rules adopted by the commission shall be at least as stringent as the federal rules and shall ensure that consumers are adequately informed about affiliated business arrangements. The commission shall consult with the insurance commissioner pursuant to section 10-11-124 (2), C.R.S., concerning rules, policies, or guidelines the insurance commissioner adopts concerning affiliated business arrangements. Neither the rules promulgated by the commissioner nor the real estate commission may create a conflicting regulatory burden on an affiliated business arrangement.

(6) The division may share information gathered during an investigation of an affiliated business arrangement with the division of insurance.

Source: L. 99: Entire section added, p. 1030, § 1, effective May 29. **L. 2006:** Entire section R&RE, p. 269, § 5, effective July 1. **L. 2007:** (2)(b) and (5) amended, p. 2023, § 21, effective June 1.

12-61-113.5. Mobile home transactions - requirements. (Repealed)

Source: L. 82: Entire section added, p. 266, § 3, effective March 25. **L. 94:** Entire section repealed, p. 705, § 5, effective April 19.

12-61-114. Hearing - administrative law judge - review - rule-making authority. (1) Except as otherwise provided in this section, all proceedings before the commission with respect to disciplinary actions and denial of licensure under this part 1 and part 8 of this article and certifications issued under part 4 of this article shall be conducted by an administrative law judge pursuant to the provisions of sections 24-4-104 and 24-4-105, C.R.S.

(2) Such proceedings shall be held in the county where the commission has its office or in such other place as the commission may designate. If the licensee is an employed broker, the commission shall also notify the broker employing the licensee by mailing, by first-class mail, a copy of the written notice required under section 24-4-104 (3), C.R.S., to the employing broker's last-known business address.

(3) An administrative law judge shall conduct all hearings for denying, suspending, or revoking a license or certificate on behalf of the commission, subject to appropriations made to the department of personnel. Each administrative law judge shall be appointed pursuant to part 10 of article 30 of title 24, C.R.S. The administrative law judge shall conduct the hearing pursuant to the provisions of sections 24-4-104 and 24-4-105, C.R.S. No license shall be denied, suspended, or revoked until the commission has made its decision by a majority vote.

(4) The decision of the commission in any disciplinary action or denial of licensure under this section is subject to review by the court of appeals by appropriate proceedings under section 24-4-106 (11). In order to effectuate the purposes of parts 1, 4, and 8 of this article 61, the commission has the power to promulgate rules pursuant to article 4 of title 24. The commission may appear in court by its own attorney.

(5) Pursuant to said proceeding, the court has the right, in its discretion, to stay the execution or effect of any final order of the commission; but a hearing shall be held affording the parties an opportunity to be heard for the purpose of determining whether the public health, safety, and welfare would be endangered by staying the commission's order. If the court

determines that the order should be stayed, it shall also determine at said hearing the amount of the bond and adequacy of the surety, which bond shall be conditioned upon the faithful performance by such petitioner of all obligations as a real estate broker and upon the prompt payment of all damages arising from or caused by the delay in the taking effect of or enforcement of the order complained of and for all costs that may be assessed or required to be paid in connection with such proceedings.

(6) In any hearing conducted by the commission in which there is a possibility of the denial, suspension, or revocation of a license because of the conviction of a felony or of a crime involving moral turpitude, the commission shall be governed by the provisions of section 24-5-101, C.R.S.

Source: L. 25: p. 434, § 14. **CSA:** C. 15, § 40. **CRS 53:** § 117-1-13. **L. 61:** p. 636, § 1. **L. 63:** p. 772, § 11. **C.R.S. 1963:** § 117-1-13. **L. 69:** p. 976, § 11. **L. 73:** pp. 529, 1147, §§ 71, 2. **L. 75:** (1) to (4) and (6) amended, p. 522, § 13, effective July 16. **L. 76:** (3) R&RE, p. 581, § 10, effective May 24. **L. 77:** (3) amended, p. 773, § 4, effective June 9. **L. 78:** (3) amended, p. 260, § 35, effective May 23. **L. 79:** (1) and (4) amended, p. 561, § 7, effective May 18; (3) amended, p. 565, § 10, effective May 31. **L. 83:** (1) and (3) amended, p. 589, § 5, effective April 26. **L. 85:** (4) and (5) amended, p. 564, § 8, effective July 1. **L. 87:** (1) and (3) amended, p. 951, § 51, effective March 13. **L. 89:** (1) and (4) amended, p. 737, § 7, effective July 1. **L. 91:** (2) and (5) amended, p. 1632, § 12, effective July 1. **L. 93:** (1) and (4) amended, p. 992, § 3, effective January 1, 1994. **L. 95:** (3) amended, p. 637, § 22, effective July 1. **L. 2008:** (2) and (5) amended, p. 507, § 16, effective April 17. **L. 2017:** (4) amended, (SB 17-294), ch. 264, p. 1390, § 23, effective May 25.

12-61-114.5. Rules. All rules adopted or amended by the commission are subject to sections 24-4-103 (8)(c) and (8)(d) and 24-34-104 (6)(b), C.R.S.

Source: L. 79: Entire section added, p. 565, § 11, effective May 31; entire section added, pp. 568, 571, §§ 4, 6, effective July 1. **L. 80:** Entire section amended, p. 787, § 19, effective June 5. **L. 81:** Entire section amended, p. 1178, § 5, effective July 1. **L. 2016:** Entire section amended, (HB 16-1192), ch. 83, p. 233, § 12, effective April 14.

12-61-115. Subpoena compelling attendance of witnesses, records, and documents. (Repealed)

Source: L. 25: p. 435, § 15. CSA C. 15, § 41. **CRS 53:** § 117-1-14. **L. 63:** p. 773, § 12. **C.R.S. 1963:** § 117-1-14. **L. 69:** p. 977, § 12. **L. 75:** Entire section R&RE, p. 522, § 14, effective July 16. **L. 76:** Entire section repealed, p. 588, § 28, effective May 24.

12-61-116. Failure to obey subpoena - penalty. (Repealed)

Source: L. 25: p. 435, § 16. **CSA:** C. 15, § 42. **CRS 53:** § 117-1-15. **C.R.S. 1963:** § 117-1-15. **L. 75:** Entire section amended, p. 523, § 15, effective July 16. **L. 76:** Entire section repealed, p. 588, § 28, effective May 24.

12-61-117. Broker remuneration. It is unlawful for a real estate broker registered in the commission office as in the employ of another broker to accept a commission or valuable consideration for the performance of any of the acts specified in this part 1 from any person except the broker's employer, who shall be a licensed real estate broker.

Source: L. 25: p. 432, § 12. **CSA:** C. 15, § 38. **CRS 53:** § 117-1-11. **L. 63:** p. 769, § 9. **C.R.S. 1963:** § 117-1-11. **L. 91:** Entire section amended, p. 1633, § 13, effective July 1. **L. 2008:** Entire section amended, p. 507, § 17, effective April 17.

12-61-118. Acts of third parties - broker's liability. Any unlawful act or violation of any of the provisions of this part 1 upon the part of an employee, officer, or member of a licensed real estate broker shall not be cause for disciplinary action against a real estate broker, unless it appears to the satisfaction of the commission that the real estate broker had actual knowledge of the unlawful act or violation or had been negligent in the supervision of employees.

Source: L. 25: p. 436, § 17. **CSA:** C. 15, § 43. **CRS 53:** § 117-1-16. **L. 63:** p. 774, § 13. **C.R.S. 1963:** § 117-1-16. **L. 75:** Entire section amended, p. 523, § 16, effective July 16. **L. 89:** Entire section amended, p. 737, § 8, effective July 1. **L. 91:** Entire section amended, p. 1633, § 14, effective July 1. **L. 2008:** Entire section amended, p. 507, § 18, effective April 17.

12-61-119. Violations. Any natural person, firm, partnership, limited liability company, association, or corporation violating the provisions of this part 1 by acting as real estate broker in this state without having obtained a license or by acting as real estate broker after the broker's license has been revoked or during any period for which said license may have been suspended is guilty of a misdemeanor and, upon conviction thereof, if a natural person, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment and, if an entity, shall be punished by a fine of not more than five thousand dollars. A second violation, if by a natural person, shall be punishable by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

Source: L. 25: p. 437, § 21. **CSA:** C. 15, § 46. **CRS 53:** § 117-1-19. **L. 63:** p. 774, § 15. **C.R.S. 1963:** § 117-1-19. **L. 91:** Entire section amended, p. 1633, § 15, effective July 1. **L. 2008:** Entire section amended, p. 507, § 19, effective April 17.

12-61-120. Subpoena compelling attendance of witnesses and production of records and documents. The commission, the director for the commission, or the administrative law judge appointed for hearings may issue a subpoena compelling the attendance and testimony of witnesses and the production of books, papers, or records pursuant to an investigation or hearing of such commission. Such subpoenas shall be served in the same manner as subpoenas issued by district courts and shall be issued without discrimination between public or private parties requiring the attendance of witnesses and the production of documents at hearings. If a person fails or refuses to obey a subpoena issued by the commission, the director, or the appointed administrative law judge, the commission may petition the district court having jurisdiction for

issuance of a subpoena in the premises, and the court shall, in a proper case, issue its subpoena. Any person who refuses to obey such subpoena shall be punished as provided in section 12-61-121.

Source: L. 79: Entire section added, p. 565, § 11, effective May 31. **L. 87:** Entire section amended, p. 951, § 52, effective March 13.

12-61-121. Failure to obey subpoena - penalty. Any person who willfully fails or neglects to appear and testify or to produce books, papers, or records required by subpoena, duly served upon him or her in any matter conducted under parts 1 and 4 of this article 61, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of twenty-five dollars, or imprisonment in the county jail for not more than thirty days for each such offense, or by both such fine and imprisonment. Each day such person so refuses or neglects constitutes a separate offense.

Source: L. 79: Entire section added, p. 565, § 11, effective May 31. **L. 89:** Entire section amended, p. 737, § 9, effective July 1. **L. 2017:** Entire section amended, (SB 17-294), ch. 264, p. 1390, § 24, effective May 25.

12-61-122. Powers of commission - injunctions. The commission may apply to a court of competent jurisdiction for an order enjoining any act or practice that constitutes a violation of parts 1 and 4 of this article 61, and, upon a showing that a person is engaging or intends to engage in any such act or practice, an injunction, restraining order, or other appropriate order shall be granted by such court regardless of the existence of another remedy therefor. Any notice, hearing, or duration of any injunction or restraining order shall be made in accordance with the provisions of the Colorado rules of civil procedure.

Source: L. 83: Entire section added, p. 590, § 6, effective April 26. **L. 89:** Entire section amended, p. 737, § 10, effective July 1. **L. 2017:** Entire section amended, (SB 17-294), ch. 264, p. 1390, § 25, effective May 25.

Cross references: For the Colorado rule of civil procedure concerning injunctions, see C.R.C.P. 65.

12-61-123. Repeal of part. This part 1 is repealed, effective September 1, 2026. Before its repeal, the real estate division, including the real estate commission, shall be reviewed in accordance with section 24-34-104.

Source: L. 91: Entire section added, p. 685, § 41, effective April 20. **L. 99:** Entire section amended, p. 717, § 7, effective July 1. **L. 2004:** Entire section amended, p. 349, § 13, effective July 1. **L. 2008:** Entire section amended, p. 496, § 1, effective April 17. **L. 2017:** Entire section amended, (SB 17-215), ch. 282, p. 1534, § 1, effective June 30.

PART 2

BROKERS' COMMISSIONS

12-61-201. When entitled to commission. No real estate agent or broker is entitled to a commission for finding a purchaser who is ready, willing, and able to complete the purchase of real estate as proposed by the owner until the same is consummated or is defeated by the refusal or neglect of the owner to consummate the same as agreed upon.

Source: L. 15: p. 397, § 1. **C.L.** § 4852. **CSA:** C. 15, § 25. **CRS 53:** § 117-2-1. **C.R.S. 1963:** § 117-2-1.

12-61-202. Objections on account of title. No real estate agent or broker is entitled to a commission when a proposed purchaser fails or refuses to complete his contract of purchase because of defects in the title of the owner, unless such owner, within a reasonable time, has said defects corrected by legal proceedings or otherwise.

Source: L. 15: p. 397, § 2. **C.L.** § 4853. **CSA:** C. 15, § 26. **CRS 53:** § 117-2-2. **C.R.S. 1963:** § 117-2-2.

12-61-203. When owner must perfect title. The owner shall not be required to begin legal or other proceedings for the correction of such title, until such agent or broker secures from the proposed purchaser an enforceable contract in writing, binding him to complete the purchase whenever the defects in the title are corrected.

Source: L. 15: p. 397, § 3. **C.L.** § 4854. **CSA:** C. 15, § 27. **CRS 53:** § 117-2-3. **C.R.S. 1963:** § 117-2-3.

12-61-203.5. Referral fees - conformity with federal law required - remedies for violation. (1) A person licensed under parts 1 to 4 of this article shall not pay or receive a referral fee except in accordance with the federal "Real Estate Settlement Procedures Act of 1974", as amended, 12 U.S.C. sec. 2601 et seq., and unless reasonable cause for payment of the referral fee exists. A reasonable cause for payment means:

(a) An actual introduction of business has been made;

(b) A contractual referral fee relationship exists; or

(c) A contractual cooperative brokerage relationship exists.

(2) (a) No person shall interfere with the brokerage relationship of a licensee.

(b) As used in this subsection (2):

(I) "Brokerage relationship" means a relationship entered into between a broker and a buyer, seller, landlord, or tenant under which the broker engages in any of the acts set forth in section 12-61-101 (2). A brokerage relationship is not established until a written brokerage agreement is entered into between the parties or is otherwise established by law.

(II) "Interference with the brokerage relationship" means demanding a referral fee from a licensee without reasonable cause.

(III) "Referral fee" means any fee paid by a licensee to any person or entity, other than a cooperative commission offered by a listing broker to a selling broker or vice versa.

(3) Any person aggrieved by a violation of any provision of this section may bring a civil action in a court of competent jurisdiction. The prevailing party in any such action shall be entitled to actual damages and, in addition, the court may award an amount up to three times the amount of actual damages sustained as a result of any such violation plus reasonable attorney fees.

Source: L. 99: Entire section added, p. 308, § 1, effective April 15. **L. 2008:** (2)(b)(I) amended, p. 508, § 20, effective April 17. **L. 2017:** IP(1) amended, (SB 17-215), ch. 282, p. 1538, § 10, effective June 30.

12-61-204. Repeal of part. This part 2 is repealed, effective September 1, 2026. Before its repeal, this part 2 is scheduled for review in accordance with section 24-34-104.

Source: L. 91: Entire section added, p. 685, § 42, effective April 20. **L. 99:** Entire section amended, p. 717, § 8, effective July 1. **L. 2008:** Entire section amended, p. 515, § 40, effective April 17. **L. 2017:** Entire section amended, (SB 17-215), ch. 282, p. 1534, § 2, effective June 30.

PART 3

RECOVERY FUND

12-61-301 to 12-61-309. (Repealed)

Editor's note: Section 12-61-302 (11)(b) provided for the repeal of this part 3, effective August 26, 2013. On August 26, 2013, the revisor received the notice referred to in section 12-61-302 (11)(b) related to the repeal. For more information about the repeal and notice, see HB 05-1264. (L. 2005, p. 623.)

PART 4

SUBDIVISIONS

Cross references: (1) For additional definitions relating to this part, see § 38-30-150.

(2) For regulation of subdivisions by planning commissions, see part 1 of article 28 of title 30 and part 2 of article 23 of title 31.

12-61-401. Definitions. As used in this part 4, unless the context otherwise requires:

(1) "Commission" means the real estate commission established under section 12-61-105.

(2) "Developer" means any person, as defined in section 2-4-401 (8), C.R.S., which participates as owner, promoter, or sales agent in the promotion, sale, or lease of a subdivision or any part thereof.

(2.5) "HOA" or "homeowners' association" means an association or unit owners' association formed before, on, or after July 1, 1992, as part of a common interest community as defined in section 38-33.3-103, C.R.S.

(3) (a) "Subdivision" means any real property divided into twenty or more interests intended solely for residential use and offered for sale, lease, or transfer.

(b) (I) The term "subdivision" also includes:

(A) The conversion of an existing structure into a common interest community of twenty or more residential units, as defined in article 33.3 of title 38, C.R.S.;

(B) A group of twenty or more time shares intended for residential use; and

(C) A group of twenty or more proprietary leases in a cooperative housing corporation, as defined in article 33.5 of title 38, C.R.S.

(II) The term "subdivision" does not include:

(A) The selling of memberships in campgrounds;

(B) Bulk sales and transfers between developers;

(C) Property upon which there has been or upon which there will be erected residential buildings that have not been previously occupied and where the consideration paid for such property includes the cost of such buildings;

(D) Lots which, at the time of closing of a sale or occupancy under a lease, are situated on a street or road and street or road system improved to standards at least equal to streets and roads maintained by the county, city, or town in which the lots are located; have a feasible plan to provide potable water and sewage disposal; and have telephone and electricity facilities and systems adequate to serve the lots, which facilities and systems are installed and in place on the lots or in a street, road, or easement adjacent to the lots and which facilities and systems comply with applicable state, county, municipal, or other local laws, rules, and regulations; or any subdivision that has been or is required to be approved after September 1, 1972, by a regional, county, or municipal planning authority pursuant to article 28 of title 30 or article 23 of title 31, C.R.S.;

(E) Sales by public officials in the official conduct of their duties.

(4) "Time share" means a time share estate, as defined in section 38-33-110 (5), C.R.S., or a time share use, but the term does not include group reservations made for convention purposes as a single transaction with a hotel, motel, or condominium owner or association. For the purposes of this subsection (4), "time share use" means a contractual or membership right of occupancy (which cannot be terminated at the will of the owner) for life or for a term of years, to the recurrent, exclusive use or occupancy of a lot, parcel, unit, or specific or nonspecific segment of real property, annually or on some other periodic basis, for a period of time that has been or will be allotted from the use or occupancy periods into which the property has been divided.

Source: L. 63: p. 785, § 1. **C.R.S. 1963:** § 118-16-1. **L. 79:** (3) amended, p. 573, § 1, effective May 25. **L. 83:** (3) amended and (4) added, p. 592, § 1, effective May 25. **L. 89:** (3) amended, p. 738, § 11, effective July 6. **L. 96:** (2) and (3) amended, p. 369, § 1, effective April 17. **L. 2010:** (2.5) added, (HB 10-1278), ch. 365, p. 1722, § 3, effective January 1, 2011.

12-61-402. Registration required. (1) Unless exempt under the provisions of section 12-61-401 (3), a developer, before selling, leasing, or transferring or agreeing or negotiating to

sell, lease, or transfer, directly or indirectly, any subdivision or any part thereof, shall register pursuant to this part 4.

(2) Upon approval by the commission, a developer who has applied for registration pursuant to section 12-61-403 may offer reservations in a subdivision during the pendency of such application and until such application is granted or denied if the fees for such reservations are held in trust by an independent third party and are fully refundable.

Source: L. 63: p. 785, § 2. **C.R.S. 1963:** § 118-16-2. **L. 79:** Entire section R&RE, p. 573, § 2, effective May 25. **L. 84:** (2) amended, p. 445, § 1, effective April 2. **L. 89:** (2) amended, p. 739, § 12, effective July 1. **L. 96:** (1) amended, p. 370, § 2, effective April 17.

12-61-403. Application for registration. (1) Every person who is required to register as a developer under this part 4 shall submit to the commission an application which contains the information described in subsections (2) and (3) of this section. If such information is not submitted, the commission may deny the application for registration. If a developer is currently regulated in another state that has registration requirements substantially equivalent to the requirements of this part 4 or that provide substantially comparable protection to a purchaser, the commission may accept proof of such registration along with the developer's disclosure or equivalent statement from the other state in full or partial satisfaction of the information required by this section. In addition, the applicant shall be under a continuing obligation to notify the commission within ten days of any change in the information so submitted, and a failure to do so shall be a cause for disciplinary action.

(2) (a) Registration information concerning the developer shall include:

(I) The principal office of the applicant wherever situate;

(II) The location of the principal office and the branch offices of the applicant in this state;

(III) Repealed.

(IV) The names and residence and business addresses of all natural persons who have a twenty-four percent or greater financial or ultimate beneficial interest in the business of the developer, either directly or indirectly, as principal, manager, member, partner, officer, director, or stockholder, specifying each such person's capacity, title, and percentage of ownership. If no natural person has a twenty-four percent or greater financial or beneficial interest in the business of the developer, the information required in this subparagraph (IV) shall be submitted regarding the natural person having the largest single financial or beneficial interest.

(V) The length of time and the locations where the applicant has been engaged in the business of real estate sales or development;

(VI) Any felony of which the applicant has been convicted within the preceding ten years. In determining whether a certificate of registration shall be issued to an applicant who has been convicted of a felony within such period of time, the commission shall be governed by the provisions of section 24-5-101, C.R.S.

(VII) The states in which the applicant has had a license or registration similar to the developer's registration in this state granted, refused, suspended, or revoked or is currently the subject of an investigation or charges that could result in refusal, suspension, or revocation;

(VIII) Whether the developer or any other person financially interested in the business of the developer as principal, partner, officer, director, or stockholder has engaged in any activity that would constitute a violation of this part 4.

(b) If the applicant is a corporate developer, a copy of the certificate of authority to do business in this state or a certificate of incorporation issued by the secretary of state shall accompany the application.

(3) Registration information concerning the subdivision shall include:

(a) The location of each subdivision from which sales are intended to be made;

(b) The name of each subdivision and the trade, corporate, or partnership name used by the developer;

(c) Evidence or certification that each subdivision offered for sale or lease is registered or will be registered in accordance with state or local requirements of the state in which each subdivision is located;

(d) Copies of documents evidencing the title or other interest in the subdivision;

(e) If there is a blanket encumbrance upon the title of the subdivision or any other ownership, leasehold, or contractual interest that could defeat all possessory or ownership rights of a purchaser, a copy of the instruments creating such liens, encumbrances, or interests, with dates as to the recording, along with documentary evidence that any beneficiary, mortgagee, or trustee of a deed of trust or any other holder of such ownership, leasehold, or contractual interest will release any lot or time share from the blanket encumbrance or has subordinated its interest in the subdivision to the interest of any purchaser or has established any other arrangement acceptable to the real estate commission that protects the rights of the purchaser;

(f) A statement that standard commission-approved forms will be used for contracts of sale, notes, deeds, and other legal documents used to effectuate the sale or lease of the subdivision or any part thereof, unless the forms to be used were prepared by an attorney representing the developer;

(g) A true statement by the developer that, in any conveyance by means of an installment contract, the purchaser shall be advised to record the contract with the proper authorities in the jurisdiction in which the subdivision is located. In no event shall any developer specifically prohibit the recording of the installment contract.

(h) A true statement by the developer of the provisions for and availability of legal access, sewage disposal, and public utilities, including water, electricity, gas, and telephone facilities, in the subdivision offered for sale or lease, including whether such are to be a developer or purchaser expense;

(i) A true statement as to whether or not a survey of each lot, site, or tract offered for sale or lease from such subdivision has been made and whether survey monuments are in place;

(i.5) A true statement by the developer as to whether or not a common interest community is to be or has been created within the subdivision and whether or not such common interest community is or will be a small cooperative or small and limited expense planned community created pursuant to section 38-33.3-116, C.R.S.;

(j) A true statement by the developer concerning the existence of any common interest community association, including whether the developer controls funds in such association.

(3.5) The commission may disapprove the form of the documents submitted pursuant to paragraph (f) of subsection (3) of this section and may deny an application for registration until

such time as the applicant submits such documents in a form that is satisfactory to the commission.

(4) Repealed.

(5) Each registration shall be accompanied by fees established pursuant to section 12-61-111.5.

Source: L. 63: p. 786, § 3. **C.R.S. 1963:** § 118-16-3. **L. 73:** p. 529, § 72. **L. 79:** Entire section R&RE, p. 570, § 3, effective May 25; (2) amended, p. 570, § 2, effective July 1. **L. 89:** (1), (3)(e), and (3)(f) amended, (2)(a)(III) and (4) repealed, and (2)(a)(VIII), (3)(j), and (3.5) added, pp. 739, 744, §§ 13, 15, 25, 14, effective July 1. **L. 96:** (1), (2)(a)(IV), (2)(a)(VII), (3)(e), (3)(i), and (3)(j) amended and (3)(i.5) added, p. 370, § 3, effective April 17.

Editor's note: Amendments to this section and subsection (2) by Senate Bill 79-457 and House Bill 79-1231 were harmonized.

12-61-404. Registration of developers. (1) The commission shall register all applicants who meet the requirements of this part 4 and provide each applicant so registered with a certificate indicating that the developer named therein is registered in the state of Colorado as a subdivision developer. The developer which will sign as seller or lessor in any contract of sale, lease, or deed purporting to convey any site, tract, lot, or divided or undivided interest from a subdivision shall secure a certificate before offering, negotiating, or agreeing to sell, lease, or transfer before such sale, lease, or transfer is made. If such person or entity is acting only as a trustee, the beneficial owner of the subdivision shall secure a certificate. A certificate issued to a developer shall entitle all sales agents and employees of such developer to act in the capacity of a developer as agent for such developer. The developer shall be responsible for all actions of such sales agents and employees.

(2) All certificates issued under this section shall expire on December 31 following the date of issuance. In the absence of any reason or condition under this part 4 that might warrant the denial or revocation of a registration, a certificate shall be renewed by payment of a renewal fee established pursuant to section 12-61-111.5. A registration that has expired may be reinstated within two years after such expiration upon payment of the appropriate renewal fee if the applicant meets all other requirements of this part 4.

(3) All fees collected under this part 4 shall be deposited in accordance with section 12-61-111.

(4) With regard to any subdivision for which the information required by section 12-61-403 (3) has not been previously submitted to the commission, each registered developer shall register such subdivision by providing the commission with such information before sale, lease, or transfer, or negotiating or agreeing to sell, lease, or transfer, any such subdivision or any part thereof.

Source: L. 63: p. 787, § 4. **C.R.S. 1963:** § 118-16-4. **L. 65:** p. 950, § 1. **L. 79:** (1) amended and (4) added, p. 575, § 4, effective May 25; (2) amended, p. 574, § 3, effective July 1. **L. 89:** (1) and (2) amended, p. 740, § 16, effective July 1. **L. 96:** (1) and (2) amended, p. 372, § 4, effective April 17.

12-61-405. Refusal, revocation, or suspension of registration - letter of admonition - probation. (1) The commission may impose an administrative fine not to exceed two thousand five hundred dollars for each separate offense; may issue a letter of admonition; may place a registrant on probation under its close supervision on such terms and for such time as it deems appropriate; and may refuse, revoke, or suspend the registration of any developer or registrant if, after an investigation and after notice and a hearing pursuant to the provisions of section 24-4-104, C.R.S., the commission determines that the developer or any director, officer, or stockholder with controlling interest in the corporation:

(a) Has used false or misleading advertising or has made a false or misleading statement or a concealment in his application for registration;

(b) Has misrepresented or concealed any material fact from a purchaser of any interest in a subdivision;

(c) Has employed any device, scheme, or artifice with intent to defraud a purchaser of any interest in a subdivision;

(d) Has been convicted of or pled guilty or nolo contendere to a crime involving fraud, deception, false pretense, theft, misrepresentation, false advertising, or dishonest dealing in any court;

(e) Has disposed of, concealed, diverted, converted, or otherwise failed to account for any funds or assets of any purchaser of any interest in a subdivision or any homeowners' association under the control of such developer or director, officer, or stockholder;

(f) Has failed to comply with any stipulation or agreement made with the commission;

(g) Has failed to comply with or has violated any provision of this article, including any failure to comply with the registration requirements of section 12-61-403, or any lawful rule or regulation promulgated by the commission under this article;

(h) (Deleted by amendment, L. 89, p. 740, § 17, effective July 1, 1989.)

(i) Has refused to honor a buyer's request to cancel a contract for the purchase of a time share or subdivision or part thereof if such request was made within five calendar days after execution of the contract and was made either by telegram, mail, or hand delivery. A request is considered made if by mail when postmarked, if by telegram when filed for telegraphic transmission, or if by hand delivery when delivered to the seller's place of business. No developer shall employ a contract that contains any provision waiving a buyer's right to such a cancellation period.

(j) Has committed any act that constitutes a violation of the "Colorado Consumer Protection Act", article 1 of title 6, C.R.S.;

(k) Has employed any sales agent or employee who violates the provisions of this part 4;

(l) Has used documents for sales or lease transactions other than those described in section 12-61-403 (3)(f);

(m) Has failed to disclose encumbrances to prospective purchasers or has failed to transfer clear title at the time of sale, if the parties agreed that such transfer would be made at that time.

(1.5) A disciplinary action relating to the business of subdivision development taken by any other state or local jurisdiction or the federal government shall be deemed to be prima facie evidence of grounds for disciplinary action, including denial of registration, under this part 4. This subsection (1.5) shall apply only to such disciplinary actions as are substantially similar to those set out as grounds for disciplinary action or denial of registration under this part 4.

(2) Any hearing held under this section shall be in accordance with the procedures established in sections 24-4-105 and 24-4-106, C.R.S.

(2.5) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the commission, does not initially warrant formal action by the commission but which should not be dismissed as being without merit, the commission may send a letter of admonition by certified mail, return receipt requested, to the registrant who is the subject of the complaint or investigation and a copy thereof to any person making such complaint. Such letter shall advise the registrant that he has the right to request in writing, within twenty days after proven receipt, that formal disciplinary proceedings be initiated against him to adjudicate the propriety of the conduct upon which the letter of admonition is based. If such request is timely made, the letter of admonition shall be deemed vacated, and the matter shall be processed by means of formal disciplinary proceedings.

(3) All administrative fines collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the division of real estate cash fund.

Source: L. 63: p. 787, § 5. **C.R.S. 1963:** § 118-16-5. **L. 79:** (1) R&RE, p. 576, § 5, effective May 25. **L. 80:** (1)(h) amended, p. 785, § 10, effective June 5. **L. 84:** (1)(i) added, p. 445, § 2, effective April 2. **L. 87:** IP(1) amended and (3) added, p. 533, § 2, effective July 1. **L. 89:** (1) amended and (1.5) and (2.5) added, p. 740, § 17, effective July 1. **L. 2005:** (3) amended, p. 625, § 5, effective May 27.

12-61-406. Powers of commission - injunction - rules. (1) The commission may apply to a court of competent jurisdiction for an order enjoining any act or practice which constitutes a violation of this part 4, and, upon a showing that a person is engaging or intends to engage in any such act or practice, an injunction, restraining order, or other appropriate order shall be granted by such court, regardless of the existence of another remedy therefor. Any notice, hearing, or duration of any injunction or restraining order shall be made in accordance with the provisions of the Colorado rules of civil procedure.

(1.2) The commission may apply to a court of competent jurisdiction for the appointment of receiver if it determines that such appointment is necessary to protect the property or interests of purchasers of a subdivision or part thereof.

(1.5) The commission shall issue or deny a certificate or additional registration within sixty days from the date of receipt of the application by the commission. The commission may make necessary investigations and inspections to determine whether any developer has violated this part 4 or any lawful rule or regulation promulgated by the commission. If, after an application by a developer has been submitted pursuant to section 12-61-403 or information has been submitted pursuant to section 12-61-404, the commission determines that an inspection of a subdivision is necessary, it shall complete the inspection within sixty days from the date of filing of the application or information, or the right of inspection is waived and the lack thereof shall not be grounds for denial of a registration.

(1.6) The commission, the director for the commission, or the administrative law judge appointed for a hearing may issue a subpoena compelling the attendance and testimony of witnesses and the production of books, papers, or records pursuant to an investigation or hearing of such commission. Any such subpoena shall be served in the same manner as for subpoenas issued by district courts.

(2) The commission has the power to make any rules necessary for the enforcement or administration of this part 4.

(2.5) The commission shall adopt, promulgate, amend, or repeal such rules and regulations as are necessary to:

(a) Require written disclosures to any purchasers as provided in subsection (3) of this section and to prescribe and require that standardized forms be used by subdivision developers in connection with the sale or lease of a subdivision or any part thereof, except as otherwise provided in section 12-61-403 (3)(f); and

(b) Require that developers maintain certain business records for a period of at least seven years.

(3) The commission may require any developer to make written disclosures to purchasers in their contracts of sale or by separate written documents if the commission finds that such disclosures are necessary for the protection of such purchasers.

(4) The commission or its designated representative may audit the accounts of any homeowner association the funds of which are controlled by a developer.

Source: L. 63: p. 787, § 6. **C.R.S. 1963:** § 118-16-6. **L. 79:** (1.5) and (1.6) added, p. 576, § 6, effective May 25. **L. 83:** (3) added, p. 593, § 2, effective May 25. **L. 87:** (1.6) added, p. 952, § 53, effective March 13. **L. 89:** (1.2), (2.5), and (4) added and (3) amended, p. 742, § 18, effective July 1.

Cross references: For the Colorado rules of civil procedure concerning subpoenas and injunctions, see C.R.C.P. 45 and 65.

12-61-406.5. HOA information and resource center - creation - duties - rules - repeal. (1) There is hereby created, within the division of real estate, the HOA information and resource center, the head of which shall be the HOA information officer. The HOA information officer shall be appointed by the executive director of the department of regulatory agencies pursuant to section 13 of article XII of the state constitution.

(2) The HOA information officer shall be familiar with the "Colorado Common Interest Ownership Act", article 33.3 of title 38, C.R.S., also referred to in this section as the "act". No person who is or, within the immediately preceding ten years, has been licensed by or registered with the division of real estate or who owns stocks, bonds, or any pecuniary interest in a corporation subject in whole or in part to regulation by the division of real estate shall be appointed as HOA information officer. In addition, in conducting the search for an appointee, the executive director of the division of real estate shall place a high premium on candidates who are balanced, independent, unbiased, and without any current financial ties to an HOA board or board member or to any person or entity that provides HOA management services. After being appointed, the HOA information officer shall refrain from engaging in any conduct or relationship that would create a conflict of interest or the appearance of a conflict of interest.

(3) (a) The HOA information officer shall act as a clearing house for information concerning the basic rights and duties of unit owners, declarants, and unit owners' associations under the act by:

(I) Compiling a database about registered associations, including the name; address; email address, if any; website, if any; and telephone number of each;

(II) Coordinating and assisting in the preparation of educational and reference materials, including materials to assist unit owners, executive boards, board members, and association managers in understanding their rights and responsibilities with respect to:

(A) Open meetings;

(B) Proper use of executive sessions;

(C) Removal of executive board members;

(D) Unit owners' right to speak at meetings of the executive board;

(E) Unit owners' obligation to pay assessments and the association's rights and responsibilities in pursuing collection of past-due amounts; and

(F) Other educational or reference materials that the HOA information officer deems necessary or appropriate;

(III) Monitoring changes in federal and state laws relating to common interest communities and providing information about the changes on the division of real estate's website; and

(IV) Providing information, including a "frequently asked questions" resource, on the division of real estate's website.

(b) The HOA information officer may:

(I) Employ one or more assistants as may be necessary to carry out his or her duties; and

(II) Request certain records from associations as necessary to carry out the HOA information officer's duties as set forth in this section.

(c) The HOA information officer shall track inquiries and complaints and report annually to the director of the division of real estate regarding the number and types of inquiries and complaints received.

(4) The operating expenses of the HOA information and resource center shall be paid from the division of real estate cash fund, created in section 12-61-111.5, subject to annual appropriation.

(5) The director of the division of real estate may adopt rules as necessary to implement this section and section 38-33.3-401, C.R.S. This subsection (5) shall not be construed to confer additional rule-making authority upon the director for any other purpose.

(6) This section is repealed, effective September 1, 2020. Prior to such repeal, the HOA information and resource center and the HOA information officer's powers and duties under this section shall be reviewed in accordance with section 24-34-104, C.R.S.

Source: L. 2010: Entire section added, (HB 10-1278), ch. 365, p. 1722, § 4, effective January 1, 2011. **L. 2013:** (3) amended, (HB 13-1134), ch. 198, p. 804, § 1, effective August 7. **L. 2017:** (4) amended, (SB 17-215), ch. 282, p. 1538, § 11, effective June 30.

12-61-406.7. Study of comparable HOA information and resource centers - recommendations - report - repeal. (Repealed)

Source: L. 2013: Entire section added, (HB 13-1134), ch. 198, p. 805, § 2, effective August 7.

Editor's note: Subsection (2) provided for the repeal of this section, effective July 1, 2014. (See L. 2013, p. 805.)

12-61-407. Violation - penalty. Any person who fails to register as a developer in violation of this part 4 commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S. Any agreement or contract for the sale or lease of a subdivision or part thereof shall be voidable by the purchaser and unenforceable by the developer unless such developer was duly registered under the provisions of this part 4 when such agreement or contract was made.

Source: L. 63: p. 788, § 7. **C.R.S. 1963:** § 118-16-7. **L. 77:** Entire section amended, p. 877, § 42, effective July 1, 1979. **L. 79:** Entire section amended, p. 577, § 7, effective May 25. **L. 89:** Entire section amended, p. 743, § 19, effective July 1; entire section amended, p. 827, § 30, effective July 1. **L. 2002:** Entire section amended, p. 1486, § 116, effective October 1.

Editor's note: (1) Amendments to this section by Senate Bill 89-246 and Senate Bill 89-22 were harmonized.

(2) The effective date for amendments made to this section by chapter 216, L. 77, was changed from July 1, 1978, to April 1, 1979, by chapter 1, First Extraordinary Session, L. 78, and was subsequently changed to July 1, 1979, by chapter 157, § 23. L. 79. See People v. McKenna, 199 Colo. 452, 611 P.2d 54 (1980).

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

12-61-408. Repeal of part. This part 4 is repealed, effective September 1, 2026. Before its repeal, this part 4 is scheduled for review in accordance with section 24-34-104.

Source: L. 91: Entire section added, p. 685, § 44, effective May 20. **L. 99:** Entire section amended, p. 719, § 13, effective July 1. **L. 2008:** Entire section amended, p. 515, § 41, effective April 17. **L. 2017:** Entire section amended, (SB 17-215), ch. 282, p. 1534, § 3, effective June 30.

PART 5

RENTAL LOCATION AGENTS

12-61-501 to 12-61-507. (Repealed)

Editor's note: (1) This part 5 was numbered as article 4 of chapter 117, C.R.S. 1963. For amendments to this part 5 prior to its repeal in 1980, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 8 of chapter 117, Session Laws of Colorado 1979, provided for the repeal of this part 5, effective January 1, 1980. (See L. 79, p. 561.)

PART 6

PREOWNED HOUSING HOME WARRANTY

12-61-601. Short title. (Repealed)

Source: L. 79: Entire part added, p. 578, § 1, effective June 7. **L. 89:** Entire section repealed, p. 744, § 25, effective July 1.

12-61-602. Definitions. As used in this part 6, unless the context otherwise requires:

(1) and (2) Repealed.

(2.3) "Home warranty service company", referred to in this part 6 as the "company", means any person who undertakes a contractual obligation on a new or preowned home through a home warranty service contract.

(2.5) (a) "Home warranty service contract" means any contract or agreement whereby a person undertakes for a predetermined fee, with respect to a specified period of time, to maintain, repair, or replace any or all of the following elements of a specified new or preowned home:

(I) Structural components, such as the roof, foundation, basement, walls, ceilings, or floors;

(II) Utility systems, such as electrical, air conditioning, plumbing, and heating systems, including furnaces; and

(III) Appliances, such as stoves, washers, dryers, and dishwashers.

(b) "Home warranty service contract" does not include:

(I) Any contract or agreement whereby a public utility undertakes for a predetermined fee, with respect to a specified period of time, to repair or replace any or all of the elements of a specified new or preowned home as specified in subparagraph (II) or (III) of paragraph (a) of this subsection (2.5); or

(II) A builder's warranty provided in connection with the sale of a new home.

(3) "Person" includes an individual, company, corporation, association, agent, and every other legal entity.

(4) "Preowned" means a single-family residence, residential unit in a multiple-dwelling structure, or mobile home on a foundation that is occupied as a residence and not owned by the builder-developer or first occupant.

(5) and (6) Repealed.

Source: L. 79: Entire part added, p. 578, § 1, effective June 7. **L. 89:** (1) and (2) repealed and (3) R&RE, pp. 743, 744, §§ 20, 25, effective July 1. **L. 2007:** (3) to (6) R&RE, p. 2024, § 22, effective June 1. **L. 2015:** (2.3) and (2.5) added and (5) and (6) repealed, (HB 15-1223), ch. 81, p. 233, § 1, effective August 5.

12-61-603. Registration required - exemption. (Repealed)

Source: L. 79: Entire part added, p. 579, § 1, effective June 7. **L. 80:** (1) and (6) amended, p. 793, § 45, effective June 5. **L. 89:** Entire section repealed, p. 744, § 25, effective July 1.

12-61-604. Deposit - bond - letter of credit or initial capitalization. (Repealed)

Source: L. 79: Entire part added, p. 579, § 1, effective June 7. **L. 89:** Entire section repealed, p. 744, § 25, effective July 1.

12-61-605. Registration - denial - expiration and renewal. (Repealed)

Source: L. 79: Entire part added, p. 579, § 1, effective June 7. **L. 86:** (5) amended, p. 1217, § 13, effective May 30. **L. 89:** Entire section repealed, p. 744, § 25, effective July 1.

12-61-606. Grounds for suspension or revocation of registration. (Repealed)

Source: L. 79: Entire part added, p. 580, § 1, effective June 7. **L. 89:** Entire section repealed, p. 744, § 25, effective July 1.

12-61-607. Judgments - distribution. (Repealed)

Source: L. 79: Entire part added, p. 581, § 1, effective June 7. **L. 89:** Entire section repealed, p. 744, § 25, effective July 1.

12-61-608. Order of suspension or revocation of registration. (Repealed)

Source: L. 79: Entire part added, p. 581, § 1, effective June 7. **L. 89:** Entire section repealed, p. 744, § 25, effective July 1.

12-61-609. Annual statement - review. (Repealed)

Source: L. 79: Entire part added, p. 581, § 1, effective June 7. **L. 89:** Entire section repealed, p. 744, § 25, effective July 1.

12-61-610. Reporting of service of process. (Repealed)

Source: L. 79: Entire part added, p. 582, § 1, effective June 7. **L. 89:** Entire section repealed, p. 744, § 25, effective July 1.

12-61-611. Purchase of service contract not to be compulsory. A company selling, offering to sell, or effecting the issuance of a home warranty service contract under this part 6 shall not in any manner require a home buyer or seller, or prospective home buyer or seller, or person refinancing a home to purchase a home warranty service contract.

Source: L. 79: Entire part added, p. 582, § 1, effective June 7. **L. 2015:** Entire section amended, (HB 15-1223), ch. 81, p. 234, § 2, effective August 5.

12-61-611.5. Contract requirements. (1) Every home warranty service contract shall contain the following information:

(a) A specific listing of all items or elements excluded from coverage;

(b) A specific listing of all other limitations in coverage, including the exclusion of preexisting conditions if applicable;

(c) The procedure that is required to be followed in order to obtain repairs or replacements;

(d) A statement as to the time period, following notification to the company, within which the requested repairs will be made or replacements will be provided;

(e) The specific duration of the home warranty service contract, including an exact termination date that is not contingent upon an unspecified future closing date or other indefinite event;

(f) A statement as to whether the home warranty service contract is transferable;

(g) A statement that actions under a home warranty service contract may be covered by the provisions of the "Colorado Consumer Protection Act" or the "Unfair Practices Act", articles 1 and 2 of title 6, C.R.S., and that a party to such a contract may have a right of civil action under those laws, including obtaining the recourse or penalties specified in those laws.

Source: L. 89: Entire section added, p. 744, § 22, effective July 1. **L. 2015:** IP(1) and (1)(e) to (1)(g) amended, (HB 15-1223), ch. 81, p. 234, § 3, effective August 5.

12-61-612. Penalty for violation. Any person who knowingly violates any provision of this part 6 commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S. Each instance of violation shall be considered a separate offense.

Source: L. 79: Entire part added, p. 582, § 1, effective June 7. **L. 89:** Entire section added, p. 743, § 21, effective July 1. **L. 2002:** Entire section amended, p. 1487, § 117, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

12-61-613. Rules and regulations. (Repealed)

Source: L. 79: Entire part added, p. 582, § 1, effective June 7. **L. 89:** Entire section repealed, p. 744, § 25, effective July 1.

12-61-614. Prohibitions. It is unlawful for any lending institution to require the purchase of home warranty insurance as a condition for granting financing for the purchase of the home.

Source: L. 79: Entire part added, p. 582, § 1, effective June 7. **L. 2015:** Entire section amended, (HB 15-1223), ch. 81, p. 235, § 4, effective August 5.

12-61-615. Repeal of part. This part 6 is repealed, effective July 1, 2020. Prior to the repeal, this part 6 shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: L. 91: Entire section added, p. 686, § 45, effective April 20. **L. 99:** Entire section amended, p. 719, § 14, effective July 1. **L. 2008:** Entire section amended, p. 515, § 42, effective April 17. **L. 2015:** Entire section amended, (HB 15-1223), ch. 81, p. 235, § 5, effective August 5.

PART 7

REAL ESTATE APPRAISERS

Editor's note: This part 7 was added in 1990. It was repealed in 2013 and was subsequently recreated and reenacted in 2014, resulting in the addition, relocation, or elimination of sections as well as subject matter. For amendments to this part 7 prior to 2013, consult the 2013 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume. For a detailed comparison of this part 7, see the comparative tables located in the back of the index.

Cross references: For the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", see Pub.L. 101-73, 103 Stat. 183.

Law reviews: For article, "Professional Standards for the Appraiser", see 22 Colo. Law. 1263 (1993).

12-61-701. Legislative declaration. The general assembly finds, determines, and declares that sections 12-61-702 to 12-61-723 are enacted pursuant to the requirements of the "Real Estate Appraisal Reform Amendments", Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", as amended, 12 U.S.C. secs. 3331 to 3351. The general assembly further finds, determines, and declares that sections 12-61-702 to 12-61-723 are intended to implement the requirements of federal law in the least burdensome manner to real estate appraisers and appraisal management companies. Licensed ad valorem appraisers licensed under this article are not regulated by the federal "Real Estate Appraisal Reform Amendments", Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", as amended, 12 U.S.C. secs. 3331 to 3351.

Source: L. 2014: Entire part RC&RE, (SB 14-117), ch. 385, p. 1881, § 1, effective July 1.

Editor's note: This section is similar to former § 12-61-701 as it existed prior to 2013.

12-61-702. Definitions. As used in this part 7, unless the context otherwise requires:

(1) (a) "Appraisal", "appraisal report", or "real estate appraisal" means a written or oral analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real estate that is transmitted to the client upon the completion of an assignment. These terms include a valuation, which is an opinion of the value of real estate, and an analysis, which is a general study of real estate not specifically performed

only to determine value; except that the terms include a valuation completed by an appraiser employee of a county assessor as defined in section 39-1-102 (2), C.R.S.

(b) The terms do not include an analysis, valuation, opinion, conclusion, notation, or compilation of data by an officer, director, or regular salaried employee of a financial institution or its affiliate, made for internal use only by the financial institution or affiliate, concerning an interest in real estate that is owned or held as collateral by the financial institution or affiliate and that is not represented or deemed to be an appraisal except to the financial institution, the agencies regulating the financial institution, and any secondary markets that purchase real estate secured loans. An appraisal prepared by an officer, director, or regular salaried employee of a financial institution who is not licensed or certified under this part 7 shall contain a written notice that the preparer is not licensed or certified as an appraiser under this part 7.

(c) "Appraisal", "appraisal report", or "real estate appraisal" does not include a federally authorized "waiver valuation", as defined in 49 CFR 24.2 (a)(33), as amended.

(2) (a) "Appraisal management company" or "AMC" means, in connection with valuing properties collateralizing mortgage loans or mortgages incorporated into a securitization, any external third party authorized either by a creditor in a consumer credit transaction secured by a consumer's principal dwelling that oversees an appraiser panel or by an underwriter of, or other principal in, the secondary mortgage markets that oversees an appraiser panel to:

(I) Recruit, select, and train appraisers;

(II) Contract with licensed and certified appraisers to perform appraisal assignments;

(III) Manage the process of having an appraisal performed, including providing administrative duties such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for services provided, and reimbursing appraisers for services performed; or

(IV) Review and verify the work of appraisers.

(b) "Appraisal management company" does not include:

(I) A corporation, limited liability company, sole proprietorship, or other entity that directly performs appraisal services;

(II) A corporation, limited liability company, sole proprietorship, or other entity that does not contract with appraisers for appraisal services, but that solely distributes orders to a client-selected panel of appraisers; and

(III) A mortgage company, or its subsidiary, that manages a panel of appraisers who are engaged to provide appraisal services on mortgage loans either originated by the mortgage company or funded by the mortgage company with its own funds.

(3) "Board" means the board of real estate appraisers created in section 12-61-703.

(4) "Client" means the party or parties who engage an appraiser or an appraisal management company for a specific assignment.

(5) Repealed.

(6) "Consulting services" means services performed by an appraiser that do not fall within the definition of an "independent appraisal" in subsection (10) of this section. "Consulting services" includes marketing, financing and feasibility studies, valuations, analyses, and opinions and conclusions given in connection with real estate brokerage, mortgage banking, and counseling and advocacy in regard to property tax assessments and appeals thereof; except that, if in rendering such services the appraiser acts as a disinterested third party, the work is deemed

an independent appraisal and not a consulting service. Nothing in this subsection (6) precludes a person from acting as an expert witness in valuation appeals.

(7) "Director" means the director of the division of real estate.

(8) "Division" means the division of real estate.

(9) "Financial institution" means any "bank" or "savings association", as such terms are defined in 12 U.S.C. sec. 1813, any state bank incorporated under title 11, C.R.S., any state or federally chartered credit union, or any company that has direct or indirect control over any of those entities.

(10) "Independent appraisal" means an engagement for which an appraiser is employed or retained to act as a disinterested third party in rendering an unbiased analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in or aspects of identified real estate.

(10.5) (a) "Panel" or "appraiser panel" means a network, list, or roster of licensed or certified appraisers approved by an AMC to perform appraisals as independent contractors for the AMC.

(b) Appraisers on an AMC's appraiser panel include both:

(I) Appraisers accepted by the AMC for consideration for future appraisal assignments in covered transactions or for secondary mortgage market participants in connection with covered transactions; and

(II) Appraisers engaged by the AMC to perform one or more appraisals in covered transactions or for secondary mortgage market participants in connection with covered transactions.

(c) An appraiser is an independent contractor for purposes of this subsection (10.5) if the appraiser is treated as an independent contractor by the AMC for purposes of federal income taxation.

(11) (a) "Real estate appraiser" or "appraiser" means a person who provides an estimate of the nature, quality, value, or utility of an interest in, or aspect of, identified real estate and includes one who estimates value and who possesses the necessary qualifications, ability, and experience to execute or direct the appraisal of real property.

(b) "Real estate appraiser" does not include:

(I) A person who conducts appraisals strictly of personal property;

(II) A person licensed as a broker pursuant to part 1 of this article who provides an opinion of value that is not represented as an appraisal and is not used for purposes of obtaining financing;

(III) A person licensed as a certified public accountant pursuant to article 2 of this title, and otherwise regulated, as long as the person does not represent his or her opinions of value for real estate as an appraisal;

(IV) A corporation, acting through its officers or regular salaried employees, when conducting a valuation of real estate property rights owned, to be purchased, or sold by the corporation;

(V) A person who conducts appraisals strictly of water rights or of mineral rights;

(VI) A right-of-way acquisition agent, an appraiser who is licensed and certified pursuant to this part 7, or any other individual who has sufficient understanding of the local real estate market to be qualified to make a waiver valuation when the agent, appraiser, or other qualified individual is employed by or contracts with a public entity and provides an opinion of

value that is not represented as an appraisal and when, for any purpose, the property or portion of property being valued is valued at twenty-five thousand dollars or less, as permitted by federal law and 49 CFR 24.102 (c)(2), as amended;

(VII) An officer, director, or regular salaried employee of a financial institution or its affiliate who makes, for internal use only by the financial institution or affiliate, an analysis, evaluation, opinion, conclusion, notation, or compilation of data with respect to an appraisal so long as the person does not make a written adjustment of the appraisal's conclusion as to the value of the subject real property;

(VIII) An officer, director, or regular salaried employee of a financial institution or its affiliate who makes an internal analysis, valuation, opinion, conclusion, notation, or compilation of data concerning an interest in real estate that is owned or held as collateral by the financial institution or its affiliate; or

(IX) A person who represents property owners as an advocate in tax or valuation protests and appeals pursuant to title 39, C.R.S.

Source: L. 2014: Entire part RC&RE, (SB 14-117), ch. 385, p. 1881, § 1, effective July 1. **L. 2018:** (1)(c) added and (11)(b)(VI) amended, (HB 18-1349), ch. 254, p. 1557, § 1, effective May 24; (5) repealed, (HB 18-1291), ch. 273, p. 1688, § 3, effective May 29; (2)(a) amended and (10.5) added, (SB 18-210), ch. 286, p. 1774, § 1, effective August 8.

Editor's note: This section is similar to former §§ 12-61-702 and 12-61-712 as they existed prior to 2013. For a detailed comparison of this section, see the comparative tables located in the back of the index.

12-61-703. Board of real estate appraisers - creation - compensation - immunity - legislative declaration - repeal of part. (1) (a) There is hereby created in the division a board of real estate appraisers consisting of seven members appointed by the governor with the consent of the senate. Of the members, three shall be licensed or certified appraisers, one of whom shall have expertise in eminent domain matters; one shall be a county assessor in office; one shall be an officer or employee of a commercial bank experienced in real estate lending; one shall be an officer or employee of an appraisal management company; and one shall be a member of the public at large not engaged in any of the businesses represented by the other members of the board.

(b) Members of the board shall hold office for terms of three years. In the event of a vacancy by death, resignation, removal, or otherwise, the governor shall appoint a member to fill the unexpired term. The governor has the authority to remove any member for misconduct, neglect of duty, or incompetence.

(2) (a) The board shall exercise its powers and perform its duties and functions under the division as if transferred to the division by a **type 1** transfer, as defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.

(b) The general assembly finds, determines, and declares that the organization of the board under the division as a **type 1** agency will provide the autonomy necessary to avoid potential conflicts of interest between the responsibility of the board in the regulation of real estate appraisers and the responsibility of the division in the regulation of real estate brokers and salespersons. The general assembly further finds, determines, and declares that the placement of

the board as a **type 1** agency under the division is consistent with the organizational structure of state government.

(3) Each member of the board shall receive the same compensation and reimbursement of expenses as is provided for members of boards and commissions in the division of professions and occupations pursuant to section 24-34-102 (13), C.R.S. Payment for all per diem compensation and expenses shall be made out of annual appropriations from the division of real estate cash fund provided for in section 12-61-705.

(4) Members of the board, consultants, and expert witnesses are immune from liability in any civil action based upon any disciplinary proceedings or other official acts they performed in good faith pursuant to this part 7.

(5) A majority of the board constitutes a quorum for the transaction of all business, and actions of the board require a vote of a majority of the members present in favor of the action taken.

(6) This part 7 is repealed, effective September 1, 2022. Prior to the repeal, the department of regulatory agencies shall review the functions of the board of real estate appraisers as provided in section 24-34-104, C.R.S.

Source: L. 2014: Entire part RC&RE, (SB 14-117), ch. 385, p. 1884, § 1, effective July 1.

Editor's note: Subsection (2)(b) is similar to former § 12-61-703 (2.5) as it existed prior to 2013.

12-61-704. Powers and duties of the board - rules. (1) In addition to all other powers and duties imposed upon it by law, the board has the following powers and duties:

(a) (I) To promulgate and amend, as necessary, rules pursuant to article 4 of title 24, C.R.S., for the implementation and administration of this part 7 and as required to comply with the federal "Real Estate Appraisal Reform Amendments", Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", as amended, 12 U.S.C. secs. 3331 to 3351, and with any requirements imposed by amendments to that federal law.

(II) The board shall not establish any requirements that are more stringent than the requirements of any applicable federal law.

(III) Licensed ad valorem appraisers are not regulated by the federal "Real Estate Appraisal Reform Amendments", Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", as amended, 12 U.S.C. secs. 3331 to 3351, but the board shall adopt rules regarding minimum qualifications and standards of practice for licensed ad valorem appraisers.

(IV) In any list or registry it maintains, the board shall identify or separately account for any appraisal management company that oversees a panel of more than fifteen certified or licensed appraisers in Colorado, or more than twenty-five in all states in which it does business, within a given year.

(b) To charge application, examination, and license and certificate renewal fees established pursuant to section 12-61-111.5 from all applicants for licensure, certification, examination, and renewal under this part 7. The board shall not refund any fees received from applicants seeking licensure, certification, examination, or renewal.

(c) Through the department of regulatory agencies and subject to appropriations made to the department of regulatory agencies, to employ administrative law judges, appointed pursuant to part 10 of article 30 of title 24, C.R.S., on a full-time or part-time basis to conduct any hearings required by this part 7;

(d) To issue, deny, or refuse to renew a license or certificate pursuant to this part 7;

(e) To take disciplinary actions in conformity with this part 7;

(f) To delegate to the director the administration and enforcement of this part 7 and the authority to act on behalf of the board on occasions and in circumstances that the board directs;

(g) (I) To develop, purchase, or contract for any examination required for the administration of this part 7, to offer each examination at least twice a year or, if demand warrants, at more frequent intervals, and to establish a passing score for each examination that reflects a minimum level of competency.

(II) If study materials are developed by a testing company or other entity, the board shall make the materials available to persons desiring to take examinations pursuant to this part 7. The board may charge fees for the materials to defray any costs associated with making the materials available.

(h) In compliance with article 4 of title 24, C.R.S., to make investigations; subpoena persons and documents, which subpoenas may be enforced by a court of competent jurisdiction if not obeyed; hold hearings; and take evidence in all matters relating to the exercise of the board's power under this part 7;

(i) Pursuant to sec. 1119 (b) of Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", Pub.L. 101-73, to apply, if necessary, for a federal waiver of the requirement relating to certification or licensing of a person to perform appraisals and to make the necessary written determinations specified in said section for purposes of making the application;

(j) If the board has reasonable cause to believe that a person, partnership, limited liability company, or corporation is violating this part 7, to enter an order requiring the individual or appraisal management company to cease and desist the violation; and

(k) To establish classroom education and experience requirements for an appraiser who prepares an appraisal for a conservation easement for which a tax credit is claimed pursuant to section 39-22-522. The requirements must ensure that appraisers have a sufficient amount of training and expertise to accurately prepare appraisals that comply with the uniform standards of professional appraisal practice and any other provision of law related to the appraisal of conservation easements for which a tax credit is claimed. A tax credit certificate for a conservation easement shall not be given in accordance with sections 12-61-1105 and 12-61-1106 unless the appraiser who prepared the appraisal of the easement met all requirements established in accordance with this subsection (1)(k) in effect at the time the appraisal certification is signed.

(2) The board shall maintain or preserve, for seven years, licensing history records of a person licensed or certified under this part 7. Complaints of record in the office of the board and board investigations, including board investigative files, are closed to public inspection. Stipulations and final agency orders are public record and are subject to sections 24-72-203 and 24-72-204, C.R.S.

Source: L. 2014: Entire part RC&RE, (SB 14-117), ch. 385, p. 1885, § 1, effective July 1. **L. 2018:** (1)(k) amended, (HB 18-1291), ch. 273, p. 1688, § 4, effective May 29; (1)(a)(IV) added, (SB 18-210), ch. 286, p. 1775, § 2, effective August 8.

Editor's note: This section is similar to former § 12-61-704 as it existed prior to 2013. For a detailed comparison of this section, see the comparative tables located in the back of the index.

12-61-705. Fees, penalties, and fines collected under part 7. All fees, penalties, and fines collected pursuant to this part 7, not including fees retained by contractors pursuant to contracts entered into in accordance with section 12-61-103, 12-61-706, or 24-34-101, C.R.S., shall be transmitted to the state treasurer, who shall credit the same to the division of real estate cash fund, created in section 12-61-111.5.

Source: L. 2014: Entire part RC&RE, (SB 14-117), ch. 385, p. 1887, § 1, effective July 1.

12-61-706. Qualifications for licensing and certification of appraisers - continuing education - definitions - rules. (1) (a) The board shall, by rule, prescribe requirements for the initial licensing or certification of persons under this part 7 to meet the requirements of the "Real Estate Appraisal Reform Amendments", Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", as amended, 12 U.S.C. secs. 3331 to 3351, and shall develop, purchase, or contract for examinations to be passed by applicants. The board shall not establish any requirements for initial licensing or certification that are more stringent than the requirements of any applicable federal law; except that all applicants shall pass an examination offered by the board. If there is no applicable federal law, the board shall consider and may use as guidelines the most recent available criteria published by the appraiser qualifications board of the appraisal foundation or its successor organization.

(b) The four levels of appraiser licensure and certification, pursuant to paragraph (a) of this subsection (1), are defined as follows:

(I) "Certified general appraiser" means an appraiser meeting the requirements set by the board for general certification;

(II) "Certified residential appraiser" means an appraiser meeting the requirements set by the board for residential certification;

(III) "Licensed ad valorem appraiser" means an appraiser meeting the requirements set by the board for ad valorem appraiser certification. Only a county assessor, employee of a county assessor's office, or employee of the division of property taxation in the department of local affairs may obtain or possess an ad valorem appraiser certification; and

(IV) "Licensed appraiser" means an appraiser meeting the requirements set by the board for a license.

(c) A county assessor or employee of a county assessor's office who is a licensed ad valorem appraiser may not perform real estate appraisals outside of his or her official duties.

(d) The board shall transfer persons employed in a county assessor's office or in the division of property taxation in the department of local affairs who are registered appraisers as of July 1, 2013, to the category of licensed ad valorem appraiser. The board shall allow these

persons, until December 31, 2015, to meet any additional requirements imposed by the board pursuant to section 12-61-704 (1)(a), as amended.

(2) (a) The board shall, by rule, prescribe continuing education requirements for persons licensed or certified as certified general appraisers, certified residential appraisers, or licensed appraisers as needed to meet the requirements of the "Real Estate Appraisal Reform Amendments", Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", as amended, 12 U.S.C. secs. 3331 to 3351. The board shall not establish any continuing education requirements that are more stringent than the requirements of any applicable law; except that all persons licensed or certified under this part 7 are subject to continuing education requirements. If there is no applicable federal law, the board shall consider and may use as guidelines the most recent available criteria published by the appraiser qualifications board of the appraisal foundation or its successor organization.

(b) The board shall, by rule, prescribe continuing education requirements for licensed ad valorem appraisers.

(3) Notwithstanding any provision of this section to the contrary, the criteria established by the board for the licensing or certification of appraisers pursuant to this part 7 shall not include membership or lack of membership in any appraisal organization.

(4) (a) Subject to section 12-61-719 (2), all appraiser employees of county assessors shall be licensed or certified as provided in subsections (1) and (2) of this section. Obtaining and maintaining a license or certificate under either of said subsections (1) and (2) entitles an appraiser employee of a county assessor to perform all real estate appraisals required to fulfill the person's official duties.

(b) Appraiser employees of county assessors who are employed to appraise real property are subject to this part 7; except that appraiser employees of county assessors who are employed to appraise real property are not subject to disciplinary actions by the board on the ground that they have performed appraisals beyond their level of competency when appraising real estate in fulfillment of their official duties. County assessors, if licensed or certified as provided in subsections (1) and (2) of this section, are not subject to disciplinary actions by the board on the ground that they have performed appraisals beyond their level of competency when appraising real estate in fulfillment of their official duties.

(c) The county in which an appraiser employee of a county assessor is employed shall pay all reasonable costs incurred by the appraiser employee of the county assessor to obtain and maintain a license or certificate pursuant to this section.

(5) The board shall not issue an appraiser's license as referenced in subparagraph (IV) of paragraph (b) of subsection (1) of this section unless the applicant has at least twelve months' appraisal experience.

(6) (a) The board shall not issue a license or certification until the applicant demonstrates that he or she meets the fitness standards established by board rule and submits a set of fingerprints to the Colorado bureau of investigation for the purpose of conducting a state and national fingerprint-based criminal history record check utilizing records of the Colorado bureau of investigation and the federal bureau of investigation. Each person submitting a set of fingerprints shall pay the fee established by the Colorado bureau of investigation for conducting the fingerprint-based criminal history record check to the bureau. Upon completion of the criminal history record check, the bureau shall forward the results to the board. The board may require a name-based criminal history record check for an applicant who has twice submitted to

a fingerprint-based criminal history record check and whose fingerprints are unclassifiable. The board may deny an application for licensure or certification based on the outcome of the criminal history record check and may establish criminal history requirements more stringent than those established by any applicable federal law. At a minimum, the board shall adopt the criminal history requirements established by any applicable federal law.

(b) An applicant for certification as a licensed ad valorem appraiser is not subject to the fingerprinting and criminal background check requirements of paragraph (a) of this subsection (6).

Source: L. 2014: Entire part RC&RE, (SB 14-117), ch. 385, p. 1887, § 1, effective July 1.

Editor's note: This section is similar to former § 12-61-706 as it existed prior to 2013. For a detailed comparison of this section, see the comparative tables located in the back of the index.

12-61-707. Appraisal management companies - application for license - exemptions. (1) An applicant shall apply for a license as an appraisal management company, or as a controlling appraiser, to the board in a manner prescribed by the board.

(2) The board may grant appraisal management company licenses to individuals, partnerships, limited liability companies, or corporations. A partnership, limited liability company, or corporation, in its application for a license, shall designate a controlling appraiser who is actively certified in a state recognized by the appraisal subcommittee of the federal financial institutions examinations council or its successor entity. The controlling appraiser is responsible for the licensed practices of the partnership, limited liability company, or corporation and all persons employed by the entity. The application of the partnership, limited liability company, or corporation and the application of the appraiser designated by it as the controlling appraiser shall be filed with the board. The board has jurisdiction over the appraiser so designated and over the partnership, limited liability company, or corporation.

(3) The board shall not issue a license to any partnership, limited liability company, or corporation unless and until the appraiser designated by the partnership, limited liability company, or corporation as controlling appraiser and each individual who owns more than ten percent of the entity demonstrates that he or she meets the fitness standards established by board rule and submits a set of fingerprints to the Colorado bureau of investigation for the purpose of conducting a state and national fingerprint-based criminal history record check utilizing records of the Colorado bureau of investigation and the federal bureau of investigation. Each person submitting a set of fingerprints shall pay the fee established by the Colorado bureau of investigation for conducting the fingerprint-based criminal history record check to the bureau. Upon completion of the criminal history record check, the bureau shall forward the results to the board. The board may require a name-based criminal history record check for an applicant who has twice submitted to a fingerprint-based criminal history record check and whose fingerprints are unclassifiable. The board may deny an application for licensure or refuse to renew a license based on the outcome of the criminal history record check. The board may require criminal history requirements more stringent than those established by any applicable federal law. At a

minimum, the board shall adopt the criminal history requirements established by any applicable federal law.

(4) The board shall not issue a license to any partnership, limited liability company, or corporation if the appraiser designated by the entity as controlling appraiser has previously had, in any state, an appraiser registration, license, or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked. A disciplinary action resulting in refusal, denial, cancellation, surrender in lieu of revocation, or revocation relating to a registration, license, or certification as an appraiser registered, licensed, or certified under this part 7 or any related occupation in any other state, territory, or country for disciplinary reasons is prima facie evidence of grounds for denial of a license by the board.

(5) The board shall not issue a license to any partnership, limited liability company, or corporation if it is owned, in whole or in part, directly or indirectly, by any person who has had, in any state, an appraiser license, registration, or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked. A disciplinary action resulting in refusal, denial, cancellation, surrender in lieu of revocation, or revocation relating to a license, registration, or certification as an appraiser licensed, registered, or certified under this part 7 or any related occupation in any other state, territory, or country for disciplinary reasons is prima facie evidence of grounds for denial of a license by the board.

(6) The board may deny an application for a license for any partnership, limited liability company, or corporation if the partnership, limited liability company, or corporation has previously had a license revoked or surrendered a license in lieu of revocation. A disciplinary action resulting in the surrender in lieu of revocation or the revocation of a license as an appraisal management company under this part 7 or any related occupation in any other state, territory, or country for disciplinary reasons may be deemed to be prima facie evidence of grounds for denial of a license by the board.

(7) Each appraisal management company must maintain a definite place of business. If the appraisal management company is domiciled in another state, the appraiser designated by the appraisal management company as controlling appraiser is responsible for supervising all licensed activities that occur in Colorado. All licensed actions occurring within the state of Colorado must occur under the name under which the appraisal management company is licensed or its trade name adopted in accordance with Colorado law.

(8) An application that is submitted by an appraisal management company that is:

(a) A partnership must be properly registered with the Colorado department of revenue or properly filed with the Colorado secretary of state and in good standing, proof of which must be included in the application. If an assumed or trade name is to be used, it must be properly filed with the Colorado department of revenue or filed and accepted by the Colorado secretary of state, proof of which must be included with the application.

(b) A limited liability company must be properly registered with the Colorado secretary of state and in good standing, proof of which must be included with the application. If an assumed or trade name is to be used, it must be properly filed with the Colorado secretary of state, proof of which must be included with the application.

(c) A corporation must be registered as a foreign corporation or properly incorporated with the Colorado secretary of state and in good standing, proof of which must be included with the application. If an assumed or trade name is to be used, it must be properly filed with the Colorado secretary of state, proof of which must be included with the application.

(9) Financial institutions and appraisal management company subsidiaries that are owned and controlled by the financial institution and regulated by a federal financial institution regulatory agency are not required to register with or be licensed by the board. This exemption includes a panel of appraisers who are engaged to provide appraisal services and are administered by a financial institution regulated by a federal financial regulatory agency.

Source: L. 2014: Entire part RC&RE, (SB 14-117), ch. 385, p. 1890, § 1, effective July 1.

Editor's note: This section is similar to former § 12-61-706.3 as it existed prior to 2013.

12-61-708. Errors and omissions insurance - duties of the division - certificate of coverage - group plan made available - rules. (1) Every licensee under this part 7, except an appraiser who is employed by a state or local governmental entity or an inactive appraiser or appraisal management company, shall maintain errors and omissions insurance to cover all activities contemplated under this part 7. The division shall make the errors and omissions insurance available to all licensees by contracting with an insurer for a group policy after a competitive bid process in accordance with article 103 of title 24, C.R.S. A group policy obtained by the division must be available to all licensees with no right on the part of the insurer to cancel any licensee. A licensee may obtain errors and omissions insurance independently if the coverage complies with the minimum requirements established by the division.

(2) (a) If the division is unable to obtain errors and omissions insurance coverage to insure all licensees who choose to participate in the group program at a reasonable annual premium, as determined by the division, a licensee shall independently obtain the errors and omissions insurance required by this section.

(b) The division shall solicit and consider information and comments from interested persons when determining the reasonableness of annual premiums.

(3) The division shall determine the terms and conditions of coverage required under this section based on rules promulgated by the board. Each licensee shall be notified of the required terms and conditions at least thirty days before the annual premium renewal date as determined by the division. Each licensee shall file a certificate of coverage showing compliance with the required terms and conditions with the division by the annual premium renewal date, as determined by the division.

(4) In addition to all other powers and duties conferred upon the board by this part 7, the board is authorized and directed to adopt rules it deems necessary or proper to carry out the requirements of this section.

Source: L. 2014: Entire part RC&RE, (SB 14-117), ch. 385, p. 1892, § 1, effective July 1.

Editor's note: This section is similar to former § 12-61-706.5 as it existed prior to 2013.

12-61-709. Bond required. (1) Before the board issues a license to an applicant for an appraisal management company license, the applicant shall post with the board a surety bond in

the amount of twenty-five thousand dollars. A licensed appraisal management company shall maintain the required bond at all times.

(2) The surety bond shall require the surety to provide notice to the board within thirty days if payment is made from the surety bond or if the bond is cancelled.

Source: L. 2014: Entire part RC&RE, (SB 14-117), ch. 385, p. 1893, § 1, effective July 1.

Editor's note: This section is similar to former § 12-61-706.7 as it existed prior to 2013.

12-61-710. Expiration of licenses - renewal - penalties - fees - rules. (1) (a) All licenses or certificates expire pursuant to a schedule established by the director and may be renewed or reinstated pursuant to this section. Upon compliance with this section and any applicable rules of the board regarding renewal, including the payment of a renewal fee plus a reinstatement fee established pursuant to paragraph (b) of this subsection (1), the expired license or certificate shall be reinstated. A real estate appraiser's license or certificate that has not been renewed for a period greater than two years shall not be reinstated, and the person must submit a new application for licensure or certification.

(b) A person who fails to renew his or her license or certificate before the applicable renewal date may have it reinstated if the person submits an application as prescribed by the board:

(I) Within thirty-one days after the date of expiration, by payment of the regular renewal fee;

(II) More than thirty-one days, but within one year, after the date of expiration, by payment of the regular renewal fee and payment of a reinstatement fee equal to one-third of the regular renewal fee; or

(III) More than one year, but within two years, after the date of expiration, by payment of the regular renewal fee and payment of a reinstatement fee equal to two-thirds of the regular renewal fee.

(2) If the federal registry fee collected by the board and transmitted to the federal financial institutions examination council is increased prior to expiration of a license or certificate, the board shall collect the amount of the increase in the fee from the holder of the license or certificate and forward the amount to the council annually. The federal registry fee does not apply to licensed ad valorem appraisers licensed under this article.

(3) (a) If the applicant has complied with this section and any applicable rules of the board regarding renewal, except for the continuing education requirements pursuant to section 12-61-706, the licensee may renew the license on inactive status. An inactive license may be activated if the licensee submits written certification of compliance with section 12-61-706 for the previous licensing period. The board may adopt rules establishing procedures to facilitate reactivation of licenses.

(b) The holder of an inactive license shall not perform a real estate appraisal or appraisal management duties.

(c) The holder of an inactive license shall not hold himself or herself out as having an active license pursuant to this part 7.

(4) At the time of renewal or reinstatement, every licensee, certificate holder, and person or individual who owns more than ten percent of an appraisal management company shall submit a set of fingerprints to the Colorado bureau of investigation for the purpose of conducting a state and national fingerprint-based criminal history record check utilizing records of the Colorado bureau of investigation and the federal bureau of investigation, if the person has not previously done so for issuance of a license or certification by the board. Each person submitting a set of fingerprints shall pay the fee established by the Colorado bureau of investigation for conducting the fingerprint-based criminal history record check to the bureau. The bureau shall forward the results to the board. The board may require a name-based criminal history record check for an applicant who has twice submitted to a fingerprint-based criminal history record check and whose fingerprints are unclassifiable. The board may refuse to renew or reinstate a license or certification based on the outcome of the criminal history record check.

Source: L. 2014: Entire part RC&RE, (SB 14-117), ch. 385, p. 1893, § 1, effective July 1.

Editor's note: This section is similar to former § 12-61-707 as it existed prior to 2013.

12-61-711. Licensure or certification by endorsement - temporary practice. (1) The board may issue a license or certification to an appraiser by endorsement to engage in the occupation of real estate appraisal to any applicant who has a license or certification in good standing as a real estate appraiser under the laws of another jurisdiction if:

(a) The applicant presents proof satisfactory to the board that, at the time of application for a Colorado license or certificate by endorsement, the applicant possesses credentials and qualifications that are substantially equivalent to the requirements of this part 7; or

(b) The jurisdiction that issued the applicant a license or certificate to engage in the occupation of real estate appraisal has a law similar to this subsection (1) pursuant to which it licenses or certifies persons who are licensed real estate appraisers in this state.

(2) The board may specify, by rule, what constitutes substantially equivalent credentials and qualifications and the manner in which the board will review credentials and qualifications of an applicant.

(3) Pursuant to section 1122 (a) of Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", Pub.L. 101-73, the board shall recognize, on a temporary basis, the license or certification of an appraiser issued by another state if:

(a) The appraiser's business is of a temporary nature; and

(b) The appraiser applies for and is granted a temporary practice permit by the board.

Source: L. 2014: Entire part RC&RE, (SB 14-117), ch. 385, p. 1894, § 1, effective July 1.

Editor's note: This section is similar to former § 12-61-708 as it existed prior to 2013.

12-61-712. Denial of license or certificate - renewal - definition. (1) The board may determine whether an applicant for licensure or certification possesses the necessary qualifications for licensure or certification required by this part 7. The board may consider such

qualities as the applicant's fitness and prior professional licensure and whether the applicant has been convicted of a crime. As used in this subsection (1), "applicant" includes any individual who owns, in whole or in part, directly or indirectly, an appraisal management company and any appraiser designated as a controlling appraiser by a partnership, limited liability company, or corporation acting as an appraisal management company.

(2) If the board determines that an applicant does not possess the applicable qualifications required by this part 7, or the applicant has violated this part 7, rules promulgated by the board, or any board order, the board may deny the applicant a license or certificate or deny the renewal or reinstatement of a license or certificate pursuant to section 12-61-710, and, in such instance, the board shall provide the applicant with a statement in writing setting forth the basis of the board's determination that the applicant does not possess the qualifications or professional competence required by this part 7. The applicant may request a hearing on the determination as provided in section 24-4-104 (9), C.R.S.

Source: L. 2014: Entire part RC&RE, (SB 14-117), ch. 385, p. 1895, § 1, effective July 1.

Editor's note: This section is similar to former § 12-61-709 as it existed prior to 2013.

12-61-713. Prohibited activities - grounds for disciplinary actions - procedures. (1) A real estate appraiser is in violation of this part 7 if the appraiser:

(a) Has been convicted of a felony or has had accepted by a court a plea of guilty or nolo contendere to a felony if the felony is related to the ability to act as a real property appraiser. A certified copy of the judgment of a court of competent jurisdiction of the conviction or plea is conclusive evidence of the conviction or plea. In considering the disciplinary action, the board shall be governed by the provisions of section 24-5-101, C.R.S.

(b) Has violated, or attempted to violate, directly or indirectly, or assisted in or abetted the violation of, or conspired to violate this part 7, a rule promulgated pursuant to this part 7, or an order of the board issued pursuant to this part 7;

(c) Has accepted any fees, compensation, or other valuable consideration to influence the outcome of an appraisal;

(d) Has used advertising that is misleading, deceptive, or false;

(e) Has used fraud or misrepresentation in obtaining a license or certificate under this part 7;

(f) Has conducted an appraisal in a fraudulent manner or used misrepresentation in any such activity;

(g) Has acted or failed to act in a manner that does not meet the generally accepted standards of professional appraisal practice as adopted by the board by rule. A certified copy of a malpractice judgment of a court of competent jurisdiction is conclusive evidence of the act or omission, but evidence of the act or omission is not limited to a malpractice judgment.

(h) Has performed appraisal services beyond his or her level of competency;

(i) Has been subject to an adverse or disciplinary action in another state, territory, or country relating to a license, certificate, or other authorization to practice as an appraiser. A disciplinary action relating to a license or certificate as an appraiser licensed or certified under this part 7 or any related occupation in any other state, territory, or country for disciplinary

reasons is prima facie evidence of grounds for disciplinary action or denial of licensure or certification by the board. This paragraph (i) applies only to violations based upon acts or omissions in the other state, territory, or country that are also violations of this part 7.

(j) Has failed to disclose in the appraisal report the fee paid to the appraiser for a residential real property appraisal if the appraiser was engaged by an appraisal management company to complete the assignment; or

(k) Has engaged in conduct that would be grounds for the denial of a license or certification under section 12-61-712.

(2) If an applicant, a licensee, or a certified person has violated any provision of this section, the board may deny or refuse to renew the license or certificate, or, as specified in subsections (3) and (6) of this section, revoke or suspend the license or certificate, issue a letter of admonition to a licensee or certified person, place a licensee or certified person on probation, or impose public censure.

(3) When a complaint or an investigation discloses an instance of misconduct by a licensed or certified appraiser that, in the opinion of the board, does not warrant formal action by the board but should not be dismissed as being without merit, the board may send a letter of admonition by certified mail to the appraiser against whom a complaint was made. The letter shall advise the appraiser of the right to make a written request, within twenty days after receipt of the letter of admonition, to the board to begin formal disciplinary proceedings as provided in this section to adjudicate the conduct or acts on which the letter was based.

(4) The board may start a proceeding for discipline of a licensee or certified person when the board has reasonable grounds to believe that a licensee or certified person has committed any act or failed to act pursuant to the grounds established in subsection (1) of this section or when a request for a hearing is timely made under subsection (3) of this section.

(5) Disciplinary proceedings shall be conducted in the manner prescribed by the "State Administrative Procedure Act", article 4 of title 24, C.R.S.

(6) As authorized in subsection (2) of this section, disciplinary actions by the board may consist of the following:

(a) **Revocation of a license or certificate.** (I) Revocation of a license or certificate by the board means that the licensed or certified person shall surrender his or her license or certificate immediately to the board.

(II) Any person whose license or certificate to practice is revoked is ineligible to apply for a license or certificate issued under this part 7 until more than two years have elapsed from the date of surrender of the license or certificate. A reapplication after the two-year period is treated as a new application.

(b) **Suspension of a license or certificate.** Suspension of a license or certificate by the board is for a period to be determined by the board.

(c) **Probationary status.** The board may impose probationary status on a licensee or certified person. If the board places a licensee or certified person on probation, the board may include conditions for continued practice that the board deems appropriate to assure that the licensee or certified person is otherwise qualified to practice in accordance with generally accepted professional standards of professional appraisal practice, as specified in board rules, including any or all of the following:

(I) A requirement that the licensee or certified person take courses of training or education as needed to correct deficiencies found in the hearing;

(II) A review or supervision of his or her practice as may be necessary to determine the quality of the practice and to correct deficiencies in the practice; and

(III) The imposition of restrictions upon the nature of his or her appraisal practice to assure that he or she does not practice beyond the limits of his or her capabilities.

(d) **Public censure.** If, after notice and hearing, the director or the director's designee determines that the licensee or certified person has committed any of the acts specified in this section, the board may impose public censure.

(7) In addition to any other discipline imposed pursuant to this section, any person who violates this part 7 or the rules promulgated pursuant to this article may be penalized by the board upon a finding of a violation pursuant to article 4 of title 24, C.R.S., as follows:

(a) In the first administrative proceeding against a person, a fine of not less than three hundred dollars but not more than five hundred dollars per violation;

(b) In any subsequent administrative proceeding against a person for transactions occurring after a final agency action determining that a violation of this part 7 has occurred, a fine of not less than one thousand dollars but not more than two thousand dollars.

(8) A person participating in good faith in making a complaint or report or participating in an investigative or administrative proceeding before the board pursuant to this article is immune from any liability, civil or criminal, that otherwise might result by reason of the action.

(9) A licensee or certified person who has direct knowledge that a person has violated this part 7 shall report his or her knowledge to the board.

(10) The board, on its own motion or upon application at any time after the imposition of discipline as provided in this section, may reconsider its prior action and reinstate or restore a license or certificate, terminate probation, or reduce the severity of its prior disciplinary action. The decision of whether to take any further action or hold a hearing with respect to a prior disciplinary action rests in the sole discretion of the board.

Source: L. 2014: Entire part RC&RE, (SB 14-117), ch. 385, p. 1895, § 1, effective July 1.

Editor's note: This section is similar to former § 12-61-710 as it existed prior to 2013. For a detailed comparison, see the comparative tables located in the back of the index.

12-61-714. Appraisal management companies - prohibited activities - grounds for disciplinary actions - procedures - rules. (1) The board, upon its own motion, may, and upon a complaint submitted to the board in writing by any person, shall, investigate the activities of a licensed appraisal management company; an appraiser designated as a controlling appraiser by a partnership, limited liability company, or corporation acting as an appraisal management company; or a person or entity that assumes to act in that capacity within the state. The board, upon finding a violation, may impose an administrative fine not to exceed two thousand five hundred dollars for each separate offense; censure a licensee; place the licensee on probation and set the terms of probation; or temporarily suspend or permanently revoke a license, when the licensee has performed, is performing, or is attempting to perform any of the following acts:

(a) Failing to:

(I) Exercise due diligence when hiring or engaging a real estate appraiser to ensure that the real estate appraiser is appropriately credentialed by the board and competent to perform the assignment; and

(II) In the case of an AMC, establish and comply with processes and controls reasonably designed to ensure that the AMC conducts its appraisal management services in accordance with the requirements of the federal "Truth in Lending Act", 15 U.S.C. sec. 1639e (a) to (i), and regulations adopted pursuant to that act.

(b) Requiring an appraiser to indemnify the appraisal management company against liability, damages, losses, or claims other than those arising out of the services performed by the appraiser, including performance or nonperformance of the appraiser's duties and obligations, whether as a result of negligence or willful misconduct;

(c) Influencing or attempting to influence the development, reporting, result, or review of a real estate appraisal or the engagement of an appraiser through coercion, extortion, collusion, compensation, inducement, intimidation, bribery, or in any other manner. This prohibition does not prohibit an appraisal management company from requesting an appraiser to:

(I) Consider additional, appropriate property information;

(II) Provide further detail, substantiation, or explanation for the appraiser's value conclusion; or

(III) Correct errors in the appraisal report.

(d) Prohibiting an appraiser, in the completion of an appraisal service, from communicating with the client, any intended users, real estate brokers, tenants, property owners, management companies, or any other entity that the appraiser reasonably believes has information pertinent to the completion of an appraisal assignment; except that this paragraph (d) does not apply to communications between an appraiser and an appraisal management company's client if the client has adopted an explicit policy prohibiting such communication. If the client has adopted an explicit policy prohibiting communication by the appraiser with the client, communication by an appraiser to the client must be made in writing and submitted to the appraisal management company.

(e) Altering or modifying a completed appraisal report without the authoring appraiser's knowledge and written consent, and the consent of the intended user, except to modify the format of the report solely for transmission to the client and in a manner acceptable to the client;

(f) Requiring an appraiser to provide to the appraisal management company access to the appraiser's electronic signature;

(g) Failing to validate or verify that the work completed by an appraiser who is hired or engaged by the appraisal management company complies with state and federal regulations, including the uniform standards of professional appraisal practice, by conducting an annual audit of a random sample of the appraisals received within the previous year by the appraisal management company. The board shall establish annual appraisal review requirements by rule and shall solicit and consider information and comments from interested persons.

(h) Failing to make payment to an appraiser within sixty days after completion of the appraisal, unless otherwise agreed or unless the appraiser has been notified in writing that a bona fide dispute exists regarding the performance or quality of the appraisal;

(i) Failing to perform the terms of a written agreement with an appraiser hired or engaged to complete an appraisal assignment;

(j) Failing to disclose to an appraiser, at the time of engagement, the identity of the client;

(k) Using an appraisal report for a client other than the one originally contracted with, without the original client's written consent;

(l) Failing to maintain possession of, for future use or inspection by the board, for a period of at least five years or at least two years after final disposition of any judicial proceeding in which a representative of the appraisal management company provided testimony related to the assignment, whichever period expires last, the documents or records prescribed by the rules of the board or to produce the documents or records upon reasonable request by the board;

(m) Having been convicted of, or entering a plea of guilty, an Alford plea, or a plea of nolo contendere to, any misdemeanor or felony relating to the conduct of an appraisal, theft, embezzlement, bribery, fraud, misrepresentation, or deceit, or any other like crime under Colorado law, federal law, or the laws of other states. A certified copy of the judgment of a court of competent jurisdiction of the conviction or other official record indicating that a plea was entered is conclusive evidence of the conviction or plea in any hearing under this part 7.

(n) Having been the subject of an adverse or disciplinary action in another state, territory, or country relating to a license, registration, certification, or other authorization to practice as an appraisal management company. A disciplinary action relating to a registration, license, or certificate as an appraisal management company under this part 7 or any related occupation in any other state, territory, or country for disciplinary reasons is prima facie evidence of grounds for disciplinary action or denial of a license by the board. This paragraph (n) applies only to violations based upon acts or omissions in the other state, territory, or country that would violate this part 7 if committed in Colorado.

(o) Violating the "Colorado Consumer Protection Act", article 1 of title 6, C.R.S.;

(p) Procuring, or attempting to procure, an appraisal management company license or renewing, reinstating, or reactivating, or attempting to renew, reinstate, or reactivate, an appraisal management company license by fraud, misrepresentation, or deceit or by making a material misstatement of fact in an application for a license;

(q) Knowingly misrepresenting or making false promises through agents, advertising, or otherwise;

(r) Failing to disclose to a client the fee amount paid to the appraiser hired or engaged to complete the appraisal upon completion of the assignment; or

(s) Disregarding, violating, or abetting, directly or indirectly, a violation of this part 7, a rule promulgated by the board pursuant to this part 7, or an order of the board entered pursuant to this part 7.

(2) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, does not warrant formal action by the board but should not be dismissed as being without merit, the board may send a letter of admonition by certified mail, return receipt requested, to the licensee against whom the complaint was made. The letter shall advise the licensee of the right to make a written request, within twenty days after receipt of the letter of admonition, to the board to begin formal disciplinary proceedings as provided in this section to adjudicate the conduct or acts on which the letter was based.

(3) Disciplinary proceedings must be conducted in the manner prescribed by the "State Administrative Procedure Act", article 4 of title 24, C.R.S.

(4) If a partnership, limited liability company, or corporation operating under the license of an appraiser designated and licensed as a controlling appraiser by the partnership, limited liability company, or corporation is guilty of any act listed in subsection (1) of this section, the board may suspend or revoke the right of the partnership, limited liability company, or corporation to conduct its business under the license of the controlling appraiser, whether or not the controlling appraiser had personal knowledge of the violation and whether or not the board suspends or revokes the individual license of the controlling appraiser.

(5) This part 7 does not relieve any person from civil liability or criminal prosecution under the laws of this state.

(6) A licensee or certified person having direct knowledge that a person or licensed partnership, limited liability company, or corporation has violated this part 7 shall report his or her knowledge to the board.

(7) The board, on its own motion or upon application, at any time after the imposition of discipline as provided in this section, may reconsider its prior action and reinstate or restore a license, terminate probation, or reduce the severity of its prior disciplinary action. The decision of whether to take any further action or hold a hearing with respect to the action rests in the sole discretion of the board.

Source: L. 2014: Entire part RC&RE, (SB 14-117), ch. 385, p. 1898, § 1, effective July 1. **L. 2018:** (1)(a) amended, (SB 18-210), ch. 286, p. 1775, § 3, effective August 8.

Editor's note: This section is similar to former § 12-61-710.5 as it existed prior to 2013.

12-61-715. Judicial review of final board actions and orders. Final actions and orders of the board under sections 12-61-712, 12-61-713, and 12-61-714 appropriate for judicial review are subject to judicial review in the court of appeals in accordance with section 24-4-106 (11), C.R.S.

Source: L. 2014: Entire part RC&RE, (SB 14-117), ch. 385, p. 1902, § 1, effective July 1.

Editor's note: This section is similar to former § 12-61-711 as it existed prior to 2013.

12-61-716. Unlawful acts - penalties. (1) It is unlawful for a person to:

(a) Violate section 12-61-713 (1)(c), (1)(e), or (1)(f) or perform a real estate appraisal without first having obtained a license or certificate from the board pursuant to this part 7;

(b) Accept a fee for an independent appraisal assignment that is contingent upon:

(I) Reporting a predetermined analysis, opinion, or conclusion; or

(II) The analysis, opinion, or conclusion reached; or

(III) The consequences resulting from the analysis, opinion, or conclusion;

(c) Misrepresent a consulting service as an independent appraisal; or

(d) Fail to disclose, in connection with a consulting service for which a contingent fee is or will be paid, the fact that a contingent fee is or will be paid.

(2) Any person who violates any provision of subsection (1) of this section commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S. Any person

who subsequently violates any provision of subsection (1) of this section within five years after the date of a conviction for a violation of subsection (1) of this section commits a class 5 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: L. 2014: Entire part RC&RE, (SB 14-117), ch. 385, p. 1902, § 1, effective July 1.

Editor's note: This section is similar to former § 12-61-712 as it existed prior to 2013.

12-61-717. Appraisal management company license required - violations - injunction. (1) Except as provided in section 12-61-707 (9), it is unlawful for any person, partnership, limited liability company, or corporation to engage in the business of appraisal management in this state without first having obtained a license from the board. The board shall not grant a license to a person, partnership, limited liability company, or corporation until the person, partnership, limited liability company, or corporation demonstrates compliance with this part 7.

(2) The board may apply to a court of competent jurisdiction for an order enjoining an act or practice that constitutes a violation of this part 7, and, upon a showing that a person, partnership, limited liability company, or corporation is engaging or intends to engage in an act or practice that violates this part 7, the court shall grant an injunction, restraining order, or other appropriate order, regardless of the existence of another remedy for the violation. Any notice, hearing, or duration of an injunction or restraining order shall be made in accordance with the Colorado rules of civil procedure.

(3) Any person, partnership, limited liability company, or corporation violating this part 7 by acting as an appraisal management company without having obtained a license or acting as an appraisal management company after the appraisal management company's license has been revoked or during any period for which the license was suspended is guilty of a misdemeanor and, upon conviction thereof:

(a) If a natural person, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment, for the first violation and, for a second or subsequent violation, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment; and

(b) If an entity, shall be punished by a fine of not more than five thousand dollars.

Source: L. 2014: Entire part RC&RE, (SB 14-117), ch. 385, p. 1902, § 1, effective July 1.

Editor's note: This section is similar to former § 12-61-712.5 as it existed prior to 2013.

12-61-718. Injunctive proceedings. (1) The board may, in the name of the people of the state of Colorado, through the attorney general of the state of Colorado, apply for an injunction in any court of competent jurisdiction to perpetually enjoin a person or appraisal management company from committing an act prohibited by this part 7.

(2) Injunctive proceedings under this section are in addition to and not in lieu of penalties and other remedies provided in this part 7.

(3) When seeking an injunction under this section, the board is not required to allege or prove either that an adequate remedy at law does not exist or that substantial or irreparable damage would result from a continued violation.

Source: L. 2014: Entire part RC&RE, (SB 14-117), ch. 385, p. 1903, § 1, effective July 1.

Editor's note: This section is similar to former § 12-61-713 as it existed prior to 2013.

12-61-719. Special provision for appraiser employees of county assessors. (1) Except as provided in subsection (2) of this section, unless a federal waiver is applied for and granted pursuant to section 12-61-704 (1)(i), a person acting as a real estate appraiser in this state shall be licensed or certified as provided in this part 7. No person shall practice without a license or certificate or hold himself or herself out to the public as a licensed or certified real estate appraiser unless licensed or certified pursuant to this part 7.

(2) An appraiser employee of a county assessor who is employed to appraise real property shall be licensed or certified as provided in this part 7 and shall have two years from the date of taking office or the beginning of employment to comply with this part 7.

Source: L. 2014: Entire part RC&RE, (SB 14-117), ch. 385, p. 1903, § 1, effective July 1.

Editor's note: This section is similar to former § 12-61-714 as it existed prior to 2013.

12-61-720. Duties of board under federal law. (1) The board shall:

(a) Transmit to the appraisal subcommittee of the federal financial institutions examinations council or its successor entity, no less than annually, a roster listing individuals and appraisal management companies that have received a certificate or license as provided in this part 7;

(b) Collect and transmit, on an annual basis, to the federal financial institutions examinations council an annual registry fee, as prescribed by the appraisal subcommittee of the federal financial institutions examinations council or its successor entity, from the following individuals and entities:

(I) Individuals and appraisal management companies that are licensed or certified pursuant to this part 7; and

(II) Appraisal management companies that operate as subsidiaries of federally regulated financial institutions; and

(c) Conduct its business and promulgate rules in a manner consistent with Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", as amended, Pub.L. 101-73.

(2) The board shall not collect or transmit the information required by this section for licensed ad valorem appraisers.

Source: L. 2014: Entire part RC&RE, (SB 14-117), ch. 385, p. 1904, § 1, effective July 1. **L. 2018:** (1)(b) amended, (SB 18-210), ch. 286, p. 1776, § 4, effective August 8.

Editor's note: This section is similar to former § 12-61-715 as it existed prior to 2013. For a detailed comparison, see the comparative tables located in the back of the index.

12-61-721. Business entities. (1) A corporation, partnership, bank, savings and loan association, savings bank, credit union, or other business entity may provide appraisal services if the appraisal is prepared by a certified general appraiser, a certified residential appraiser, or a licensed appraiser. An individual who is not a certified general appraiser, a certified residential appraiser, or a licensed appraiser may assist in the preparation of an appraisal if:

(a) The assistant is under the direct supervision of a certified or licensed appraiser; and

(b) The final appraisal document is approved and signed by an individual who is a certified or licensed appraiser.

Source: L. 2014: Entire part RC&RE, (SB 14-117), ch. 385, p. 1904, § 1, effective July 1.

Editor's note: This section is similar to former § 12-61-716 as it existed prior to 2013.

12-61-722. Provisions found not to comply with federal law null and void - severability. (1) If any provision of this part 7 is found by a court of competent jurisdiction or by the appropriate federal agency not to comply with the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", as amended, Pub.L. 101-73, the provision is null and void, but the remaining provisions of this part 7 are valid unless the remaining provisions alone are incomplete and are incapable of being executed in accordance with the legislative intent of this part 7.

(2) If the regulation of appraisal management companies is repealed from Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", as amended, Pub.L. 101-73, the board's jurisdiction over these entities is also repealed. Before the repeal, the division shall review the regulation of appraisal management companies as provided in section 24-34-104, C.R.S. If the board's jurisdiction is repealed, the director shall notify the revisor of statutes of the date of the repeal.

Source: L. 2014: Entire part RC&RE, (SB 14-117), ch. 385, p. 1904, § 1, effective July 1.

Editor's note: (1) This section is similar to former § 12-61-717 as it existed prior to 2013.

(2) As of publication date, the revisor of statutes has not received the notice referred to in subsection (2).

Cross references: For Title XI of the federal "Financial Institutions Recovery, Reform, and Enforcement Act of 1989", see 12 U.S.C. §§ 3331 to 3351.

12-61-723. Scope of article - regulated financial institutions - de minimis exemption. (1) (a) This article does not apply to an appraisal relating to any real estate-related transaction or loan made or to be made by a financial institution or its affiliate if the real estate-related transaction or loan is excepted from appraisal regulations established by the primary federal regulator of the financial institution and the appraisal is performed by:

(I) An officer, director, or regular salaried employee of the financial institution or its affiliate; or

(II) A real estate broker licensed under this article with whom said institution or affiliate has contracted for performance of the appraisal.

(b) The appraisal must not be represented or deemed to be an appraisal except to the financial institution, the agencies regulating the financial institution, and any secondary markets that purchase real estate secured loans. The appraisal must contain a written notice that the preparer is not licensed or certified as an appraiser under this part 7. Nothing in this subsection (1) exempts a person licensed or certified as an appraiser under this part 7 from regulation as provided in this part 7.

(2) Nothing in this article limits the ability of any federal or state regulator of a financial institution to require the financial institution to obtain appraisals as specified by the regulator.

Source: L. 2014: Entire part RC&RE, (SB 14-117), ch. 385, p. 1905, § 1, effective July 1.

Editor's note: This section is similar to former § 12-61-718 as it existed prior to 2013.

12-61-724. Certification of conservation easement holders - rules - definition - repeal. (Repealed)

Source: L. 2014: Entire part RC&RE, (SB 14-117), ch. 385, p. 1905, § 1, effective July 1. **L. 2017:** (3) amended, (SB 17-215), ch. 282, p. 1538, § 12, effective June 30. **L. 2018:** Entire section repealed, (HB 18-1291), ch. 273, p. 1693, § 10, effective May 29.

Editor's note: This section is similar to former § 12-61-720 as it existed prior to 2013. For a detailed comparison, see the comparative tables located in the back of the index.

12-61-725. Conservation easement oversight commission - created - repeal. (Repealed)

Source: L. 2014: Entire part RC&RE, (SB 14-117), ch. 385, p. 1908, § 1, effective July 1. **L. 2018:** Entire section repealed, (HB 18-1291), ch. 273, p. 1693, § 10, effective May 29.

Editor's note: This section is similar to former § 12-61-721 as it existed prior to 2013. For a detailed comparison, see the comparative tables located in the back of the index.

12-61-726. Conservation easement tax credit certificates - rules. (Repealed)

Source: L. 2014: Entire part RC&RE, (SB 14-117), ch. 385, p. 1910, § 1, effective July 1. **L. 2018:** Entire section repealed, (HB 18-1291), ch. 273, p. 1693, § 10, effective May 29.

Editor's note: This section is similar to former § 12-61-722 as it existed prior to 2013.

12-61-727. Conservation easement tax credit certificate application process - definitions - rules. (Repealed)

Source: L. 2014: Entire part RC&RE, (SB 14-117), ch. 385, p. 1911, § 1, effective July 1. **L. 2017:** (6) amended, (SB 17-215), ch. 282, p. 1539, § 13, effective June 30. **L. 2018:** Entire section repealed, (HB 18-1291), ch. 273, p. 1693, § 10, effective May 29.

Editor's note: This section is similar to former § 12-61-723 as it existed prior to 2013.

PART 8

BROKERAGE RELATIONSHIPS

Law reviews: For article, "The New Brokerage Legislation: The Demise of 'Agency By Surprise'", see 22 Colo. Law. 1919 (1993); for article, "Designated Brokerage: Colorado Real Estate Agency Law Evolves Again", see 32 Colo. Law. 11 (March 2003).

12-61-801. Legislative declaration. (1) The general assembly finds, determines, and declares that the public will best be served through a better understanding of the public's legal and working relationships with real estate brokers and by being able to engage any such real estate broker on terms and under conditions that the public and the real estate broker find acceptable. This includes engaging a broker as a single agent or transaction-broker. Individual members of the public should not be exposed to liability for acts or omissions of real estate brokers that have not been approved, directed, or ratified by such individuals. Further, the public should be advised of the general duties, obligations, and responsibilities of the real estate broker they engage.

(2) This part 8 is enacted to govern the relationships between real estate brokers and sellers, landlords, buyers, and tenants in real estate transactions.

Source: L. 93: Entire part added, p. 979, § 1, effective January 1, 1994. **L. 2002:** (1) amended, p. 1056, § 1, effective January 1, 2003.

12-61-802. Definitions. As used in this part 8, unless the context otherwise requires:

(1) "Broker" shall have the same meaning as set forth in section 12-61-101 (2), except as otherwise specified in this part 8.

(1.3) "Customer" means a party to a real estate transaction with whom the broker has no brokerage relationship because such party has not engaged or employed a broker.

(1.5) "Designated broker" means an employing broker or employed broker who is designated in writing by an employing broker to serve as a single agent or transaction-broker for

a seller, landlord, buyer, or tenant in a real estate transaction. "Designated broker" does not include a real estate brokerage firm that consists of only one licensed natural person.

(2) "Dual agent" means a broker who, with the written informed consent of all parties to a contemplated real estate transaction, is engaged as a limited agent for both the seller and buyer or both the landlord and tenant.

(3) "Limited agent" means an agent whose duties and obligations to a principal are only those set forth in section 12-61-804 or 12-61-805, with any additional duties and obligations agreed to pursuant to section 12-61-803 (5).

(4) "Single agent" means a broker who is engaged by and represents only one party in a real estate transaction. A single agent includes the following:

(a) "Buyer's agent", which means a broker who is engaged by and represents the buyer in a real estate transaction;

(b) "Landlord's agent", which means a broker who is engaged by and represents the landlord in a leasing transaction;

(c) "Seller's agent", which means a broker who is engaged by and represents the seller in a real estate transaction; and

(d) "Tenant's agent", which means a broker who is engaged by and represents the tenant in a leasing transaction.

(5) "Subagent" means a broker engaged to act for another broker in performing brokerage tasks for a principal. The subagent owes the same obligations and responsibilities to the principal as does the principal's broker.

(6) "Transaction-broker" means a broker who assists one or more parties throughout a contemplated real estate transaction with communication, interposition, advisement, negotiation, contract terms, and the closing of such real estate transaction without being an agent or advocate for the interests of any party to such transaction. Upon agreement in writing pursuant to section 12-61-803 (2) or a written disclosure pursuant to section 12-61-808 (2)(d), a transaction-broker may become a single agent.

Source: L. 93: Entire part added, p. 979, § 1, effective January 1, 1994. **L. 2002:** (1.3) and (1.5) added and (3) and (6) amended, p. 1056, § 2, effective January 1, 2003. **L. 2008:** (1) amended, p. 508, § 23, effective April 17.

12-61-803. Relationships between brokers and the public - definition. (1) When engaged in any of the activities enumerated in section 12-61-101 (2), a broker may act in any transaction as a single agent or transaction-broker. The broker's general duties and obligations arising from that relationship shall be disclosed to the seller and the buyer or to the landlord and the tenant pursuant to section 12-61-808.

(2) A broker shall be considered a transaction-broker unless a single agency relationship is established through a written agreement between the broker and the party or parties to be represented by such broker.

(3) A broker may work with a single party in separate transactions pursuant to different relationships including, but not limited to, selling one property as a seller's agent and working with that seller in buying another property as a transaction-broker or buyer's agent, but only if the broker complies with this part 8 in establishing the relationships for each transaction.

(4) (a) A broker licensed pursuant to part 1 of this article, whether acting as a single agent or transaction-broker, may complete standard forms for use in a real estate transaction, including standard forms intended to convey personal property as part of the real estate transaction, when a broker is performing the activities enumerated or referred to in section 12-61-101 (2) in the transaction.

(b) As used in this subsection (4), "standard form" means:

(I) A form promulgated by the real estate commission for current use by brokers, also referred to in this section as a "commission-approved form";

(II) A form drafted by a licensed Colorado attorney representing the broker, employing broker, or brokerage firm, so long as the name of the attorney or law firm and the name of the broker, employing broker, or brokerage firm for whom the form is prepared are included on the form itself;

(III) A form provided by a party to the transaction if the broker is acting in the transaction as either a transaction-broker or as a single agent for the party providing the form to the broker, so long as the broker retains written confirmation that the form was provided by a party to the transaction;

(IV) A form prescribed by a governmental agency, a quasi-governmental agency, or a lender regulated by state or federal law, if use of the form is mandated by such agency or lender;

(V) A form issued with the written approval of the Colorado Bar Association or its successor organization and specifically designated for use by brokers in Colorado, so long as the form is used within any guidelines or conditions specified by the Colorado Bar Association or successor organization in connection with the use of the form;

(VI) A form used for disclosure purposes only, if the disclosure does not purport to waive or create any legal rights or obligations affecting any party to the transaction and if the form provides only information concerning either:

(A) The real estate involved in the transaction specifically; or

(B) The geographic area in which the real estate is located generally;

(VII) A form prescribed by a title company that is providing closing services in a transaction for which the broker is acting either as a transaction-broker or as a single agent for a party to the transaction; or

(VIII) A letter of intent created or prepared by a broker, employing broker, or brokerage firm so long as the letter of intent states on its face that it is nonbinding and creates no legal rights or obligations.

(c) A broker shall use a commission-approved form when such a form exists and is appropriate for the transaction. A broker's use of any standard form described in subsection (4)(b)(III) or (4)(b)(IV) of this section must be limited to inserting transaction-specific information within the form. In using standard forms described in subsection (4)(b)(II), (4)(b)(V), (4)(b)(VI), (4)(b)(VII), or (4)(b)(VIII) of this section, the broker may also advise the parties as to effects thereof, and the broker's use of those standard forms must be appropriate for the transaction and the circumstances in which they are used. In any transaction described in this subsection (4), the broker shall advise the parties that the forms have important legal consequences and that the parties should consult legal counsel before signing such forms.

(5) Nothing contained in this section shall prohibit the public from entering into written contracts with any broker which contain duties, obligations, or responsibilities which are in addition to those specified in this part 8.

(6) (a) If a real estate brokerage firm has more than one licensed natural person, the employing broker or an individual broker employed or engaged by that employing broker shall be designated to work with the seller, landlord, buyer, or tenant as a designated broker. The employing broker may designate more than one of its individual brokers to work with a seller, landlord, buyer, or tenant.

(b) The brokerage relationship established between the seller, landlord, buyer, or tenant and a designated broker, including the duties, obligations, and responsibilities of that relationship, shall not extend to the employing broker nor to any other broker employed or engaged by that employing broker who has not been so designated and shall not extend to the firm, partnership, limited liability company, association, corporation, or other entity that employs such broker.

(c) A real estate broker may have designated brokers working as single agents for a seller or landlord and a buyer or tenant in the same real estate transaction without creating dual agency for the employing real estate broker, or any broker employed or engaged by that employing real estate broker.

(d) An individual broker may be designated to work for both a seller or landlord and a buyer or tenant in the same transaction as a transaction-broker for both, as a single agent for the seller or landlord treating the buyer or tenant as a customer, or as a single agent for a buyer or tenant treating the seller or landlord as a customer, but not as a single agent for both. The applicable designated broker relationship shall be disclosed in writing to the seller or landlord and buyer or tenant in a timely manner pursuant to rules promulgated by the real estate commission.

(e) A designated broker may work with a seller or landlord in one transaction and work with a buyer or tenant in another transaction.

(f) When a designated broker serves as a single agent pursuant to section 12-61-804 or 12-61-805, there shall be no imputation of knowledge to the employing or employed broker who has not been so designated.

(g) The extent and limitations of the brokerage relationship with the designated broker shall be disclosed to the seller, landlord, buyer, or tenant working with that designated broker pursuant to section 12-61-808.

(7) No seller, buyer, landlord, or tenant shall be vicariously liable for a broker's acts or omissions that have not been approved, directed, or ratified by such seller, buyer, landlord, or tenant.

(8) Nothing in this section shall be construed to limit the employing broker's or firm's responsibility to supervise licensees employed by such broker or firm nor to shield such broker or firm from vicarious liability.

Source: L. 93: Entire part added, p. 980, § 1, effective January 1, 1994. **L. 2002:** (1) to (4) amended and (6) to (8) added, p. 1057, § 3, effective January 1, 2003. **L. 2008:** (1) and (4) amended, p. 509, § 24, effective April 17. **L. 2017:** (4) amended, (SB 17-215), ch. 282, p. 1539, § 14, effective June 30.

12-61-804. Single agent engaged by seller or landlord. (1) A broker engaged by a seller or landlord to act as a seller's agent or a landlord's agent is a limited agent with the following duties and obligations:

(a) To perform the terms of the written agreement made with the seller or landlord;

(b) To exercise reasonable skill and care for the seller or landlord;

(c) To promote the interests of the seller or landlord with the utmost good faith, loyalty, and fidelity, including, but not limited to:

(I) Seeking a price and terms which are acceptable to the seller or landlord; except that the broker shall not be obligated to seek additional offers to purchase the property while the property is subject to a contract for sale or to seek additional offers to lease the property while the property is subject to a lease or letter of intent to lease;

(II) Presenting all offers to and from the seller or landlord in a timely manner regardless of whether the property is subject to a contract for sale or a lease or letter of intent to lease;

(III) Disclosing to the seller or landlord adverse material facts actually known by the broker;

(IV) Counseling the seller or landlord as to any material benefits or risks of a transaction which are actually known by the broker;

(V) Advising the seller or landlord to obtain expert advice as to material matters about which the broker knows but the specifics of which are beyond the expertise of such broker;

(VI) Accounting in a timely manner for all money and property received; and

(VII) Informing the seller or landlord that such seller or landlord shall not be vicariously liable for the acts of such seller's or landlord's agent that are not approved, directed, or ratified by such seller or landlord.

(d) To comply with all requirements of this article and any rules promulgated pursuant to this article; and

(e) To comply with any applicable federal, state, or local laws, rules, regulations, or ordinances including fair housing and civil rights statutes or regulations.

(2) The following information shall not be disclosed by a broker acting as a seller's or landlord's agent without the informed consent of the seller or landlord:

(a) That a seller or landlord is willing to accept less than the asking price or lease rate for the property;

(b) What the motivating factors are for the party selling or leasing the property;

(c) That the seller or landlord will agree to financing terms other than those offered;

(d) Any material information about the seller or landlord unless disclosure is required by law or failure to disclose such information would constitute fraud or dishonest dealing; or

(e) Any facts or suspicions regarding circumstances which may psychologically impact or stigmatize any real property pursuant to section 38-35.5-101, C.R.S.

(3) (a) A broker acting as a seller's or landlord's agent owes no duty or obligation to the buyer or tenant; except that a broker shall, subject to the limitations of section 38-35.5-101, C.R.S., concerning psychologically impacted property, disclose to any prospective buyer or tenant all adverse material facts actually known by such broker. Such adverse material facts may include but shall not be limited to adverse material facts pertaining to the title and the physical condition of the property, any material defects in the property, and any environmental hazards affecting the property which are required by law to be disclosed.

(b) A seller's or landlord's agent owes no duty to conduct an independent inspection of the property for the benefit of the buyer or tenant and owes no duty to independently verify the accuracy or completeness of any statement made by such seller or landlord or any independent inspector.

(4) A seller's or landlord's agent may show alternative properties not owned by such seller or landlord to prospective buyers or tenants and may list competing properties for sale or lease and not be deemed to have breached any duty or obligation to such seller or landlord.

(5) A designated broker acting as a seller's or landlord's agent may cooperate with other brokers but may not engage or create any subagents.

Source: L. 93: Entire part added, p. 981, § 1, effective January 1, 1994. **L. 2002:** (1)(c)(VII) and (5) amended, p. 1059, § 4, effective January 1, 2003.

12-61-805. Single agent engaged by buyer or tenant. (1) A broker engaged by a buyer or tenant to act as a buyer's or tenant's agent shall be a limited agent with the following duties and obligations:

(a) To perform the terms of the written agreement made with the buyer or tenant;

(b) To exercise reasonable skill and care for the buyer or tenant;

(c) To promote the interests of the buyer or tenant with the utmost good faith, loyalty, and fidelity, including, but not limited to:

(I) Seeking a price and terms which are acceptable to the buyer or tenant; except that the broker shall not be obligated to seek other properties while the buyer is a party to a contract to purchase property or while the tenant is a party to a lease or letter of intent to lease;

(II) Presenting all offers to and from the buyer or tenant in a timely manner regardless of whether the buyer is already a party to a contract to purchase property or the tenant is already a party to a contract or a letter of intent to lease;

(III) Disclosing to the buyer or tenant adverse material facts actually known by the broker;

(IV) Counseling the buyer or tenant as to any material benefits or risks of a transaction which are actually known by the broker;

(V) Advising the buyer or tenant to obtain expert advice as to material matters about which the broker knows but the specifics of which are beyond the expertise of such broker;

(VI) Accounting in a timely manner for all money and property received; and

(VII) Informing the buyer or tenant that such buyer or tenant shall not be vicariously liable for the acts of such buyer's or tenant's agent that are not approved, directed, or ratified by such buyer or tenant;

(d) To comply with all requirements of this article and any rules promulgated pursuant to this article; and

(e) To comply with any applicable federal, state, or local laws, rules, regulations, or ordinances including fair housing and civil rights statutes or regulations.

(2) The following information shall not be disclosed by a broker acting as a buyer's or tenant's agent without the informed consent of the buyer or tenant:

(a) That a buyer or tenant is willing to pay more than the purchase price or lease rate for the property;

(b) What the motivating factors are for the party buying or leasing the property;

(c) That the buyer or tenant will agree to financing terms other than those offered;

(d) Any material information about the buyer or tenant unless disclosure is required by law or failure to disclose such information would constitute fraud or dishonest dealing; or

(e) Any facts or suspicions regarding circumstances which would psychologically impact or stigmatize any real property pursuant to section 38-35.5-101, C.R.S.

(3) (a) A broker acting as a buyer's or tenant's agent owes no duty or obligation to the seller or landlord; except that such broker shall disclose to any prospective seller or landlord all adverse material facts actually known by the broker including but not limited to adverse material facts concerning the buyer's or tenant's financial ability to perform the terms of the transaction and whether the buyer intends to occupy the property to be purchased as a principal residence.

(b) A buyer's or tenant's agent owes no duty to conduct an independent investigation of the buyer's or tenant's financial condition for the benefit of the seller or landlord and owes no duty to independently verify the accuracy or completeness of statements made by such buyer or tenant or any independent inspector.

(4) A buyer's or tenant's agent may show properties in which the buyer or tenant is interested to other prospective buyers or tenants without breaching any duty or obligation to such buyer or tenant. Nothing in this section shall be construed to prohibit a buyer's or tenant's agent from showing competing buyers or tenants the same property and from assisting competing buyers or tenants in attempting to purchase or lease a particular property.

(5) A broker acting as a buyer's or tenant's agent owes no duty to conduct an independent inspection of the property for the benefit of the buyer or tenant and owes no duty to independently verify the accuracy or completeness of statements made by the seller, landlord, or independent inspectors; except that nothing in this subsection (5) shall be construed to limit the broker's duties and obligations imposed pursuant to subsection (1) of this section.

(6) A broker acting as a buyer's or tenant's agent may cooperate with other brokers but may not engage or create any subagents.

Source: L. 93: Entire part added, p. 983, § 1, effective January 1, 1994. **L. 2002:** (1)(c)(VII) amended and (5) and (6) added, p. 1059, § 5, effective January 1, 2003.

12-61-806. Dual agent. (1) A broker shall not establish dual agency with any seller, landlord, buyer, or tenant.

(2) to (6) (Deleted by amendment, L. 2002, p. 1060, § 6, effective January 1, 2003.)

Source: L. 93: Entire part added, p. 985, § 1, effective January 1, 1994. **L. 2002:** Entire section amended, p. 1060, § 6, effective January 1, 2003.

12-61-807. Transaction-broker. (1) A broker engaged as a transaction-broker is not an agent for either party.

(2) A transaction-broker shall have the following obligations and responsibilities:

(a) To perform the terms of any written or oral agreement made with any party to the transaction;

(b) To exercise reasonable skill and care as a transaction-broker, including, but not limited to:

(I) Presenting all offers and counteroffers in a timely manner regardless of whether the property is subject to a contract for sale or lease or letter of intent;

(II) Advising the parties regarding the transaction and suggesting that such parties obtain expert advice as to material matters about which the transaction-broker knows but the specifics of which are beyond the expertise of such broker;

(III) Accounting in a timely manner for all money and property received;

(IV) Keeping the parties fully informed regarding the transaction;

(V) Assisting the parties in complying with the terms and conditions of any contract including closing the transaction;

(VI) Disclosing to all prospective buyers or tenants any adverse material facts actually known by the broker including but not limited to adverse material facts pertaining to the title, the physical condition of the property, any defects in the property, and any environmental hazards affecting the property required by law to be disclosed;

(VII) Disclosing to any prospective seller or landlord all adverse material facts actually known by the broker including but not limited to adverse material facts pertaining to the buyer's or tenant's financial ability to perform the terms of the transaction and the buyer's intent to occupy the property as a principal residence; and

(VIII) Informing the parties that as seller and buyer or as landlord and tenant they shall not be vicariously liable for any acts of the transaction-broker;

(c) To comply with all requirements of this article and any rules promulgated pursuant to this article; and

(d) To comply with any applicable federal, state, or local laws, rules, regulations, or ordinances including fair housing and civil rights statutes or regulations.

(3) The following information shall not be disclosed by a transaction-broker without the informed consent of all parties:

(a) That a buyer or tenant is willing to pay more than the purchase price or lease rate offered for the property;

(b) That a seller or landlord is willing to accept less than the asking price or lease rate for the property;

(c) What the motivating factors are for any party buying, selling, or leasing the property;

(d) That a seller, buyer, landlord, or tenant will agree to financing terms other than those offered;

(e) Any facts or suspicions regarding circumstances which may psychologically impact or stigmatize any real property pursuant to section 38-35.5-101, C.R.S.; or

(f) Any material information about the other party unless disclosure is required by law or failure to disclose such information would constitute fraud or dishonest dealing.

(4) A transaction-broker has no duty to conduct an independent inspection of the property for the benefit of the buyer or tenant and has no duty to independently verify the accuracy or completeness of statements made by the seller, landlord, or independent inspectors.

(5) A transaction-broker has no duty to conduct an independent investigation of the buyer's or tenant's financial condition or to verify the accuracy or completeness of any statement made by the buyer or tenant.

(6) A transaction-broker may do the following without breaching any obligation or responsibility:

(a) Show alternative properties not owned by the seller or landlord to a prospective buyer or tenant;

(b) List competing properties for sale or lease;

(c) Show properties in which the buyer or tenant is interested to other prospective buyers or tenants; and

(d) Serve as a single agent or transaction-broker for the same or for different parties in other real estate transactions.

(7) There shall be no imputation of knowledge or information between any party and the transaction-broker or among persons within an entity engaged as a transaction-broker.

(8) A transaction-broker may cooperate with other brokers but shall not engage or create any subagents.

Source: L. 93: Entire part added, p. 986, § 1, effective January 1, 1994. **L. 2002:** (6)(d) and (8) amended, p. 1061, § 7, effective January 1, 2003.

12-61-808. Broker disclosures. (1) (a) Any person, firm, partnership, limited liability company, association, or corporation acting as a broker shall adopt a written office policy that identifies and describes the relationships offered to the public by such broker.

(b) A broker shall not be required to offer or engage in any one or in all of the brokerage relationships enumerated in section 12-61-804, 12-61-805, or 12-61-807.

(c) Written disclosures and written agreements required by subsection (2) of this section shall contain a statement to the seller, landlord, buyer, or tenant that different brokerage relationships are available that include buyer agency, seller agency, or status as a transaction-broker. Should the seller, landlord, buyer, or tenant request information or ask questions concerning a brokerage relationship not offered by the broker pursuant to the broker's written office policy enumerated in subsection (1)(a) of this section, the broker shall provide to the party a written definition of that brokerage relationship that has been promulgated by the Colorado real estate commission.

(d) Disclosures made in accordance with this part 8 shall be sufficient to disclose brokerage relationships to the public.

(2) (a) (I) Prior to engaging in any of the activities enumerated in section 12-61-101 (2), a transaction-broker shall disclose in writing to the party to be assisted that such broker is not acting as agent for such party and that such broker is acting as a transaction-broker.

(II) As part of each relationship entered into by a broker pursuant to subparagraph (I) of this paragraph (a), written disclosure shall be made which shall contain a signature block for the buyer, seller, landlord, or tenant to acknowledge receipt of such disclosure. Such disclosure and acknowledgment, by itself, shall not constitute a contract with the broker. If such buyer, seller, landlord, or tenant chooses not to sign the acknowledgment, the broker shall note that fact on a copy of the disclosure and shall retain such copy.

(III) If the transaction-broker undertakes any obligations or responsibilities in addition to or different from those set forth in section 12-61-807, such obligations or responsibilities shall be disclosed in a writing which shall be signed by the involved parties.

(b) Prior to engaging in any of the activities enumerated in section 12-61-101 (2), a broker intending to establish a single agency relationship with a seller, landlord, buyer, or tenant shall enter into a written agency agreement with the party to be represented. Such agreement shall disclose the duties and responsibilities specified in section 12-61-804 or 12-61-805, as applicable. Notice of the single agency relationship shall be furnished to any prospective party to the proposed transaction in a timely manner.

(c) (Deleted by amendment, L. 2002, p. 1061, § 8, effective January 1, 2003.)

(d) (I) Prior to engaging in any of the activities enumerated in section 12-61-101 (2), a broker intending to work with a buyer or tenant as an agent of the seller or landlord shall provide a written disclosure to such buyer or tenant that shall contain the following:

(A) A statement that the broker is an agent for the seller or landlord and is not an agent for the buyer or tenant;

(B) A list of the tasks that the agent intends to perform for the seller or landlord with the buyer or tenant; and

(C) A statement that the buyer or tenant shall not be vicariously liable for the acts of the agent unless the buyer or tenant approves, directs, or ratifies such acts.

(II) The written disclosure required pursuant to subparagraph (I) of this paragraph (d), shall contain a signature block for the buyer or tenant to acknowledge receipt of such disclosure. Such disclosure and acknowledgment, by itself, shall not constitute a contract with the broker. If the buyer or tenant does not sign such disclosure, the broker shall note that fact on a copy of such disclosure and retain such copy.

(e) (Deleted by amendment, L. 2002, p. 1061, § 8, effective January 1, 2003.)

(f) A broker who has already established a relationship with one party to a proposed transaction shall advise at the earliest reasonable opportunity any other potential parties or their agents of such established relationship.

(g) (I) Prior to engaging in any of the activities enumerated in section 12-61-101 (2), the seller, buyer, landlord, or tenant shall be advised in any written agreement with a broker that the brokerage relationship exists only with the designated broker, does not extend to the employing broker or to any other brokers employed or engaged by the employing broker who are not so designated, and does not extend to the brokerage company.

(II) Nothing in this paragraph (g) shall be construed to limit the employing broker's or firm's responsibility to supervise licensees employed by such broker or firm nor to shield such broker or firm from vicarious liability.

Source: L. 93: Entire part added, p. 988, § 1, effective January 1, 1994. **L. 2002:** (1)(a) to (1)(c), (2)(b), (2)(c), (2)(d)(I), and (2)(e) amended and (2)(g) added, p. 1061, § 8, effective January 1, 2003. **L. 2008:** (2)(a)(I), (2)(b), IP(2)(d)(I), and (2)(g)(I) amended, p. 509, § 25, effective April 17.

12-61-809. Duration of relationship. (1) (a) The relationships set forth in this part 8 shall commence at the time that the broker is engaged by a party and shall continue until performance or completion of the agreement by which the broker was engaged.

(b) If the agreement by which the broker was engaged is not performed or completed for any reason, the relationship shall end at the earlier of the following:

(I) Any date of expiration agreed upon by the parties;

(II) Any termination or relinquishment of the relationship by the parties; or

(III) One year after the date of the engagement.

(2) (a) Except as otherwise agreed to in writing and pursuant to paragraph (b) of this subsection (2), a broker engaged as a seller's agent or buyer's agent owes no further duty or obligation after termination or expiration of the contract or completion of performance.

(b) Notwithstanding paragraph (a) of this subsection (2), a broker shall be responsible after termination or expiration of the contract or completion of performance for the following:

(I) Accounting for all moneys and property related to and received during the engagement; and

(II) Keeping confidential all information received during the course of the engagement which was made confidential by request or instructions from the engaging party unless:

(A) The engaging party grants written consent to disclose such information;

(B) Disclosure of such information is required by law; or

(C) The information is made public or becomes public by the words or conduct of the engaging party or from a source other than the broker.

(3) Except as otherwise agreed to in writing, a transaction-broker owes no further obligation or responsibility to the engaging party after termination or expiration of the contract for performance or completion of performance; except that such broker shall account for all moneys and property related to and received during the engagement.

Source: L. 93: Entire part added, p. 990, § 1, effective January 1, 1994. **L. 2002:** (2)(a) amended, p. 1062, § 9, effective January 1, 2003.

12-61-810. Compensation. (1) In any real estate transaction, the broker's compensation may be paid by the seller, the buyer, the landlord, the tenant, a third party, or by the sharing or splitting of a commission or compensation between brokers.

(2) Payment of compensation shall not be construed to establish an agency relationship between the broker and the party who paid such compensation.

(3) A seller or landlord may agree that a transaction-broker or single agent may share the commission or other compensation paid by such seller or landlord with another broker.

(4) A buyer or tenant may agree that a single agent or transaction-broker may share the commission or other compensation paid by such buyer or tenant with another broker.

(5) A buyer's or tenant's agent shall obtain the written approval of such buyer or tenant before such agent may propose to the seller's or landlord's agent that such buyer's or tenant's agent be compensated by sharing compensation paid by such seller or landlord.

(6) Prior to entering into a brokerage or listing agreement or a contract to buy, sell, or lease, the identity of those parties, persons, or entities paying compensation or commissions to any broker shall be disclosed to the parties to the transaction.

(7) A broker may be compensated by more than one party for services in a transaction, if those parties have consented in writing to such multiple payments prior to entering into a contract to buy, sell, or lease.

Source: L. 93: Entire part added, p. 991, § 1, effective January 1, 1994. **L. 94:** (6) amended, p. 496, § 1, effective March 31. **L. 2002:** (3) and (4) amended, p. 1063, § 10, effective January 1, 2003.

12-61-811. Violations. The violation of any provision of this part 8 by a broker constitutes an act pursuant to section 12-61-113 (1)(k) for which the real estate commission may investigate and take administrative action against any such broker pursuant to sections 12-61-113 and 12-61-114.

Source: L. 93: Entire part added, p. 991, § 1, effective January 1, 1994. **L. 2008:** Entire section amended, p. 510, § 26, effective April 17.

PART 9

MORTGAGE LOAN ORIGINATORS

12-61-901. Short title. This part 9 shall be known and may be cited as the "Mortgage Loan Originator Licensing and Mortgage Company Registration Act".

Source: L. 2006: Entire part added, p. 1581, § 1, effective July 1. **L. 2007:** Entire section amended, p. 1731, § 3, effective January 1, 2008. **L. 2009:** Entire part amended, (HB 09-1085), ch. 303, p. 1611, § 1, effective August 5. **L. 2010:** Entire section amended, (HB 10-1141), ch. 280, p. 1283, § 2, effective August 11.

12-61-902. Definitions. As used in this part 9, unless the context otherwise requires:

(1) "Affiliate" means a person who, directly or indirectly, through intermediaries controls, is controlled by, or is under the common control of another person addressed by this part 9.

(1.2) "Affordable housing dwelling unit" means an affordable housing dwelling unit as defined in section 29-26-102, C.R.S.

(1.3) "Board" means the board of mortgage loan originators created in section 12-61-902.5.

(1.5) "Borrower" means any person who consults with or retains a mortgage loan originator in an effort to obtain or seek advice or information on obtaining or applying to obtain a residential mortgage loan for himself, herself, or persons including himself or herself, regardless of whether the person actually obtains such a loan.

(1.7) "Community development organization" means any community housing development organization or community land trust as defined by the federal "Cranston-Gonzalez National Affordable Housing Act of 1990" or a community-based development organization as defined by the federal "Housing and Community Development Act of 1974", that is also either a private or public nonprofit organization that is exempt from taxation under section 501 (a) of the federal "Internal Revenue Code of 1986" pursuant to section 501 (c) of the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 501 (a) and 501 (c), and that receives funding from the United States department of housing and urban development, Colorado division of housing, Colorado housing and finance authority, or United States department of agriculture rural development, or through a grantee of the United States department of housing and urban development, purely for the purpose of community housing development activities.

(2) "Depository institution" has the same meaning as set forth in the "Federal Deposit Insurance Act", 12 U.S.C. sec. 1813 (c), and includes a credit union.

(3) "Director" means the director of the division of real estate.

(4) "Division" means the division of real estate.

(4.3) "Dwelling" shall have the same meaning as set forth in the federal "Truth in Lending Act", 15 U.S.C. sec. 1602 (v).

(4.5) "Federal banking agency" means the board of governors of the federal reserve system, the comptroller of the currency, the director of the office of thrift supervision, the national credit union administration, or the federal deposit insurance corporation.

(4.6) "HUD-approved housing counseling agency" means an agency that is either a private or public nonprofit organization that is exempt from taxation under section 501 (a) of the federal "Internal Revenue Code of 1986" pursuant to section 501 (c) of the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 501 (a) and 501 (c), and approved by the United States department of housing and urban development, in accordance with the housing counseling program handbook section 7610.1 and 24 CFR 214.

(4.7) "Individual" means a natural person.

(4.9) (a) "Loan processor or underwriter" means an individual who performs clerical or support duties at the direction of, and subject to supervision by, a state-licensed loan originator or a registered loan originator.

(b) As used in this subsection (4.9), "clerical or support duties" includes duties performed after receipt of an application for a residential mortgage loan, including:

(I) The receipt, collection, distribution, and analysis of information commonly used for the processing or underwriting of a residential mortgage loan; and

(II) Communicating with a borrower to obtain the information necessary to process or underwrite a loan, to the extent that the communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms.

(5) "Mortgage company" means a person other than an individual who, through employees or other individuals, takes residential loan applications or offers or negotiates terms of a residential mortgage loan.

(5.5) "Mortgage lender" means a lender who is in the business of making residential mortgage loans if:

(a) The lender is the payee on the promissory note evidencing the loan; and

(b) The loan proceeds are obtained by the lender from its own funds or from a line of credit made available to the lender from a bank or other entity that regularly loans money to lenders for the purpose of funding mortgage loans.

(6) (a) "Mortgage loan originator" means an individual who:

(I) Takes a residential mortgage loan application; or

(II) Offers or negotiates terms of a residential mortgage loan.

(b) "Mortgage loan originator" does not include:

(I) An individual engaged solely as a loan processor or underwriter;

(II) A person that only performs real estate brokerage or sales activities and is licensed or registered pursuant to part 1 of this article, unless the person is compensated by a mortgage lender or a mortgage loan originator;

(III) A person solely involved in extensions of credit relating to time share plans, as defined in 11 U.S.C. sec. 101 (53D);

(IV) An individual who is servicing a mortgage loan; or

(V) A person that only performs the services and activities of a dealer, as defined in section 24-32-3302, C.R.S.

(6.3) "Nationwide mortgage licensing system and registry" means a mortgage licensing system developed pursuant to the federal "Secure and Fair Enforcement for Mortgage Licensing

Act of 2008", 12 U.S.C. sec. 5101 et seq., to track the licensing and registration of mortgage loan originators and that is established and maintained by:

(a) The conference of state bank supervisors and the American association of residential mortgage regulators, or their successor entities; or

(b) The secretary of the United States department of housing and urban development.

(6.5) "Nontraditional mortgage product" means a mortgage product other than a thirty-year, fixed-rate mortgage.

(7) "Originate a mortgage" means to act, directly or indirectly, as a mortgage loan originator.

(7.5) "Person" means a natural person, corporation, company, limited liability company, partnership, firm, association, or other legal entity.

(7.6) "Quasi-government agency" means an agency that is either a private or public nonprofit organization that is exempt from taxation under section 501 (a) of the federal "Internal Revenue Code of 1986" pursuant to section 501 (c) of the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 501 (a) and 501 (c), and was created to operate in accordance with article 4 of title 29, C.R.S., as a public housing authority.

(7.7) "Real estate brokerage activity" means an activity that involves offering or providing real estate brokerage services to the public, including, without limitation:

(a) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

(b) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(c) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than matters related to financing for the transaction;

(d) Engaging in an activity for which a person engaged in the activity is required under applicable law to be registered or licensed as a real estate agent or real estate broker; or

(e) Offering to engage in any activity, or act in any capacity related to such activity, described in this subsection (7.7).

(8) "Residential mortgage loan" means a loan that is primarily for personal, family, or household use and that is secured by a mortgage, deed of trust, or other equivalent, consensual security interest on a dwelling or residential real estate upon which is constructed or intended to be constructed a single-family dwelling or multiple-family dwelling of four or fewer units.

(9) "Residential real estate" means any real property upon which a dwelling is or will be constructed.

(9.5) "Self-help housing organization" means a private or public nonprofit organization that is exempt from taxation under section 501 (a) of the federal "Internal Revenue Code of 1986" pursuant to section 501 (c) of the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 501 (a) and 501 (c), and that purely originates residential mortgage loans with interest rates no greater than zero percent for borrowers who have provided part of the labor to construct the dwelling securing the loan or that receives funding from the United States department of agriculture rural development section 502 mutual self-help housing program for borrowers that have provided part of the labor to construct the dwelling securing the loan.

(10) "Servicing a mortgage loan" means collecting, receiving, or obtaining the right to collect or receive payments on behalf of a mortgage lender, including payments of principal,

interest, escrow amounts, and other amounts due on obligations due and owing to the mortgage lender.

(11) "State-licensed loan originator" means an individual who is:

(a) A mortgage loan originator or engages in the activities of a mortgage loan originator;

(b) Not an employee of a depository institution or a subsidiary that is:

(I) Owned and controlled by a depository institution; and

(II) Regulated by a federal banking agency;

(c) Licensed or required to be licensed pursuant to this part 9; and

(d) Registered as a state-licensed loan originator with, and maintains a unique identifier through, the nationwide mortgage licensing system and registry.

(12) "Unique identifier" means a number or other identifier assigned to a mortgage loan originator pursuant to protocols established by the nationwide mortgage licensing system and registry.

Source: L. 2006: Entire part added, p. 1581, § 1, effective July 1. **L. 2007:** (1.5) and (8) added and (5), IP(6), and (7) amended, p. 1715, § 1, effective June 1. **L. 2009:** Entire part amended, (HB 09-1085), ch. 303, p. 1611, § 1, effective August 5. **L. 2010:** (1.3) and (5.5) added and (5) amended, (HB 10-1141), ch. 280, p. 1283, § 3, effective August 11. **L. 2011:** (1.2), (1.7), (4.6), (7.6), and (9.5) added, (SB 11-206), ch. 253, p. 1096, § 2, effective June 2.

Cross references: For the legislative declaration in the 2011 act adding subsections (1.2), (1.7), (4.6), (7.6), and (9.5), see section 1 of chapter 253, Session Laws of Colorado 2011.

12-61-902.5. Board of mortgage loan originators - creation - compensation - enforcement of part after board creation - immunity. (1) (a) There is hereby created in the division a board of mortgage loan originators, consisting of five members appointed by the governor with the consent of the senate.

(b) Of the members of the board:

(I) Three must be licensed mortgage loan originators. The general assembly encourages the governor to appoint to at least one of these three positions a licensed mortgage loan originator who is an employee or exclusive agent of, or works as an independent contractor for, a Colorado-based mortgage company.

(II) Two must be members of the public at large not engaged in mortgage loan origination or mortgage lending.

(c) Of the members of the board appointed for terms beginning on and after August 11, 2010, two of the members appointed as mortgage loan originators and one of the members appointed as a member of the public at large shall be appointed for terms of two years, and one of the members appointed as a mortgage loan originator and one of the members appointed as a member of the public at large shall serve for terms of four years. Thereafter, members of the board shall hold office for a term of four years.

(d) In the event of a vacancy by death, resignation, removal, or otherwise, the governor shall appoint a member to fill the unexpired term. The governor has the authority to remove any member for misconduct, neglect of duty, or incompetence.

(2) (a) The board shall exercise its powers and perform its duties and functions under the department of regulatory agencies as if transferred to the department by a **type 1** transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.

(b) Notwithstanding any other provision of this part 9, on and after the creation of the board by this section, the board shall exercise all of the rule-making, enforcement, and administrative authority of the director set forth in this part 9. The board has the authority to delegate to the director any enforcement and administrative authority under this part 9 that the board deems necessary and appropriate. If the board delegates any enforcement or administrative authority under this part 9 to the director, the director shall only be entitled to exercise such authority as specifically delegated in writing to the director by the board.

(3) Each member of the board shall receive the same compensation and reimbursement of expenses as those provided for members of boards and commissions in the division of professions and occupations pursuant to section 24-34-102 (13). Payment for all per diem compensation and expenses shall be made out of annual appropriations from the division of real estate cash fund created in section 12-61-111.5.

(4) Members of the board, consultants, and expert witnesses shall be immune from suit in any civil action based upon any disciplinary proceedings or other official acts they performed in good faith pursuant to this part 9.

(5) A majority of the board shall constitute a quorum for the transaction of all business, and actions of the board shall require a vote of a majority of the members present in favor of the action taken.

(6) (a) All rules promulgated by the director prior to August 11, 2010, shall remain in full force and effect until repealed or modified by the board. The board shall have the authority to enforce any previously promulgated rules of the director under this part 9 and any rules promulgated by the board.

(b) Nothing in this section shall affect any action taken by the director prior to August 11, 2010. No person who, on or before August 11, 2010, holds a license issued under this part 9 shall be required to secure an additional license under this part 9, but shall otherwise be subject to all the provisions of this part 9. A license previously issued shall, for all purposes, be considered a license issued by the board under this part 9.

Source: L. 2010: Entire section added, (HB 10-1141), ch. 280, p. 1284, § 4, effective August 11. **L. 2017:** (3) amended, (SB 17-215), ch. 282, p. 1540, § 15, effective June 30. **L. 2018:** (1) amended, (HB 18-1174), ch. 282, p. 1763, § 5, effective August 8.

Editor's note: Section 6 of chapter 282 (HB 18-1174), Session Laws of Colorado 2018, provides that the act changing this section applies to applications received on or after August 8, 2018.

12-61-903. License required - rules. (1) (a) Unless licensed by the board and registered with the nationwide mortgage licensing system and registry as a state-licensed loan originator, an individual shall not originate or offer to originate a mortgage or act or offer to act as a mortgage loan originator.

(b) On and after January 1, 2010, a licensed mortgage loan originator shall apply for license renewal in accordance with subsection (4) of this section every calendar year as determined by the board by rule.

(c) (Deleted by amendment, L. 2009, (HB 09-1085), ch. 303, p. 1615, § 1, effective August 5, 2009.)

(1.5) An independent contractor may not engage in residential mortgage loan origination activities as a loan processor or underwriter unless the independent contractor is a state-licensed loan originator.

(2) An applicant for initial licensing as a mortgage loan originator shall submit to the board the following:

(a) A criminal history record check in compliance with subsection (5) of this section;

(b) A disclosure of all administrative discipline taken against the applicant concerning the categories listed in section 12-61-905 (1)(c); and

(c) The application fee established by the board in accordance with section 12-61-908.

(3) (a) In addition to the requirements imposed by subsection (2) of this section, on or after August 5, 2009, each individual applicant for initial licensing as a mortgage loan originator must have satisfactorily completed:

(I) At least twenty hours of education as administered and approved by the Nationwide Multistate Licensing System and Registry or its successor; and

(II) A written examination approved by the board. For the portion of the examination that represents the state-specific test required in the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008", 12 U.S.C. sec. 5101 et seq., the board may adopt the uniform state test administered through the Nationwide Multistate Licensing System and Registry or its successor.

(b) The board may contract with one or more independent testing services to develop, administer, and grade the examinations required by paragraph (a) of this subsection (3) and to maintain and administer licensee records. The contract may allow the testing service to recover from applicants its costs incurred in connection with these functions. The board may contract separately for these functions and may allow the costs to be collected by a single contractor for distribution to other contractors.

(c) The board may publish reports summarizing statistical information prepared by the nationwide mortgage licensing system and registry relating to mortgage loan originator examinations.

(4) An applicant for license renewal shall submit to the board the following:

(a) A disclosure of all administrative discipline taken against the applicant concerning the categories listed in section 12-61-905 (1)(c); and

(b) The renewal fee established by the board in accordance with section 12-61-908.

(5) (a) Prior to submitting an application for a license, an applicant shall submit a set of fingerprints to the Colorado bureau of investigation. Upon receipt of the applicant's fingerprints, the Colorado bureau of investigation shall use the fingerprints to conduct a state and national criminal history record check using records of the Colorado bureau of investigation and the federal bureau of investigation. All costs arising from such criminal history record check shall be borne by the applicant and shall be paid when the set of fingerprints is submitted. Upon completion of the criminal history record check, the bureau shall forward the results to the board. The board may acquire a name-based criminal history record check for an applicant who has

twice submitted to a fingerprint-based criminal history record check and whose fingerprints are unclassifiable.

(b) If the board determines that the criminal background check provided by the nationwide mortgage licensing system and registry is a sufficient method of screening license applicants to protect Colorado consumers, the board may, by rule, authorize the use of that criminal background check instead of the criminal history record check otherwise required by this subsection (5).

(5.5) (a) On and after January 1, 2010, in connection with an application for a license as a mortgage loan originator, the applicant shall furnish information concerning the applicant's identity to the nationwide mortgage licensing system and registry. The applicant shall furnish, at a minimum, the following:

(I) Fingerprints for submission to the federal bureau of investigation and any government agency or entity authorized to receive fingerprints for a state, national, or international criminal history record check; and

(II) Personal history and experience, in a form prescribed by the nationwide mortgage licensing system and registry, including submission of authorization for the nationwide mortgage licensing system and registry to obtain:

(A) An independent credit report from the consumer reporting agency described in the federal "Fair Credit Reporting Act", 15 U.S.C. sec. 1681a (p); and

(B) Information related to any administrative, civil, or criminal findings by a government jurisdiction.

(b) An applicant is responsible for paying all costs arising from a criminal history record check and shall pay such costs upon submission of fingerprints.

(c) The board may acquire a name-based criminal history record check for an applicant who has twice submitted to a fingerprint-based criminal history record check and whose fingerprints are unclassifiable.

(5.7) Repealed.

(6) Before granting a license to an applicant, the board shall require the applicant to post a bond as required by section 12-61-907.

(7) The board shall issue or deny a license within sixty days after:

(a) The applicant has submitted the requisite information to the board and the Nationwide Multistate Licensing System and Registry, including the completed application and any necessary supplementary information, the application fee, and proof that the applicant has posted a surety bond and obtained errors and omissions insurance; and

(b) The board receives the completed criminal history record check and all other relevant information or documents necessary to reasonably ascertain facts underlying the applicant's criminal history.

(8) (a) The board may require, as a condition of license renewal on or after January 1, 2009, continuing education of licensees for the purpose of enhancing the professional competence and professional responsibility of all licensees.

(b) Continuing professional education requirements shall be determined by the board by rule; except that licensees shall be required to complete at least eight credit hours of continuing education each year. The board may contract with one or more independent service providers to develop, review, or approve continuing education courses. The contract may allow the independent service provider to recover from licensees its costs incurred in connection with

these functions. The board may contract separately for these functions and may allow the costs to be collected by a single contractor for distribution to other contractors.

(9) (a) The board may require contractors and prospective contractors for services under subsections (3) and (8) of this section to submit, for the board's review and approval, information regarding the contents and materials of proposed courses and other documentation reasonably necessary to further the purposes of this section.

(b) The board may set fees for the initial and continuing review of courses for which credit hours will be granted. The initial filing fee for review of materials shall not exceed five hundred dollars, and the fee for continued review shall not exceed two hundred fifty dollars per year per course offered.

(10) The board may adopt reasonable rules to implement this section. The board may adopt rules necessary to implement provisions required in the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008", 12 U.S.C. sec. 5101 et seq., and for participation in the nationwide mortgage licensing system and registry.

(11) In order to fulfill the purposes of this part 9, the board may establish relationships or contracts with the nationwide mortgage licensing system and registry or other entities designated by the nationwide mortgage licensing system and registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this part 9.

(12) The board may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from or distributing information to the department of justice, a government agency, or any other source.

Source: L. 2006: Entire part added, p. 1582, § 1, effective July 1. **L. 2007:** Entire section amended, p. 1732, § 4, effective January 1, 2008. **L. 2009:** Entire part amended, (HB 09-1085), ch. 303, p. 1615, § 1, effective August 5. **L. 2010:** (1)(a), (1)(b), IP(2), (2)(c), (3), IP(4), (4)(b), (5), (5.5)(c), and (6) to (12) amended, (HB 10-1141), ch. 280, p. 1285, § 5, effective August 11. **L. 2013:** (1)(a) amended and (5.7) repealed, (SB 13-156), ch. 393, p. 2286, § 3, effective July 1. **L. 2016:** (3)(a) amended, (HB 16-1306), ch. 117, p. 331, § 2, effective August 10. **L. 2018:** (3)(a) and (7) amended, (HB 18-1174), ch. 282, p. 1762, § 3, effective August 8.

Editor's note: Section 6 of chapter 282 (HB 18-1174), Session Laws of Colorado 2018, provides that the act changing this section applies to applications received on or after August 8, 2018.

12-61-903.1. Registration required - rules. (1) On or after January 1, 2011, each mortgage company shall register with the nationwide mortgage licensing system and registry, unless exempted by rule by the board, and shall renew such registration each calendar year based on the following criteria:

(a) (I) The mortgage company is legally operating in the state of Colorado in accordance with standards determined and administered by the Colorado secretary of state; and

(II) The mortgage company is not legally barred from operating in Colorado.

(b) Sole proprietors, general partnerships, and other mortgage companies not otherwise required to register with the secretary of state shall register using a trade name.

Source: L. 2010: Entire section added, (HB 10-1141), ch. 280, p. 1288, § 6, effective August 11.

12-61-903.3. License or registration inactivation. (1) The board may inactivate a state license or a registration with the nationwide mortgage licensing system and registry when a licensee has failed to:

(a) Comply with the surety bond requirements of sections 12-61-903 (6) and 12-61-907;

(b) Comply with the errors and omissions insurance requirement in section 12-61-903.5 or any rule of the board that directly or indirectly addresses errors and omissions insurance requirements;

(c) Maintain current contact information, surety bond information, or errors and omissions insurance information as required by this part 9 or by any rule of the board that directly or indirectly addresses such requirements;

(d) Respond to an investigation or examination;

(e) Comply with any of the education or testing requirements set forth in this part 9 or in any rule of the board that directly or indirectly addresses education or testing requirements; or

(f) Register with and provide all required information to the nationwide mortgage licensing system and registry.

Source: L. 2009: Entire part amended, (HB 09-1085), ch. 303, p. 1619, § 1, effective August 5. **L. 2010:** IP(1), (1)(b), (1)(c), and (1)(e) amended, (HB 10-1141), ch. 280, p. 1288, § 7, effective August 11.

12-61-903.5. Errors and omissions insurance - duties of the board - certificate of coverage - when required - group plan made available - effect - rules. (1) Every licensee under this part 9, except an inactive mortgage loan originator or an attorney licensee who maintains a policy of professional malpractice insurance that provides coverage for errors and omissions insurance for their activities as a licensee under this part 9, shall maintain errors and omissions insurance to cover all activities contemplated under this part 9. The division shall make the errors and omissions insurance available to all licensees by contracting with an insurer for a group policy after a competitive bid process in accordance with article 103 of title 24, C.R.S. A group policy obtained by the division must be available to all licensees with no right on the part of the insurer to cancel a licensee. A licensee may obtain errors and omissions insurance independently if the coverage complies with the minimum requirements established by the division.

(2) (a) If the division is unable to obtain errors and omissions insurance coverage to insure all licensees who choose to participate in the group program at a reasonable annual premium, as determined by the division, a licensee shall independently obtain the errors and omissions insurance required by this section.

(b) The division shall solicit and consider information and comments from interested persons when determining the reasonableness of annual premiums.

(3) The division shall determine the terms and conditions of coverage required under this section based on rules promulgated by the board. Each licensee shall be notified of the required terms and conditions at least thirty days before the annual premium renewal date as determined by the division. Each licensee shall file a certificate of coverage showing compliance with the

required terms and conditions with the division by the annual premium renewal date, as determined by the division.

(4) In addition to all other powers and duties conferred upon the board by this part 9, the board shall adopt such rules as it deems necessary or proper to carry out this section.

Source: L. 2007: Entire section added, p. 1734, § 5, effective January 1, 2008. **L. 2009:** Entire part amended, (HB 09-1085), ch. 303, p. 1619, § 1, effective August 5. **L. 2010:** (2) amended, (HB 10-1141), ch. 280, p. 1289, § 8, effective August 11. **L. 2012:** Entire section R&RE, (HB 12-1110), ch. 277, p. 1473, § 16, effective July 1, 2013.

12-61-903.7. License renewal. (1) In order for a licensed mortgage loan originator to renew a license issued pursuant to this part 9, the mortgage loan originator shall:

(a) Continue to meet the minimum standards for issuance of a license pursuant to this part 9;

(b) Satisfy the annual continuing education requirements set forth in section 12-61-903 (8) and in rules adopted by the board; and

(c) Pay applicable license renewal fees.

(2) If a licensed mortgage loan originator fails to satisfy the requirements of subsection (1) of this section for license renewal, the mortgage loan originator's license shall expire. The board shall adopt rules to establish procedures for the reinstatement of an expired license consistent with the standards established by the nationwide mortgage licensing system and registry.

Source: L. 2009: Entire part amended, (HB 09-1085), ch. 303, p. 1620, § 1, effective August 5. **L. 2010:** (1)(b) and (2) amended, (HB 10-1141), ch. 280, p. 1289, § 9, effective August 11.

12-61-904. Exemptions - rules. (1) Except as otherwise provided in section 12-61-905.5, this part 9 does not apply to the following, unless otherwise determined by the federal bureau of consumer financial protection or the United States department of housing and urban development:

(a) (Deleted by amendment, L. 2010, (HB 10-1141), ch. 280, p. 1289, § 10, effective August 11, 2010.)

(b) With respect to a residential mortgage loan:

(I) A person, estate, or trust that provides mortgage financing for the sale of no more than three properties in any twelve-month period to purchasers of such properties, each of which is owned by such person, estate, or trust and serves as security for the loan; or

(II) An individual who acts as a mortgage loan originator, without compensation or gain to the mortgage loan originator, in providing loan financing for not more than three residential mortgage loans in any twelve-month period to a family member of the individual. The board shall define "family member" by rule. For purposes of this exemption only, "compensation or gain" excludes any interest paid under the loan financing provided.

(c) A bank and a savings association as these terms are defined in the "Federal Deposit Insurance Act", a subsidiary that is owned and controlled by a bank or savings association,

employees of a bank or savings association, employees of a subsidiary that is owned and controlled by a bank or savings association, credit unions, and employees of credit unions;

(d) An attorney who renders services in the course of practice, who is licensed in Colorado, and who is not primarily engaged in the business of negotiating residential mortgage loans;

(e) (Deleted by amendment, L. 2007, p. 1716, § 2, effective June 1, 2007, and p. 1734, § 6, effective January 1, 2008.)

(f) A person who:

(I) Funds a residential mortgage loan that has been originated and processed by a licensed person or by an exempt person;

(II) Does not solicit borrowers in Colorado for the purpose of making residential mortgage loans; and

(III) Does not participate in the negotiation of residential mortgage loans with the borrower, except for setting the terms under which a person may buy or fund a residential mortgage loan originated by a licensed or exempt person;

(g) A loan processor or underwriter who is not an independent contractor and who does not represent to the public that the individual can or will perform any activities of a mortgage loan originator. As used in this paragraph (g), "represent to the public" means communicating, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual is able to provide a particular service or activity for a consumer.

(h) To the extent that it is providing programs benefitting affordable housing dwelling units, an agency of the federal government, the Colorado government, or any of Colorado's political subdivisions or employees of an agency of the federal government, of the Colorado government, or of any of Colorado's political subdivisions;

(i) Quasi-government agencies, HUD-approved housing counseling agencies, or employees of quasi-government agencies or HUD-approved housing counseling agencies;

(j) Community development organizations or employees of community development organizations;

(k) Self-help housing organizations or employees of self-help housing organizations or volunteers acting as an agent of self-help housing organizations;

(l) A person licensed under part 1 of this article who represents a person, estate, or trust providing mortgage financing under paragraph (b) of this subsection (1).

(2) The exemptions in subsection (1) of this section shall not apply to persons acting beyond the scope of such exemptions.

(3) The board may adopt reasonable rules modifying the exemptions in this section in accordance with rules adopted by the federal bureau of consumer financial protection or the United States department of housing and urban development.

Source: L. 2006: Entire part added, p. 1583, § 1, effective July 1. **L. 2007:** IP(1) and (1)(e) amended, p. 1716, § 2, effective June 1; (1)(e), (1)(f)(I), and (1)(f)(III) amended, p. 1734, § 6, effective January 1, 2008. **L. 2009:** Entire part amended, (HB 09-1085), ch. 303, p. 1620, § 1, effective August 5. **L. 2010:** (1)(a), (1)(b), and (1)(c) amended, (HB 10-1141), ch. 280, p. 1289, § 10, effective August 11. **L. 2011:** IP(1) and (1)(b) amended, (HB 11-1022), ch. 6, p. 12, § 2, effective March 1; IP(1) amended and (1)(h) to (1)(k) and (3) added, (SB11-206), ch. 253,

pp. 1097, 1098, §§ 3, 4, effective June 2. **L. 2013:** (1)(l) added, (SB 13-118), ch. 70, p. 226, § 1, effective March 22. **L. 2016:** IP(1) and (1)(b) amended, (HB 16-1306), ch. 117, p. 332, § 3, effective August 10. **L. 2017:** (1)(b)(II) amended, (SB 17-127), ch. 49, p. 153, § 1, effective August 9.

Editor's note: Amendments to the introductory portion to subsection (1) by Senate Bill 11-206 and House Bill 11-1022 were harmonized.

Cross references: For the legislative declaration in the 2011 act amending the introductory portion to subsection (1) and subsection (1)(b), see section 1 of chapter 6, Session Laws of Colorado 2011. For the legislative declaration in the 2011 act amending the introductory portion to subsection (1) and adding subsections (1)(h) to (1)(k) and (3), see section 1 of chapter 253, Session Laws of Colorado 2011.

12-61-904.5. Originator's relationship to borrower - rules. (1) A mortgage loan originator shall have a duty of good faith and fair dealing in all communications and transactions with a borrower. Such duty includes, but is not limited to:

(a) The duty to not recommend or induce the borrower to enter into a transaction that does not have a reasonable, tangible net benefit to the borrower, considering all of the circumstances, including the terms of a loan, the cost of a loan, and the borrower's circumstances;

(b) The duty to make a reasonable inquiry concerning the borrower's current and prospective income, existing debts and other obligations, and any other relevant information and, after making such inquiry, to make his or her best efforts to recommend, broker, or originate a residential mortgage loan that takes into consideration the information submitted by the borrower, but the mortgage loan originator shall not be deemed to violate this section if the borrower conceals or misrepresents relevant information; and

(c) The duty not to commit any acts, practices, or omissions in violation of section 38-40-105, C.R.S.

(2) For purposes of implementing subsection (1) of this section, the board may adopt rules defining what constitutes a reasonable, tangible net benefit to the borrower.

(3) A violation of this section constitutes a deceptive trade practice under the "Colorado Consumer Protection Act", article 1 of title 6, C.R.S.

Source: L. 2007: Entire section added, p. 1716, § 3, effective June 1; entire section added, p. 1745, § 2, effective July 1. **L. 2009:** Entire part amended, (HB 09-1085), ch. 303, p. 1621, § 1, effective August 5. **L. 2010:** (2) amended, (HB 10-1141), ch. 280, p. 1290, § 11, effective August 11.

12-61-905. Powers and duties of the board. (1) The board may deny an application for a license, refuse to renew, or revoke the license of an applicant or licensee who has:

(a) Filed an application with the board containing material misstatements of fact or omitted any disclosure required by this part 9;

(b) Within the last five years, been convicted of or pled guilty or nolo contendere to a crime involving fraud, deceit, material misrepresentation, theft, or the breach of a fiduciary duty, except as otherwise set forth in this part 9;

(c) Except as otherwise set forth in this part 9, within the last five years, had a license, registration, or certification issued by Colorado or another state revoked or suspended for fraud, deceit, material misrepresentation, theft, or the breach of a fiduciary duty, and such discipline denied the person authorization to practice as:

(I) A mortgage broker or a mortgage loan originator;

(II) A real estate broker, as defined by section 12-61-101 (2);

(III) A real estate salesperson;

(IV) A real estate appraiser, as defined by section 12-61-702 (11);

(V) An insurance producer, as defined by section 10-2-103 (6), C.R.S.;

(VI) An attorney;

(VII) A securities broker-dealer, as defined by section 11-51-201 (2), C.R.S.;

(VIII) A securities sales representative, as defined by section 11-51-201 (14), C.R.S.;

(IX) An investment advisor, as defined by section 11-51-201 (9.5), C.R.S.; or

(X) An investment advisor representative, as defined by section 11-51-201 (9.6), C.R.S.;

(d) Been enjoined within the immediately preceding five years under the laws of this or any other state or of the United States from engaging in deceptive conduct relating to the brokering of or originating a mortgage loan;

(e) Been found to have violated the provisions of section 12-61-910.2;

(f) Been found to have violated the provisions of section 12-61-905.5;

(g) to (i) Repealed.

(j) Not demonstrated financial responsibility, character, and general fitness to command the confidence of the community and to warrant a determination that the individual will operate honestly, fairly, and efficiently, consistent with the purposes of this part 9;

(k) Not completed the prelicense education requirements set forth in section 12-61-903 and any applicable rules of the board; or

(l) Not passed a written examination that meets the requirements set forth in section 12-61-903 and any applicable rules of the board.

(1.5) The board shall deny an application for a license, refuse to renew, or revoke the license of an applicant or licensee who has:

(a) (I) Had a mortgage loan originator license or similar license revoked in any jurisdiction.

(II) If a revocation is subsequently formally nullified, the license is not revoked for purposes of this subsection (1.5)(a).

(b) (I) At any time been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering.

(II) If the individual obtains a pardon of the conviction, the board shall not deem the individual convicted for purposes of this subsection (1.5)(b).

(c) Been convicted of, or pled guilty or nolo contendere to, a felony within the immediately preceding seven years.

(2) The board may investigate the activities of a licensee or other person that present grounds for disciplinary action under this part 9 or that violate section 12-61-910 (1).

(3) (a) If the board has reasonable grounds to believe that a mortgage loan originator is no longer qualified under subsection (1) of this section, the board may summarily suspend the mortgage loan originator's license pending a hearing to revoke the license. A summary suspension shall conform to article 4 of title 24, C.R.S.

(b) The board shall suspend the license of a mortgage loan originator who fails to maintain the bond required by section 12-61-907 until the licensee complies with such section.

(4) The board or an administrative law judge appointed pursuant to part 10 of article 30 of title 24, C.R.S., shall conduct disciplinary hearings concerning mortgage loan originators and mortgage companies. Such hearings shall conform to article 4 of title 24, C.R.S.

(5) (a) Except as provided in paragraph (b) of this subsection (5), an individual whose license has been revoked shall not be eligible for licensure for two years after the effective date of the revocation.

(b) If the board or an administrative law judge determines that an application contained a misstatement of fact or omitted a required disclosure due to an unintentional error, the board shall allow the applicant to correct the application. Upon receipt of the corrected and completed application, the board or administrative law judge shall not bar the applicant from being licensed on the basis of the unintentional misstatement or omission.

(6) (a) The board or an administrative law judge may administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing or investigation conducted by the board or an administrative law judge. The board may request any information relevant to the investigation, including, but not limited to, independent credit reports obtained from a consumer reporting agency described in the federal "Fair Credit Reporting Act", 15 U.S.C. sec. 1681a (p).

(b) Upon failure of a witness to comply with a subpoena or process, the district court of the county in which the subpoenaed witness resides or conducts business may issue an order requiring the witness to appear before the board or administrative law judge; produce the relevant papers, books, records, documentary evidence, testimony, or materials in question; or both. Failure to obey the order of the court may be punished as a contempt of court. The board or an administrative law judge may apply for such order.

(c) The licensee or individual who, after an investigation under this part 9, is found to be in violation of a provision of this part 9 shall be responsible for paying all reasonable and necessary costs of the division arising from subpoenas or requests issued pursuant to this subsection (6), including court costs for an action brought pursuant to paragraph (b) of this subsection (6).

(7) (a) If the board has reasonable cause to believe that an individual is violating this part 9, including but not limited to section 12-61-910 (1), the board may enter an order requiring the individual to cease and desist such violations.

(b) The board, upon its own motion, may, and, upon the complaint in writing of any person, shall, investigate the activities of any licensee or any individual who assumes to act in such capacity within the state. In addition to any other penalty that may be imposed pursuant to this part 9, any individual violating any provision of this part 9 or any rules promulgated pursuant to this article may be fined upon a finding of misconduct by the board as follows:

(I) In the first administrative proceeding, a fine not in excess of one thousand dollars per act or occurrence;

(II) In a second or subsequent administrative proceeding, a fine not less than one thousand dollars nor in excess of two thousand dollars per act or occurrence.

(c) All fines collected pursuant to this subsection (7) shall be transferred to the state treasurer, who shall credit them to the division of real estate cash fund created in section 12-61-111.5.

(8) The board shall keep records of the individuals licensed as mortgage loan originators and of disciplinary proceedings. The records kept by the board shall be open to public inspection in a reasonable time and manner determined by the board.

(9) (a) The board shall maintain a system, which may include, without limitation, a hotline or website, that gives consumers a reasonably easy method for making complaints about a mortgage loan originator.

(b) (Deleted by amendment, L. 2009, (HB 09-1085), ch. 303, p. 1621, § 1, effective August 5, 2009.)

(10) The board shall promulgate rules to allow licensed mortgage loan originators to hire unlicensed mortgage loan originators under temporary licenses. If an unlicensed mortgage loan originator has initiated the application process for a license, he or she shall be assigned a temporary license for a reasonable period until a license is approved or denied. The licensed mortgage loan originator who employs an unlicensed mortgage loan originator shall be held responsible under all applicable provisions of law, including without limitation this part 9 and section 38-40-105, C.R.S., for the actions of the unlicensed mortgage loan originator to whom a temporary license has been assigned under this subsection (10).

Source: L. 2006: Entire part added, p. 1583, § 1, effective July 1. **L. 2007:** IP(1)(c) and (7) amended and (1)(d) and (1)(f) added, p. 1717, § 4, effective June 1; IP(1)(c) and (7) amended and (1)(d) and (1)(e) added, p. 1726, § 1, effective June 1; IP(1), (2), (3), (5), (7), and (8) amended and (10) added and IP(7)(b) amended, p. 1734, 1731, §§ 7, 1, effective January 1, 2008. **L. 2008:** (1)(c)(III) amended, p. 510, § 27, effective April 17. **L. 2009:** Entire part amended, (HB 09-1085), ch. 303, p. 1621, § 1, effective August 5. **L. 2010:** IP(1), (1)(a), (1)(g), (1)(k), (1)(l), (2), (3), (4), (5)(b), (6)(a), (6)(b), (7)(a), IP(7)(b), (7)(c), (8), (9)(a), and (10) amended, (HB 10-1141), ch. 280, p. 1290, § 12, effective August 11. **L. 2013:** (1)(g), (1)(h), and (1)(i) repealed and (1.5) added, (SB 13-156), ch. 393, p. 2287, § 4, effective July 1. **L. 2014:** (1)(c)(IV) amended, (SB 14-117), ch. 385, p. 1918, § 4, effective July 1. **L. 2016:** (1)(f) amended, (HB 16-1306), ch. 117, p. 332, § 4, effective August 10. **L. 2017:** (7)(c) amended, (SB 17-215), ch. 282, p. 1541, § 16, effective June 30. **L. 2018:** (1.5) amended, (HB 18-1174), ch. 282, p. 1762, § 4, effective August 8.

Editor's note: (1) Amendments to the introductory portion to subsection (7)(b) by House Bill 07-1322 and Senate Bill 07-085 were harmonized. Amendments to subsection (7)(c) by House Bill 07-1322 and Senate Bill 07-085 were harmonized.

(2) Subsection (7) was amended by House Bill 07-1322, Senate Bill 07-085, and Senate Bill 07-203. Amendments to the introductory portion to subsection (7)(b) in section 7 of Senate Bill 07-203 were superseded by amendments in section 1 of Senate Bill 07-203. Amendments to subsection (7)(b)(II) in House Bill 07-1322 and Senate Bill 07-085 were superseded by amendments in Senate Bill 07-203, effective January 1, 2008.

(3) Section 6 of chapter 282 (HB 18-1174), Session Laws of Colorado 2018, provides that the act changing this section applies to applications received on or after August 8, 2018.

12-61-905.1. Powers and duties of the board over mortgage companies - fines - rules. (1) With respect to mortgage companies, the board may deny an application for registration; refuse to renew, suspend, or revoke the registration; enter cease-and-desist orders; and impose fines as set forth in this section as follows:

(a) If the board has reasonable cause to believe a person is acting without a license or registration;

(b) If the mortgage company fails to maintain possession, for future use or inspection by an authorized representative of the board, for a period of four years, of the documents or records prescribed by the rules of the board or to produce such documents or records upon reasonable request by the board or by an authorized representative of the board;

(c) If the mortgage company employs or contracts with individuals who are required to be licensed pursuant to this part 9 and who are not either:

(I) Licensed; or

(II) In the process of becoming licensed; or

(d) If the mortgage company directs, makes, or causes to be made, in any manner, a false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan, engages in bait and switch advertising as that term is used in section 6-1-105 (1)(n), C.R.S., or violates any rule of the board that directly or indirectly addresses advertising requirements.

(2) (a) The board upon its own motion or upon the complaint in writing of any person may investigate the activities of any registered mortgage company or any mortgage company that is acting in a capacity that requires registration pursuant to this part 9.

(b) The board may fine a mortgage company that has violated this section or any rules promulgated pursuant to this section as follows:

(I) In the first administrative proceeding, a fine not in excess of one thousand dollars per act or occurrence;

(II) In a second or subsequent administrative proceeding, a fine not in excess of two thousand dollars per act or occurrence.

(c) All fines collected pursuant to this section shall be transmitted to the state treasurer, who shall credit them to the division of real estate cash fund created in section 12-61-111.5.

(3) The board may adopt reasonable rules for implementing this section.

(4) Nothing in this section automatically imputes a violation to the mortgage company if a licensed agent or employee, or an individual agent or employee who is required to be licensed, violates any other provision of this part 9.

Source: L. 2010: Entire section added, (HB 10-1141), ch. 280, p. 1292, § 13, effective August 11. **L. 2013:** (1)(c) amended, (SB 13-156), ch. 393, p. 2288, § 5, effective July 1. **L. 2017:** (2)(c) amended, (SB 17-215), ch. 282, p. 1541, § 17, effective June 30.

12-61-905.5. Disciplinary actions - grounds - procedures - rules. (1) The board, upon its own motion, may, or upon the complaint in writing of any person, shall, investigate the activities of any mortgage loan originator. The board has the power to impose an administrative

fine in accordance with section 12-61-905, deny a license, censure a licensee, place the licensee on probation and set the terms of probation, order restitution, order the payment of actual damages, or suspend or revoke a license when the board finds that the licensee or applicant has performed, is performing, or is attempting to perform any of the following acts:

(a) Knowingly making any misrepresentation or knowingly making use of any false or misleading advertising;

(b) Making any promise that influences, persuades, or induces another person to detrimentally rely on such promise when the licensee could not or did not intend to keep such promise;

(c) Knowingly misrepresenting or making false promises through agents, salespersons, advertising, or otherwise;

(d) Violating any provision of the "Colorado Consumer Protection Act", article 1 of title 6, C.R.S., and, if the licensee has been assessed a civil or criminal penalty or been subject to an injunction under said act, the board shall revoke the licensee's license;

(e) Acting for more than one party in a transaction without disclosing any actual or potential conflict of interest or without disclosing to all parties any fiduciary obligation or other legal obligation of the mortgage loan originator to any party;

(f) Representing or attempting to represent a mortgage loan originator other than the licensee's principal or employer without the express knowledge and consent of that principal or employer;

(g) In the case of a licensee in the employ of another mortgage loan originator, failing to place, as soon after receipt as is practicably possible, in the custody of that licensed mortgage loan originator-employer any deposit money or other money or fund entrusted to the employee by any person dealing with the employee as the representative of that licensed mortgage loan originator-employer;

(h) Failing to account for or to remit, within a reasonable time, any moneys coming into his or her possession that belong to others, whether acting as a mortgage loan originator, real estate broker, salesperson, or otherwise, and failing to keep records relative to said moneys, which records shall contain such information as may be prescribed by the rules of the board relative thereto and shall be subject to audit by the board;

(i) Converting funds of others, diverting funds of others without proper authorization, commingling funds of others with the licensee's own funds, or failing to keep such funds of others in an escrow or a trustee account with a bank or recognized depository in this state, which account may be any type of checking, demand, passbook, or statement account insured by an agency of the United States government, and to keep records relative to the deposit that contain such information as may be prescribed by the rules of the board relative thereto, which records shall be subject to audit by the board;

(j) Failing to provide the parties to a residential mortgage loan transaction with such information as may be prescribed by the rules of the board;

(k) Unless an employee of a duly registered mortgage company, failing to maintain possession, for future use or inspection by an authorized representative of the board, for a period of four years, of the documents or records prescribed by the rules of the board or to produce such documents or records upon reasonable request by the board or by an authorized representative of the board;

(l) Paying a commission or valuable consideration for performing any of the functions of a mortgage loan originator, as described in this part 9, to any person who is not licensed under this part 9 or is not registered in compliance with the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008", 12 U.S.C. sec. 5101 et seq.;

(m) Disregarding or violating any provision of this part 9 or any rule adopted by the board pursuant to this part 9; violating any lawful orders of the board; or aiding and abetting a violation of any rule, order of the board, or provision of this part 9;

(n) Conviction of, entering a plea of guilty to, or entering a plea of nolo contendere to any crime in article 3 of title 18, C.R.S., in parts 1 to 4 of article 4 of title 18, C.R.S., in article 5 of title 18, C.R.S., in part 3 of article 8 of title 18, C.R.S., in article 15 of title 18, C.R.S., in article 17 of title 18, C.R.S., or any other like crime under Colorado law, federal law, or the laws of other states. A certified copy of the judgment of a court of competent jurisdiction of such conviction or other official record indicating that such plea was entered shall be conclusive evidence of such conviction or plea in any hearing under this part 9.

(o) Violating or aiding and abetting in the violation of the Colorado or federal fair housing laws;

(p) Failing to immediately notify the board in writing of a conviction, plea, or violation pursuant to paragraph (n) or (o) of this subsection (1);

(q) Having demonstrated unworthiness or incompetency to act as a mortgage loan originator by conducting business in such a manner as to endanger the interest of the public;

(r) (Deleted by amendment, L. 2009, (HB 09-1085), ch. 303, p. 1625, § 1, effective August 5, 2009.)

(s) Procuring, or attempting to procure, a mortgage loan originator's license or renewing, reinstating, or reactivating, or attempting to renew, reinstate, or reactivate, a mortgage loan originator's license by fraud, misrepresentation, or deceit or by making a material misstatement of fact in an application for such license;

(t) Claiming, arranging for, or taking any secret or undisclosed amount of compensation, commission, or profit or failing to reveal to the licensee's principal or employer the full amount of such licensee's compensation, commission, or profit in connection with any acts for which a license is required under this part 9;

(u) Exercising an option to purchase in any agreement authorizing or employing such licensee to sell, buy, or exchange real estate for compensation or commission except when such licensee, prior to or coincident with election to exercise such option to purchase, reveals in writing to the licensee's principal or employer the full amount of the licensee's profit and obtains the written consent of such principal or employer approving the amount of such profit;

(v) Fraud, misrepresentation, deceit, or conversion of trust funds that results in the payment of any claim pursuant to this part 9 or that results in the entry of a civil judgment for damages;

(w) Any other conduct, whether of the same or a different character than specified in this subsection (1), that evinces a lack of good faith and fair dealing;

(x) Having had a mortgage loan originator's license suspended or revoked in any jurisdiction or having had any disciplinary action taken against the mortgage loan originator in any other jurisdiction. A certified copy of the order of disciplinary action shall be prima facie evidence of such disciplinary action.

(y) Engaging in any unfair or deceptive practice toward any person;

(z) Obtaining property by fraud or misrepresentation;

(aa) Soliciting or entering into a contract with a borrower that provides, in substance, that the mortgage loan originator may earn a fee or commission through the mortgage loan originator's best efforts to obtain a loan even though no loan is actually obtained for the borrower;

(bb) Soliciting, advertising, or entering into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of the solicitation, advertisement, or contract;

(cc) Failing to make a disclosure to a loan applicant or a noninstitutional investor as required by section 12-61-914 and any other applicable state or federal law;

(dd) Making, in any manner, any false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan or engaging in bait and switch advertising;

(ee) Negligently making any false statement or knowingly and willfully omitting a material fact in connection with any reports filed by a mortgage loan originator or in connection with any investigation conducted by the division;

(ff) In any advertising of residential mortgage loans or any other applicable mortgage loan originator activities covered by the following federal acts, failing to comply with any requirement of the"Truth in Lending Act", 15 U.S.C. sec. 1601 and Regulation Z, 12 CFR 226 and 12 CFR 1026; the "Real Estate Settlement Procedures Act of 1974", 12 U.S.C. sec. 2601 and Regulation X, 12 CFR 1024 et seq.; the "Equal Credit Opportunity Act", 15 U.S.C. sec. 1691 and Regulation B, 12 CFR 202.9, 202.11, and 202.12 and 12 CFR 1002; Title V, Subtitle A of the "Financial Services Modernization Act of 1999", also known as the "Gramm-Leach-Bliley Act", 15 U.S.C. secs. 6801 to 6809, and the federal trade commission's privacy rules, 16 CFR 313 and 314, mandated by the "Gramm-Leach-Bliley Act"; the "Home Mortgage Disclosure Act of 1975", 12 U.S.C. sec. 2801 et seq. and Regulation C, home mortgage disclosure, 12 CFR 203 and 12 CFR 1003; the "Federal Trade Commission Act" of 1914, 15 U.S.C. sec. 45 (a) and 16 CFR 233; and the "Telemarketing and Consumer Fraud and Abuse Prevention Act", 15 U.S.C. secs. 6101 to 6108, and the federal trade commission's telemarketing sales rule, 16 CFR 310, as amended. The board may adopt rules requiring mortgage loan originators to comply with other applicable state and federal statutes and regulations.

(gg) Failing to pay a third-party provider, no later than thirty days after the recording of the loan closing documents or ninety days after completion of the third-party service, whichever comes first, unless otherwise agreed or unless the third-party service provider has been notified in writing that a bona fide dispute exists regarding the performance or quality of the third-party service; or

(hh) Collecting, charging, attempting to collect or charge, or using or proposing any agreement purporting to collect or charge any fee prohibited by section 12-61-914 or 12-61-915.

(2) (Deleted by amendment, L. 2009, (HB 09-1085), ch. 303, p. 1625, § 1, effective August 5, 2009.)

(3) Upon request of the board, when any mortgage loan originator is a party to any suit or proceeding, either civil or criminal, arising out of any transaction involving a residential mortgage loan and the mortgage loan originator participated in the transaction in his or her capacity as a licensed mortgage loan originator, the mortgage loan originator shall supply to the board a copy of the complaint, indictment, information, or other initiating pleading and the

answer filed, if any, and advise the board of the disposition of the case and of the nature and amount of any judgment, verdict, finding, or sentence that may be made, entered, or imposed therein.

(4) This part 9 shall not be construed to relieve any person from civil liability or criminal prosecution under the laws of this state.

(5) Complaints of record in the office of the board and board investigations, including board investigative files, are closed to public inspection. Stipulations and final agency orders are public record and subject to sections 24-72-203 and 24-72-204, C.R.S.

(6) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, does not warrant formal action by the board but that should not be dismissed as being without merit, the board may send a letter of admonition by certified mail, return receipt requested, to the licensee against whom a complaint was made and a copy of the letter of admonition to the person making the complaint, but the letter shall advise the licensee that the licensee has the right to request in writing, within twenty days after proven receipt, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based. If such request is timely made, the letter of admonition shall be deemed vacated, and the matter shall be processed by means of formal disciplinary proceedings.

(7) All administrative fines collected pursuant to this section shall be transmitted to the state treasurer, who shall credit them to the division of real estate cash fund created in section 12-61-111.5.

(8) (a) The board shall not consider an application for licensure from an individual whose license has been revoked until two years after the date of revocation.

(b) If an individual's license was suspended or revoked due to conduct that resulted in financial loss to another person, no new license shall be granted, nor shall a suspended license be reinstated, until full restitution has been made to the person suffering such financial loss. The amount of restitution shall include interest, reasonable attorney fees, and costs of any suit or other proceeding undertaken in an effort to recover the loss.

(9) When the board or the division becomes aware of facts or circumstances that fall within the jurisdiction of a criminal justice or other law enforcement authority upon investigation of the activities of a licensee, the board or division shall, in addition to the exercise of its authority under this part 9, refer and transmit such information, which may include originals or copies of documents and materials, to one or more criminal justice or other law enforcement authorities for investigation and prosecution as authorized by law.

Source: L. 2007: Entire section added, p. 1736, § 8, effective January 1, 2008. **L. 2009:** Entire part amended, (HB 09-1085), ch. 303, p. 1625, § 1, effective August 5. **L. 2010:** IP(1), (1)(d), (1)(h) to (1)(k), (1)(m), (1)(p), (3), (5), (6), (7), (8)(a), and (9) amended, (HB 10-1141), ch. 280, p. 1293, § 14, effective August 11. **L. 2012:** (5) amended, (HB 12-1110), ch. 277, p. 1474, § 17, effective July 1, 2013. **L. 2016:** IP(1) amended and (1)(y) to (1)(hh) added, (HB 16-1306), ch. 117, p. 332, § 5, effective August 10. **L. 2017:** (7) amended, (SB 17-215), ch. 282, p. 1541, § 18, effective June 30.

12-61-905.6. Hearing - administrative law judge - review - rules. (1) Except as otherwise provided in this section, all proceedings before the board with respect to disciplinary

actions and denial of licensure under this part 9, at the discretion of the board, may be conducted by an authorized representative of the board or an administrative law judge pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(2) Proceedings shall be held in the county where the board has its office or in such other place as the board may designate. If the licensee is employed by another licensed mortgage loan originator or by a real estate broker, the board shall also notify the licensee's employer by mailing, by first-class mail, a copy of the written notice required under section 24-4-104 (3), C.R.S., to the employer's last-known business address.

(3) The board, an authorized representative of the board, or an administrative law judge shall conduct all hearings for denying, suspending, or revoking a license or certificate on behalf of the board, subject to appropriations made to the department of personnel. Each administrative law judge shall be appointed pursuant to part 10 of article 30 of title 24, C.R.S. The administrative law judge shall conduct the hearing in accordance with sections 24-4-104 and 24-4-105, C.R.S. No license shall be denied, suspended, or revoked until the board has made its decision.

(4) The decision of the board in any disciplinary action or denial of licensure under this section is subject to judicial review by the court of appeals. In order to effectuate the purposes of this part 9, the board has the power to promulgate rules pursuant to article 4 of title 24, C.R.S.

(5) In a judicial review proceeding, the court may stay the execution or effect of any final order of the board; but a hearing shall be held affording the parties an opportunity to be heard for the purpose of determining whether the public health, safety, and welfare would be endangered by staying the board's order. If the court determines that the order should be stayed, it shall also determine at the hearing the amount of the bond and adequacy of the surety, which bond shall be conditioned upon the faithful performance by such petitioner of all obligations as a mortgage loan originator and upon the prompt payment of all damages arising from or caused by the delay in the taking effect of or enforcement of the order complained of and for all costs that may be assessed or required to be paid in connection with such proceedings.

(6) In any hearing conducted by the board or an authorized representative of the board in which there is a possibility of the denial, suspension, or revocation of a license because of the conviction of a felony or of a crime involving moral turpitude, the board or its authorized representative shall be governed by section 24-5-101, C.R.S.

Source: L. 2007: Entire section added, p. 1740, § 8, effective January 1, 2008. **L. 2009:** Entire part amended, (HB 09-1085), ch. 303, p. 1629, § 1, effective August 5. **L. 2010:** Entire section amended, (HB 10-1141), ch. 280, p. 1295, § 15, effective August 11.

12-61-905.7. Subpoena - misdemeanor. (1) The board or the administrative law judge appointed for hearings may issue subpoenas, as described in section 12-61-905 (6), which shall be served in the same manner as subpoenas issued by district courts and shall be issued without discrimination between public or private parties requiring the attendance of witnesses or the production of documents at hearings.

(2) Any person who willfully fails or neglects to appear and testify or to produce books, papers, or records required by subpoena, duly served upon him or her in any matter conducted under this part 9, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of one hundred dollars or imprisonment in the county jail for not more than thirty days for

each such offense, or by both such fine and imprisonment. Each day such person so refuses or neglects constitutes a separate offense.

Source: L. 2007: Entire section added, p. 1741, § 8, effective January 1, 2008. **L. 2009:** Entire part amended, (HB 09-1085), ch. 303, p. 1630, § 1, effective August 5. **L. 2010:** (1) amended, (HB 10-1141), ch. 280, p. 1296, § 16, effective August 11.

12-61-906. Immunity. A person participating in good faith in the filing of a complaint or report or participating in an investigation or hearing before the board or an administrative law judge pursuant to this part 9 shall be immune from any liability, civil or criminal, that otherwise might result by reason of such action.

Source: L. 2006: Entire part added, p. 1586, § 1, effective July 1. **L. 2009:** Entire part amended, (HB 09-1085), ch. 303, p. 1630, § 1, effective August 5. **L. 2010:** Entire section amended, (HB 10-1141), ch. 280, p. 1296, § 17, effective August 11.

12-61-907. Bond required - rules. (1) Before receiving a license, an applicant shall post with the board a surety bond in an amount prescribed by the board by rule. A licensed mortgage loan originator shall maintain the required bond at all times. The surety bond may be held by the individual mortgage loan originator or may be in the name of the company by which the mortgage loan originator is employed. The board may adopt rules to further define surety bond requirements.

(2) The surety shall not be required to pay a person making a claim upon the bond until a final determination of fraud, forgery, criminal impersonation, or fraudulent representation has been made by a court with jurisdiction.

(3) The surety bond shall require the surety to provide notice to the board within thirty days if payment is made from the surety bond or if the bond is cancelled.

Source: L. 2006: Entire part added, p. 1586, § 1, effective July 1. **L. 2007:** (1) amended, p. 1741, § 9, effective January 1, 2008. **L. 2009:** Entire part amended, (HB 09-1085), ch. 303, p. 1630, § 1, effective August 5. **L. 2010:** (1) and (3) amended, (HB 10-1141), ch. 280, p. 1296, § 18, effective August 11. **L. 2016:** (1) amended, (HB 16-1306), ch. 117, p. 333, § 6, effective August 10.

12-61-908. Fees. (1) The board may set the fees for issuance and renewal of licenses and registrations under this part 9. The fees shall be set in amounts that offset the direct and indirect costs of implementing this part 9 and section 38-40-105. The money collected pursuant to this section shall be transferred to the state treasurer, who shall credit it to the division of real estate cash fund created in section 12-61-111.5.

(2) and (3) (Deleted by amendment, L. 2017.)

Source: L. 2006: Entire part added, p. 1586, § 1, effective July 1. **L. 2007:** (1) amended, p. 1727, § 2, effective June 1; (1) amended, p. 1746, § 3, effective July 1; entire section amended, p. 1741, § 10, effective January 1, 2008. **L. 2009:** Entire part amended, (HB 09-1085), ch. 303, p. 1630, § 1, effective August 5. **L. 2010:** Entire section amended, (HB 10-1141), ch.

280, p. 1296, § 19, effective August 11. **L. 2017:** Entire section amended, (SB 17-215), ch. 282, p. 1541, § 19, effective June 30.

Editor's note: Amendments to this section and subsection (1) by Senate Bill 07-203, Senate Bill 07-216, and Senate Bill 07-085 were harmonized.

Cross references: For the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008", see 12 U.S.C. § 5101 et seq.

12-61-909. Attorney general - district attorney - jurisdiction. The attorney general shall have concurrent jurisdiction with the district attorneys of this state to investigate and prosecute allegations of criminal violations of this part 9.

Source: L. 2006: Entire part added, p. 1586, § 1, effective July 1. **L. 2009:** Entire part amended, (HB 09-1085), ch. 303, p. 1631, § 1, effective August 5.

12-61-910. Violations - injunctions. (1) (a) Any individual violating this part 9 by acting as a mortgage loan originator in this state without having obtained a license or by acting as a mortgage loan originator after that individual's license has been revoked or during any period for which said license may have been suspended is guilty of a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.; except that, if the violator is not a natural person, the violator shall be punished by a fine of not more than five thousand dollars.

(b) Each residential mortgage loan negotiated or offered to be negotiated by an unlicensed person shall be a separate violation of this subsection (1).

(2) (Deleted by amendment, L. 2007, p. 1742, 11, effective January 1, 2008.)

(3) The board may request that an action be brought in the name of the people of the state of Colorado by the attorney general or the district attorney of the district in which the violation is alleged to have occurred to enjoin a person from engaging in or continuing the violation or from doing any act that furthers the violation. In such an action, an order or judgment may be entered awarding such preliminary or final injunction as is deemed proper by the court. The notice, hearing, or duration of an injunction or restraining order shall be made in accordance with the Colorado rules of civil procedure.

(4) A violation of this part 9 shall not affect the validity or enforceability of any mortgage.

Source: L. 2006: Entire part added, p. 1586, § 1, effective July 1. **L. 2007:** (1) and (2) amended, p. 1742, § 11, effective January 1, 2008. **L. 2009:** Entire part amended, (HB 09-1085), ch. 303, p. 1631, § 1, effective August 5. **L. 2010:** (3) amended, (HB 10-1141), ch. 280, p. 1297, § 20, effective August 11.

12-61-910.2. Prohibited conduct - influencing a real estate appraisal. (1) A mortgage loan originator shall not, directly or indirectly, compensate, coerce, or intimidate an appraiser, or attempt, directly or indirectly, to compensate, coerce, or intimidate an appraiser, for the purpose of influencing the independent judgment of the appraiser with respect to the value of

a dwelling offered as security for repayment of a residential mortgage loan. This prohibition shall not be construed as prohibiting a mortgage loan originator from requesting an appraiser to:

(a) Consider additional, appropriate property information;

(b) Provide further detail, substantiation, or explanation for the appraiser's value conclusion; or

(c) Correct errors in the appraisal report.

Source: L. 2007: Entire section added, p. 1727, § 3, effective June 1. **L. 2009:** Entire part amended, (HB 09-1085), ch. 303, p. 1631, § 1, effective August 5.

12-61-910.3. Rule-making authority. The board has the authority to promulgate rules as necessary to enable the board to carry out the board's duties under this part 9.

Source: L. 2007: Entire section added, p. 1717, § 5, effective June 1; entire section added, p. 1727, § 3, effective June 1; entire section added and amended, pp. 1736, 1731, §§ 8, 2, effective January 1, 2008. **L. 2009:** Entire part amended, (HB 09-1085), ch. 303, p. 1632, § 1, effective August 5. **L. 2010:** Entire section amended, (HB 10-1141), ch. 280, p. 1297, § 21, effective August 11.

Editor's note: (1) Amendments to this section by House Bill 07-1322, Senate Bill 07-203, and Senate Bill 07-085 were harmonized.

(2) This section was amended in section 2 of Senate Bill 07-203. Those amendments were superseded by the enactment of the section in House Bill 07-1322, Senate Bill 07-085, and section 8 of Senate Bill 07-203 to reflect the intent of the General Assembly.

12-61-910.4. Nontraditional mortgage products - consumer protections - rules - incorporation of federal interagency guidance. (Repealed)

Source: L. 2007: Entire section added, p. 1745, § 2, effective July 1. **L. 2009:** Entire part amended, (HB 09-1085), ch. 303, p. 1632, § 1, effective August 5. **L. 2010:** Entire section amended, (HB 10-1141), ch. 280, p. 1297, § 22, effective August 11. **L. 2016:** Entire section repealed, (HB 16-1306), ch. 117, p. 335, § 9, effective August 10.

12-61-911. Prohibited conduct - fraud - misrepresentation - conflict of interest - rules. (Repealed)

Source: L. 2006: Entire part added, p. 1587, § 1, effective July 1. **L. 2007:** Entire section R&RE, p. 1718, § 6, effective June 1; (1) and (2) amended, p. 1742, § 12, effective January 1, 2008. **L. 2009:** Entire part amended, (HB 09-1085), ch. 303, p. 1632, § 1, effective August 5. **L. 2010:** (1)(j) amended, (HB 10-1141), ch. 280, p. 1298, § 23, effective August 11. **L. 2011:** (1)(j) amended, (HB 11-1303), ch. 264, p. 1152, § 17, effective August 10. **L. 2013:** (1)(k) and (1)(l) amended and (1)(m) repealed, (SB 13-156), ch. 393, p. 2288, § 6, effective July 1. **L. 2016:** Entire section repealed, (HB 16-1306), ch. 117, p. 334, § 7, effective August 10.

12-61-911.5. Acts of employee - mortgage loan originator's liability. An unlawful act or violation of this part 9 upon the part of an agent or employee of a licensed mortgage loan originator shall not be cause for disciplinary action against a mortgage loan originator unless it appears that the mortgage loan originator knew or should have known of the unlawful act or violation or had been negligent in the supervision of the agent or employee.

Source: L. 2007: Entire section added, p. 1742, § 13, effective January 1, 2008. **L. 2009:** Entire part amended, (HB 09-1085), ch. 303, p. 1633, § 1, effective August 5.

12-61-912. Dual status as real estate broker - requirements. (1) Unless a mortgage loan originator complies with both subsections (2) and (3) of this section, he or she shall not act as a mortgage loan originator in any transaction in which:

(a) The mortgage loan originator acts or has acted as a real estate broker or salesperson; or

(b) Another person doing business under the same licensed real estate broker acts or has acted as a real estate broker or salesperson.

(2) Before providing mortgage-related services to the borrower, a mortgage loan originator shall make a full and fair disclosure to the borrower, in addition to any other disclosures required by this part 9 or other laws, of all material features of the loan product and all facts material to the transaction.

(3) (a) A real estate broker or salesperson licensed under part 1 of this article who also acts as a mortgage loan originator shall carry on such mortgage loan originator business activities and shall maintain such person's mortgage loan originator business records separate and apart from the real estate broker or sales activities conducted pursuant to part 1 of this article. Such activities shall be deemed separate and apart even if they are conducted at an office location with a common entrance and mailing address if:

(I) Each business is clearly identified by a sign visible to the public;

(II) Each business is physically separated within the office facility; and

(III) No deception of the public as to the separate identities of the broker business firms results.

(b) This subsection (3) shall not require a real estate broker or salesperson licensed under part 1 of this article who also acts as a mortgage loan originator to maintain a physical separation within the office facility for the conduct of its real estate broker or sales and mortgage loan originator activities if the board determines that maintaining such physical separation would constitute an undue financial hardship upon the mortgage loan originator and is unnecessary for the protection of the public.

Source: L. 2007: Entire section added, p. 1719, § 7, effective June 1. **L. 2008:** (1), IP(3)(a), and (3)(b) amended, p. 510, § 28, effective April 17. **L. 2009:** Entire part amended, (HB 09-1085), ch. 303, p. 1634, § 1, effective August 5. **L. 2010:** (3)(b) amended, (HB 10-1141), ch. 280, p. 1298, § 24, effective August 11.

12-61-913. Written contract required - effect. (Repealed)

Source: L. 2007: Entire section added, p. 1720, § 7, effective June 1. **L. 2009:** Entire part amended, (HB 09-1085), ch. 303, p. 1634, § 1, effective August 5. **L. 2016:** Entire section repealed, (HB 16-1306), ch. 117, p. 335, § 9, effective August 10.

12-61-914. Written disclosure of fees and costs - contents - limits on fees - lock-in agreement terms - rules. (1) (a) A mortgage loan originator's disclosures must comply with all applicable requirements of:

(I) The federal "Truth in Lending Act", 15 U.S.C. secs. 1601 et seq., and Regulation Z, 12 CFR 226 and 12 CFR 1026;

(II) The federal "Real Estate Settlement Procedures Act of 1974", 12 U.S.C. secs. 2601 et seq., and Regulation X, 12 CFR 1024 et seq.;

(III) The federal "Equal Credit Opportunity Act", 15 U.S.C. sec. 1691 and Regulation B, 12 CFR 202.9, 202.11, and 202.12 and 12 CFR 1002;

(IV) Title V, Subtitle A of the federal "Financial Services Modernization Act of 1999", also known as the "Gramm-Leach-Bliley Act", 15 U.S.C. secs. 6801 to 6809, and the federal trade commission's privacy rules, 16 CFR 313 and 314, adopted in accordance with the federal "Gramm-Leach-Bliley Act";

(V) The federal "Home Mortgage Disclosure Act of 1975", 12 U.S.C. secs. 2801 et seq., and Regulation C, 12 CFR 203 and 12 CFR 1003, pertaining to home mortgage disclosure;

(VI) The "Federal Trade Commission Act of 1914", 15 U.S.C. sec. 45 (a), and 16 CFR 233;

(VII) The federal "Telemarketing and Consumer Fraud and Abuse Prevention Act", 15 U.S.C. secs. 6101 to 6108, and the federal trade commission's telemarketing sales rule, 16 CFR 310.

(b) The board may, by rule, require mortgage loan originators to comply with other mortgage loan disclosure requirements contained in applicable statutes and regulations in connection with making any residential mortgage loan or engaging in other activity subject to this part 9.

(2) to (4) (Deleted by amendment, L. 2016.)

Source: L. 2007: Entire section added, p. 1720, § 7, effective June 1. **L. 2009:** Entire part amended, (HB 09-1085), ch. 303, p. 1634, § 1, effective August 5. **L. 2010:** (2)(d) and (4)(b) amended, (HB 10-1141), ch. 280, p. 1298, § 25, effective August 11. **L. 2016:** Entire section amended, (SB 16-014), ch. 17, p. 38, § 1, effective March 16.

12-61-915. Fee, commission, or compensation - when permitted - amount. (1) Except as otherwise permitted by subsection (2) or (3) of this section, a mortgage loan originator shall not receive a fee, commission, or compensation of any kind in connection with the preparation or negotiation of a residential mortgage loan unless a borrower actually obtains a loan from a lender on the terms and conditions agreed to by the borrower and mortgage loan originator.

(2) If the mortgage loan originator has obtained for the borrower a written commitment from a lender for a loan on the terms and conditions agreed to by the borrower and the mortgage loan originator, and the borrower fails to close on the loan through no fault of the mortgage loan originator, the mortgage loan originator may charge a fee, not to exceed three hundred dollars,

for services rendered, preparation of documents, or transfer of documents in the borrower's file that were prepared or paid for by the borrower if the fee is not otherwise prohibited by the federal "Truth in Lending Act", 15 U.S.C. sec. 1601, and Regulation Z, 12 CFR 226, as amended.

(3) A mortgage loan originator may solicit or receive fees for third-party provider goods or services in advance. Fees for any goods or services not provided shall be refunded to the borrower, and the mortgage loan originator may not charge more for the goods and services than the actual costs of the goods or services charged by the third-party provider.

Source: L. 2007: Entire section added, p. 1722, § 7, effective June 1. **L. 2009:** Entire part amended, (HB 09-1085), ch. 303, p. 1636, § 1, effective August 5.

12-61-916. Confidentiality. (1) Except as otherwise provided in the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008", 12 U.S.C. sec. 5111, the requirements under any federal law or law of this state regarding privacy or confidentiality of any information or material provided to the nationwide mortgage licensing system and registry, and any privilege arising under federal or state law, including the rules of any federal or state court with respect to such information or material, shall apply to the information or material after it has been disclosed to the nationwide mortgage licensing system and registry. The information or material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or confidentiality protections provided by federal or state law.

(2) The board may enter into agreements with other government agencies, the conference of state bank supervisors, the American association of residential mortgage regulators, or other associations representing government agencies as established by rule.

(3) Information or material that is subject to privilege or confidentiality pursuant to subsection (1) of this section shall not be subject to the following:

(a) Disclosure under a federal or state law governing the disclosure to the public of information held by an officer or agency of the federal government or the respective state; or

(b) Subpoena, discovery, or admission into evidence in any private civil action or administrative process, unless with respect to a privilege held by the nationwide mortgage licensing system and registry regarding the information or material, the person to whom the information or material pertains waives the privilege, in whole or in part.

Source: L. 2009: Entire part amended, (HB 09-1085), ch. 303, p. 1637, § 1, effective August 5. **L. 2010:** (2) amended, (HB 10-1141), ch. 280, p. 1299, § 26, effective August 11.

12-61-917. Mortgage call reports - reports of violations. (1) The board may require each licensee or registrant to submit to the nationwide mortgage licensing system and registry mortgage call reports, which shall be in the form and contain the information required by the nationwide mortgage licensing system and registry.

(2) The board may report violations of this part 9, enforcement actions, and other relevant information to the nationwide mortgage licensing system and registry.

Source: L. 2009: Entire part amended, (HB 09-1085), ch. 303, p. 1637, § 1, effective August 5. **L. 2010:** Entire section amended, (HB 10-1141), ch. 280, p. 1299, § 27, effective August 11.

12-61-918. Unique identifier - clearly displayed. Each person required to be licensed or registered shall show his or her or the entity's unique identifier clearly on all residential mortgage loan application forms and any other documents as specified by the board by rule or order.

Source: L. 2009: Entire part amended, (HB 09-1085), ch. 303, p. 1637, § 1, effective August 5. **L. 2010:** Entire section amended, (HB 10-1141), ch. 280, p. 1299, § 28, effective August 11.

12-61-919. Repeal of part. (1) This part 9 is repealed, effective September 1, 2029.

(2) Prior to its repeal, the department of regulatory agencies shall review the licensing of mortgage loan originators and the registration of mortgage companies in accordance with section 24-34-104, C.R.S. The department shall include in its review of mortgage loan originators and mortgage companies an analysis of the number and types of complaints made about mortgage loan originators and mortgage companies and whether the licensing of mortgage loan originators and the registration of mortgage companies correlates with public protection from fraudulent activities in the residential mortgage loan industry.

Source: L. 2009: Entire part amended, (HB 09-1085), ch. 303, p. 1638, § 1, effective August 5. **L. 2010:** Entire section amended, (HB 10-1141), ch. 280, p. 1300, § 30, effective August 11. **L. 2013:** (1) amended, (SB 13-156), ch. 393, p. 2286, § 1, effective July 1. **L. 2018:** (1) amended, (HB 18-1174), ch. 282, p. 1761, § 2, effective August 8.

Editor's note: Section 6 of chapter 282 (HB 18-1174), Session Laws of Colorado 2018, provides that the act changing this section applies to applications received on or after August 8, 2018.

PART 10

COMMUNITY ASSOCIATION MANAGERS

12-61-1001 to 12-61-1014. (Repealed)

Editor's note: (1) This part 10 was added in 2013. For amendments to this part 10 prior to its repeal in 2018, consult the 2017 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Section 12-61-1014 provided for the repeal of this part 10, effective July 1, 2018. (See L. 2016, p. 233.)

PART 11

CONSERVATION EASEMENTS

12-61-1101. Legislative declaration. (1) The general assembly finds, determines, and declares that:

(a) Colorado's conservation easement program is an important preservation tool used to balance economic needs with natural resources such as land and water preservation. Colorado's conservation easement tax credit and the federal tax deduction have allowed many farmers and ranchers the opportunity to donate their development rights to preserve a legacy of open spaces in Colorado for wildlife, agriculture, and ranching.

(b) Citizens throughout Colorado believe good, sound conservation practices are important to Colorado's quality of life, agriculture, and natural heritage;

(c) Colorado's conservation easement tax credit program was designed to give landowners an incentive to conserve and preserve their land in a predominantly natural, scenic, or open condition;

(d) Creating a division of conservation within the department of regulatory agencies will keep a firewall between professional evaluation and professional discipline, while creating a division to ensure this program allows landowners to exercise their private property rights while protecting taxpayers from the fraud and abuse that existed in the program prior to 2009;

(e) Establishing the division of conservation to administer the conservation easement tax credit program will:

(I) Allow the division to continue to certify conservation easement holders to identify fraudulent or unqualified organizations and prevent them from holding conservation easements for which tax credits are claimed in the state;

(II) Allow the conservation easement oversight commission to advise the division of conservation and the department of revenue regarding conservation easements for which a tax credit is claimed and to review applications for conservation easement holder certification; and

(III) Ensure that the division of conservation and the department of revenue are sharing relevant information concerning conservation easement appraisals in order to ensure compliance with accepted appraisal practices and other provisions of law.

Source: L. 2018: Entire part added, (HB 18-1291), ch. 273, p. 1674, § 1, effective May 29.

12-61-1102. Division of conservation - director. (1) The executive director of the department of regulatory agencies is authorized by this section to employ, subject to the provisions of the state personnel system laws of the state, a director of the division of conservation, referred to in this part 11 as the "division", who in turn shall employ such deputies, clerks, and assistants as are necessary to discharge the duties imposed by this part 11. The division of conservation, which is a division in the department of regulatory agencies, and the director of the division shall exercise their powers and perform their duties and functions under the department of regulatory agencies as if they were transferred to the department by a **type 2** transfer.

(2) It is the duty of the director of the division, personally or his or her designee, to aid in the administration and enforcement of this part 11 and to administer, in consultation with the

conservation easement oversight commission, the certification of conservation easement holders and issuance of tax credit certificates as provided in this part 11.

Source: L. 2018: Entire part added, (HB 18-1291), ch. 273, p. 1675, § 1, effective May 29.

12-61-1103. Conservation easement oversight commission - created - repeal. (1) There is hereby created in the division a conservation easement oversight commission. The commission shall exercise its powers and perform its duties and functions under the division as if transferred thereto by a **type 2** transfer, as defined in the "Administrative Organization Act of 1968", article 1 of title 24. The commission consists of eight members as follows:

(a) One member representing the great outdoors Colorado program, appointed by and serving as an advisory, nonvoting member at the pleasure of the state board of the great outdoors Colorado trust fund established in article XXVII of the state constitution;

(b) One voting member representing the department of natural resources, appointed by and serving at the pleasure of the executive director of the department of natural resources;

(c) One voting member representing the department of agriculture, appointed by and serving at the pleasure of the executive director of the department of agriculture;

(d) Three voting members appointed by the governor as follows:

(I) Two voting representatives of certified conservation easement holders; and

(II) A voting individual who is competent and qualified to analyze the conservation purpose of conservation easements; and

(e) Two voting members of the general public, one appointed by the president of the senate to serve at the pleasure of the president and one appointed by the speaker of the house of representatives to serve at the pleasure of the speaker. Appointments made pursuant to this subsection (1)(e) are for three-year terms and no member shall serve more than two consecutive terms.

(2) In making appointments to the commission, the governor shall consult with the three members of the commission appointed pursuant to subsections (1)(a) to (1)(c) of this section and with appropriate organizations representing the particular interest or area of expertise that the appointees in subsections (1)(d)(I) and (1)(d)(II) of this section represent. Not more than two of the governor's appointees serving at the same time shall be from the same political party. In making the initial appointments, the governor shall appoint one member for a term of two years. All other appointments by the governor are for terms of three years. No member shall serve more than two consecutive terms. In the event of a vacancy by death, resignation, removal, or otherwise, the governor shall appoint a member to fill the unexpired term. The governor may remove any member for misconduct, neglect of duty, or incompetence.

(3) (a) At the request of the division or the department of revenue, the commission shall advise the division and the department of revenue regarding conservation easements for which a state income tax credit is claimed pursuant to section 39-22-522.

(b) The commission shall review conservation easement tax credit certificate applications and requests for optional preliminary advisory opinions in accordance with section 12-61-1106.

(4) The commission shall meet at least quarterly. The division shall convene the meetings of the commission and provide staff support as requested by the commission. A

majority of the voting members of the commission constitutes a quorum for the transaction of all business, and actions of the commission require a vote of a majority of the voting members present in favor of the action taken. The commission may delegate to the director of the division the authority to act on behalf of the commission on occasions and in circumstances that the commission deems necessary for the efficient and effective administration and execution of the commission's responsibilities under this part 11.

(5) The commission shall establish a conflict-of-interest policy to ensure that any member of the commission is disqualified from performing an act that conflicts with a private pecuniary interest of the member or from participating in the deliberation or decision-making process for certification for an applicant represented by the member.

(6) The commission shall advise and make recommendations to the director of the division regarding the certification of conservation easement holders in accordance with section 12-61-1104.

(7) Commission members are immune from liability in accordance with the provisions of the "Colorado Governmental Immunity Act", article 10 of title 24.

(8) This section is repealed, effective July 1, 2019.

Source: L. 2018: Entire part added, (HB 18-1291), ch. 273, p. 1675, § 1, effective May 29.

12-61-1104. Certification of conservation easement holders - rules - definition - repeal. (1) The division shall, in consultation with the commission created in section 12-61-1103, establish and administer a certification program for qualified organizations under section 170 (h) of the federal "Internal Revenue Code of 1986", as amended, that hold conservation easements for which a tax credit is claimed pursuant to section 39-22-522. The purposes of the program are to:

(a) Establish minimum qualifications for certifying organizations that hold conservation easements to encourage professionalism and stability; and

(b) Identify fraudulent or unqualified applicants, as determined under the rules of the division, to prevent them from becoming certified by the program.

(2) The division shall establish and accept applications for certification. The division shall conduct a review of each application and consider the recommendations of the commission before making a final determination to grant or deny certification. In reviewing an application and in granting certification, the division and the commission may consider:

(a) The applicant's process for reviewing, selecting, and approving a potential conservation easement;

(b) The applicant's stewardship practices and capacity, including the ability to maintain, monitor, and defend the purposes of the easement;

(c) An audit of the applicant's financial records;

(d) The applicant's system of governance and ethics regarding conflicts of interest and transactions with related parties as described in section 267 (b) of the federal "Internal Revenue Code of 1986", as amended, donors, board members, and insiders. For purposes of this subsection (2)(d), "insiders" means board and staff members, substantial contributors, parties related to those above, those who have an ability to influence decisions of the organization, and those with access to information not available to the general public.

(e) Any other information deemed relevant by the division or the commission; and

(f) The unique circumstances of the different entities to which this certification applies as set forth in subsection (4) of this section.

(3) At the time of submission of an application, and each year the entity is certified pursuant to this section, the applicant shall pay the division a fee, as prescribed by the division, to cover the costs of the division and the commission in administering the certification program for entities that hold conservation easements for which tax credits are claimed pursuant to section 39-22-522. The division shall have the authority to accept and expend gifts, grants, and donations for the purposes of this section. The state treasurer shall credit fees, gifts, grants, and donations collected pursuant to this subsection (3) to the conservation cash fund created in section 12-61-1107. On or before each January 1, the division shall certify to the general assembly the amount of the fee prescribed by the division pursuant to this subsection (3).

(4) The certification program applies to:

(a) Nonprofit entities holding easements on property with conservation values consisting of recreation or education, protection of environmental systems, or preservation of open space;

(b) Nonprofit entities holding easements on property for historic preservation; and

(c) The state and any municipality, county, city and county, special district, or other political subdivision of the state that holds an easement.

(5) The certification program shall contain a provision allowing for the expedited or automatic certification of an entity that is currently accredited by national land conservation organizations that are broadly accepted by the conservation industry.

(6) The commission shall meet at least quarterly and make recommendations to the division regarding the certification program. The division is authorized to determine whether an applicant for certification possesses the necessary qualifications for certification required by the rules adopted by the division. If the division determines that an applicant does not possess the applicable qualifications for certification or that the applicant has violated any provision of this part 11, the rules promulgated by the division, or any division order, the division may deny the applicant a certification or deny the renewal of a certification, and, in such instance, the division shall provide the applicant with a statement in writing setting forth the basis of the division's determination. The applicant may request a hearing on the determination as provided in section 24-4-104 (9). The division shall notify successful applicants in writing. An applicant that is not certified may reapply for certification in accordance with procedures established by the division.

(7) The division shall promulgate rules to effectuate the duties of the commission pursuant to article 4 of title 24. Such rules shall specifically address the following:

(a) Allowing for the expedited or automatic certification of an entity that is currently accredited by national land conservation organizations that are broadly accepted by the conservation industry;

(b) A streamlined and lower-cost process for conservation easement holders that do not intend to accept new donations of conservation easements for which tax credits would be claimed that focuses on the holder's stewardship capabilities;

(c) The fees charged pursuant to subsection (3) of this section or section 12-61-1106 (6), specifically ensuring that the fees are adequate to pay for administrative costs but not so high as to act as a disincentive to the creation of conservation easements in the state; and

(d) The adoption of best practices, processes, and procedures used by other entities that regularly review conservation easement transactions, including a practice, process, or procedure

deeming qualified conservation easement appraisals approved by these entities based on their independent reviews as credible for purposes of the conservation easement tax credit.

(8) A conservation easement tax credit certificate application may be submitted pursuant to section 12-61-1106 only if the entity has been certified in accordance with this section at the time the donation of the easement is made. The division shall make information available to the public concerning the date that it commences accepting applications for entities that hold conservation easements and the requirements of this subsection (8).

(9) The division shall maintain and update an online list, accessible to the public, of the organizations that have applied for certification and whether each has been certified, rejected for certification, or had its certification revoked or suspended in accordance with this section.

(10) The division may investigate the activities of any entity that is required to be certified pursuant to this section and to impose discipline for noncompliance, including the suspension or revocation of a certification or the imposition of fines. The division may promulgate rules in accordance with article 4 of title 24 for the certification program and discipline authorized by this section.

(11) The division may subpoena persons and documents, which subpoenas may be enforced by a court of competent jurisdiction if not obeyed, for purposes of conducting investigations pursuant to subsection (10) of this section.

(12) Nothing in this section:

(a) Affects any tax credit that was claimed pursuant to section 39-22-522 before certification was required by this section; or

(b) Requires the certification of an entity that holds a conservation easement for which a tax credit is not claimed pursuant to section 39-22-522.

(13) This section is repealed, effective July 1, 2019.

Source: L. 2018: Entire part added, (HB 18-1291), ch. 273, p. 1677, § 1, effective May 29.

12-61-1105. Conservation easement tax credit certificates - rules. (1) The division shall receive tax credit certificate applications from and issue certificates to landowners for income tax credits for conservation easements donated on or after January 1, 2011, in accordance with section 39-22-522 (2.5) and this part 11. Nothing in this section restricts or limits the authority of the division to enforce this part 11. The division may promulgate rules in accordance with article 4 of title 24 for the issuance of the certificates. In promulgating rules, the division may include provisions governing:

(a) The review of the tax credit certificate application pursuant to this part 11;

(b) The administration and financing of the certification process;

(c) The notification to the public regarding the aggregate amount of tax credit certificates that have been issued and that are on the wait list pursuant to section 39-25-522 (2.5);

(d) The notification to the landowner, the entity to which the easement was granted, and the department of revenue regarding the tax credit certificates issued; and

(e) Any other matters related to administering section 39-22-522 (2.5) or this part 11.

(2) The division shall apply the amount claimed in a completed tax credit certificate application against the annual tax credit limit in the order that completed applications are received. The division shall apply claimed tax credit amounts that exceed the annual limit in any

year against the limit for the next available year and issue tax credit certificates for use in the year in which the amount was applied to the annual limit.

(3) The division shall not issue tax credit certificates that in aggregate exceed the limit set forth in section 39-22-522 (2.5) during a particular calendar year.

Source: L. 2018: Entire part added, (HB 18-1291), ch. 273, p. 1680, § 1, effective May 29.

12-61-1106. Conservation easement tax credit certificate application process - definitions - rules. (1) For purposes of this section:

(a) "Application" means an application for a tax credit certificate submitted pursuant to section 12-61-1105 or this section.

(b) "Conservation purpose" means conservation purpose as defined in section 170 (h) of the federal "Internal Revenue Code of 1986", as amended, and any federal regulations promulgated in connection with such section.

(c) "Credibility" means the results are worthy of belief and are supported by relevant evidence and logic to the degree necessary for the intended use.

(d) "Deficiency" means noncompliance with a requirement for obtaining a tax credit certificate that, unless such noncompliance is remedied, is grounds for the denial of a tax credit certificate application submitted pursuant to this section.

(e) "Director" means the director of the division of conservation or his or her designee.

(f) "Landowner" means the record owner of the surface of the land and, if applicable, owner of the water or water rights beneficially used thereon who creates a conservation easement in gross pursuant to section 38-30.5-104.

(g) "Tax credit certificate" means the conservation easement tax credit certificate issued pursuant to section 12-61-1105 and this section.

(2) (a) The division shall establish and administer a process by which a landowner seeking to claim an income tax credit for any conservation easement donation made on or after January 1, 2014, must apply for a tax credit certificate as required by section 39-22-522 (2.5) and (2.7). The purpose of the application process is to determine whether a conservation easement donation for which a tax credit will be claimed:

(I) Is a contribution of a qualified real property interest to a qualified organization to be used exclusively for a conservation purpose;

(II) Is substantiated with a qualified appraisal prepared by a qualified appraiser in accordance with the uniform standards of professional appraisal practice; and

(III) Complies with the requirements of this section.

(b) The landowner has the burden of proof regarding compliance with all applicable laws, rules, and regulations.

(3) For the purpose of reviewing applications and making determinations regarding the issuance of tax credit certificates, including the dollar amount of the tax credit certificate to be issued:

(a) Division staff shall review each application and advise and make recommendations to the director and the commission regarding the application;

(b) The director has authority and responsibility to determine the credibility of the appraisal. In determining credibility, the director shall consider, at a minimum, compliance with the following requirements:

(I) The appraisal for a conservation easement donation for which a tax credit is claimed pursuant to section 39-22-522 is a qualified appraisal from a qualified appraiser, as defined in section 170 (f) of the federal "Internal Revenue Code of 1986", as amended, and any federal regulations promulgated in connection with such section;

(II) The appraisal conforms with the uniform standards of professional appraisal practice promulgated by the appraisal standards board of the appraisal foundation and any other provision of law;

(III) The appraiser holds a valid license as a certified general appraiser in accordance with part 7 of this article 61; and

(IV) The appraiser meets any education and experience requirements established by the board of real estate appraisers in accordance with section 12-61-704 (1)(k).

(c) The director has the authority and responsibility to determine compliance with the requirements of section 12-61-1104.

(d) The commission has the authority and responsibility to determine whether a conservation easement donation for which a tax credit is claimed pursuant to section 39-22-522 is a qualified conservation contribution as defined in section 170 (h) of the federal "Internal Revenue Code of 1986", as amended, and any federal regulations promulgated in connection with such section.

(4) The department of revenue is not authorized to disallow a conservation easement tax credit based on any requirements that are under the jurisdiction of the division, the director, or the commission pursuant to this section.

(5) A complete tax credit certificate application must be made by the landowner to the division and must include:

(a) A copy of the final conservation easement appraisal;

(b) A copy of the recorded deed granting the conservation easement;

(c) Documentation supporting the conservation purpose of the easement;

(d) Any other information or documentation the director or the commission deems necessary to make a final determination regarding the application; and

(e) The fee required pursuant to subsection (6) of this section.

(6) A landowner submitting an application for a tax credit certificate pursuant to this section or an application for an optional preliminary advisory opinion pursuant to subsection (14) of this section shall pay the division a fee as prescribed by the division. The application fee for an optional preliminary advisory opinion may be a different dollar amount than the application fee for a tax credit certificate. The fees must be adequate to pay for the administrative costs of the division and the commission in administering the requirements of this section, but not so high as to act as a disincentive to the creation of conservation easements in the state. The state treasurer shall credit the fees collected pursuant to this subsection (6) to the conservation cash fund created in section 12-61-1107. On or before January 1, 2014, and on or before each January 1 thereafter, the division shall certify to the general assembly the amount of any fees prescribed by the division pursuant to this subsection (6).

(7) (a) If, during the review of an application for a tax credit certificate, the director or the commission identifies any potential deficiencies, the director or commission shall document

the potential deficiencies in a letter sent to the landowner by first-class mail. The division shall send letters documenting potential deficiencies to landowners in a timely manner so that the number of days between the date a completed application is received by the division and the mailing date of the division's letter to the landowner does not exceed one hundred twenty days.

(b) The landowner has sixty days after the mailing date of the division's letter to address the potential deficiencies identified by the director and the commission and provide additional information or documentation that the director or the commission deems necessary to make a final determination regarding the application.

(c) The director and the commission have ninety days after the date of receipt of any additional information or documentation provided by the landowner to review the information and documentation and make a final determination regarding the application.

(d) The deadlines prescribed by this subsection (7) may be extended upon mutual agreement between the director and the commission and the landowner.

(8) The director or the commission may deny an application if the landowner:

(a) Has not demonstrated to the satisfaction of the director or the commission that the application complies with any requirement of this part 11;

(b) Does not provide the information and documentation required pursuant to this part 11; or

(c) Fails to timely respond to any written request or notice from the division, the director, or the commission.

(9) If the director reasonably believes that any appraisal submitted in accordance with this section is not credible, the director, after consultation with the commission, may request that the landowner, at the landowner's expense, obtain either a second appraisal or a review of the appraisal submitted with the application from an appraiser who meets the requirements of part 7 of this article 61 and is in good standing with the board before making a final determination regarding the application.

(10) If the director and the commission do not identify any potential deficiencies with an application, the director and the commission shall approve the application, and the division shall issue a tax credit certificate to the landowner pursuant to section 12-61-1105 in a timely manner so that the number of days between the date a completed application is received by the division and the date the tax credit certificate is issued does not exceed one hundred twenty days. Once a tax credit certificate is issued, the landowner may claim and use the tax credit subject to any other applicable procedures and requirements under title 39.

(11) (a) If all potential deficiencies that have been identified are subsequently addressed to the satisfaction of the director and the commission, the director and the commission shall approve the application, and the division shall issue a tax credit certificate to the landowner pursuant to section 12-61-1105. Once a tax credit certificate is issued, the landowner may claim and use the tax credit subject to any other applicable procedures and requirements under title 39.

(b) If any potential deficiencies that have been identified are not subsequently addressed to the satisfaction of the director and the commission, the division shall issue a written denial of the application to the landowner documenting those deficiencies that were the specific basis for the denial. The division shall date the written denial and send it by first-class mail to the landowner at the address provided by the landowner on the application. The director may act on behalf of the commission for purposes of administering the process for issuing approvals and denials of applications and for administering subsection (12) of this section.

(12) (a) The landowner may appeal to the director either the director's or the commission's denial of an application, in writing, within thirty days after the issuance of the denial. This written appeal constitutes a request for an administrative hearing.

(b) If the landowner fails to appeal the denial of an application within thirty days after the issuance of the denial, the denial becomes final, and the division shall not issue a tax credit certificate to the landowner.

(c) Administrative hearings must be conducted in accordance with section 24-4-105. At the discretion of the director, hearings may be conducted by an authorized representative of the director or the commission or an administrative law judge from the office of administrative courts in the department of personnel. All hearings must be held in the county where the division is located unless the director designates otherwise. The decision of the director or the commission is subject to judicial review by the court of appeals and is subject to the provisions of section 24-4-106.

(d) In conducting settlement discussions with a landowner, the director and the commission may compromise on any of the deficiencies identified in the application and supporting documentation, including the dollar amount of the tax credit certificate to be issued. The director shall place on file in the division a record of any compromise and the reasons for the compromise.

(e) The director may promulgate rules pursuant to article 4 of title 24 to effectuate the purposes of this subsection (12).

(13) (a) Commencing with the 2014 calendar year, and for each calendar year thereafter, the division shall create a report, which shall be made available to the public, containing the following aggregate information:

(I) The total number of tax credit certificate applications received, approved, and denied in accordance with this section, along with average processing times;

(II) For applications approved in accordance with this section:

(A) The total acreage under easement summarized by the allowable conservation purposes as defined in section 170 (h) of the federal "Internal Revenue Code of 1986", as amended, and any federal regulations promulgated in connection with such section;

(B) The total appraised value of the easements;

(C) The total donated value of the easements; and

(D) The total dollar amount of tax credit certificates issued.

(b) The division may include additional easement-specific information in the public report that, notwithstanding the provisions of this part 11 or any other law to the contrary, would otherwise be publicly available.

(c) The director is authorized to share publicly available information regarding conservation easements with a third-party vendor for the purpose of developing and maintaining a registry of conservation easements in the state with a corresponding map displaying the boundaries of each easement in the state relative to county boundaries and other relevant mapping information. Prior to sharing the information, the director shall consult with the commission regarding the appropriate types of information and the methods used for collecting the information. The department of regulatory agencies shall annually report on the information contained in the registry as a part of its presentation to its committee of reference at a hearing held pursuant to section 2-7-203 (2)(a) of the "State Measurement for Accountable, Responsive,

and Transparent (SMART) Government Act". The information to be shared shall include the following:

(I) Any deeds, contracts, or other instruments creating, assigning, or terminating the easement, including the reception numbers on all instruments;

(II) The location and acreage of each easement, delineated by county;

(III) The name of the original grantor of the easement and the name of the original grantee of the easement.

(IV) Whether the holder of the easement is a certified organization pursuant to section 12-61-1104;

(V) The conservation purposes of the easement; and

(VI) If a tax credit was issued.

(14) (a) In addition to the tax credit certificate application process set forth in this section, a landowner may submit a proposed conservation easement donation to the division to obtain an optional preliminary advisory opinion regarding the transaction. The opinion may address the proposed deed of conservation easement, appraisal, conservation purpose, or other relevant aspect of the transaction.

(b) The division, the director, and the commission shall review the information and documentation provided in a manner consistent with the scope of their authority and responsibilities for reviewing tax credit certificate applications as outlined in subsection (3) of this section and issue either a favorable opinion or a nonfavorable opinion.

(c) The director or the commission may request that the landowner submit additional information or documentation that the director or the commission deems necessary to complete the review and issue an opinion.

(d) A nonfavorable opinion shall set forth any potential deficiencies identified by the director or the commission and that fall within the scope of the director's and the commission's review of the conservation easement transaction. The preliminary opinion is advisory only and is not binding for any purpose upon the division, the director, the commission, or the department of revenue.

(15) The division may promulgate rules to effectuate the purpose, implementation, and administration of this section pursuant to article 4 of title 24. The authority to promulgate rules includes the authority to define further in rule the administrative processes and requirements, including application processing and review time frames, for obtaining and issuing an optional preliminary advisory opinion pursuant to subsection (14) of this section.

(16) Notwithstanding the provisions of the "Colorado Open Records Act", part 2 of article 72 of title 24, the division, the director, and the commission shall deny the right of public inspection of any documentation or other record related to information obtained as part of an individual landowner's application for a tax credit certificate or an optional preliminary advisory opinion pursuant to the requirements of this section, including documentation or other records related to administrative hearings and settlement discussions held pursuant to subsection (12) of this section. The division, the director, and the commission may share documentation or other records related to information obtained pursuant to this section with the department of revenue.

(17) Nothing in this section affects any tax credit that is claimed or used pursuant to section 39-22-522 for conservation easement donations occurring prior to January 1, 2014.

Source: L. 2018: Entire part added, (HB 18-1291), ch. 273, p. 1681, § 1, effective May 29.

12-61-1107. Conservation cash fund - repeal. (1) There is hereby created in the state treasury the conservation cash fund, which consists of any moneys transferred pursuant to section 12-61-1104 and 12-61-1106 and any gifts, grants, and donations provided to carry out the purposes of this part 11. All money in the fund shall be used as provided in this part 11. Interest earned on the fund shall remain in the fund and shall not be deposited in or transferred to the general fund or any other fund.

(2) (a) As soon as practicable after May 29, 2018, the state treasurer shall transfer to the conservation cash fund any moneys in the division of real estate cash fund created in the section 12-61-111.5 that are attributable to any fees, gifts, grants, or donations credited to the division of real estate cash fund in accordance with section 12-61-724 (3) or section 12-61-727 that are in the fund immediately prior to the repeal of sections 12-61-724 and 12-61-727.

(b) This subsection (2) is repealed effective July 1, 2019.

Source: L. 2018: Entire part added, (HB 18-1291), ch. 273, p. 1688, § 1, effective May 29.

ARTICLE 62

Sanitarians

12-62-101 to 12-62-115. (Repealed)

Source: L. 78: Entire article repealed, p. 260, § 36, effective July 1, 1978.

Editor's note: This article was numbered as article 14 of chapter 66, C.R.S. 1963. For amendments to this article prior to its repeal in 1978, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 63

Shorthand Reporters

12-63-101 to 12-63-118. (Repealed)

Source: L. 77: Entire article repealed, p. 779, § 2, effective June 19.

Editor's note: This article was numbered as article 1 of chapter 126, C.R.S. 1963. For amendments to this article prior to its repeal in 1977, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 63.5

Social Workers

12-63.5-101 to 12-63.5-121. (Repealed)

Source: L. 88: Entire article repealed, p. 569, § 9, effective July 1.

Editor's note: This article was added in 1975. For amendments to this article prior to its repeal in 1988, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For present provisions relating to social workers, see part 4 of article 43 of this title.

ARTICLE 64

Veterinarians

Editor's note: This article was numbered as article 1 of chapter 145, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1967, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1967, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

Cross references: For the manufacture of animal biological products, see § 35-51-101.

12-64-101. Short title. This article shall be known and may be cited as the "Colorado Veterinary Practice Act".

Source: L. 67: R&RE, p. 357, § 1. **C.R.S. 1963:** § 145-1-2.

12-64-102. Legislative declaration. This article is enacted as an exercise of the police powers of the state to promote the public health, safety, and welfare by safeguarding the people of this state against incompetent, dishonest, or unprincipled practitioners of veterinary medicine. It is hereby declared that the practice of veterinary medicine is a privilege conferred upon persons possessed of the personal and professional qualifications specified in this article.

Source: L. 67: R&RE, p. 357, § 1. **C.R.S. 1963:** § 145-1-1. **L. 73:** p. 1509, § 1. **L. 79:** Entire section R&RE, p. 583, § 1, effective June 15.

12-64-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Animal" means any animal other than human, and said term includes fowl, birds, amphibians, fish, and reptiles, wild or domestic, living or dead.

(2) (Deleted by amendment, L. 91, p. 1467, § 1, effective July 1, 1991.)

(3) "Artificial insemination" means the collection of semen and the fertilization of, or attempted fertilization of, the ova of the female animal by placing or implanting, by artificial means, in the genital tract of the female animal the semen obtained from the male animal which will subsequently be used, or attempted to be used, to impregnate the female.

(4) "Board" means the state board of veterinary medicine.

(4.3) "Client" means the patient's owner, the owner's agent, or a person responsible for the patient.

(4.5) "Complainant" means the board or any other person who initiates a proceeding.

(5) "Direct supervision" means the supervising licensed veterinarian is readily available on the premises where the patient is being treated.

(5.1) "Dispense" means to provide a drug or device, other than by distribution, bearing a label stating the name of the veterinarian, the date dispensed, directions for use, all cautionary statements, withdrawal time, if appropriate, the identity of the animal, and the owner's name.

(5.2) "Distribute" or "distribution" means to provide a drug or device in the manufacturer's original package to the client-patient.

(6) "Hearing" means any proceeding initiated before the board in which the legal rights, duties, privileges, or immunities of a specific party or parties are determined.

(6.5) "Immediate supervision" means the supervising licensed veterinarian and any person being supervised are in direct contact with the patient.

(7) "License" means any grant of authority issued by the board to a person to engage in the practice of veterinary medicine.

(8) (Deleted by amendment, L. 91, p. 1467, § 1, effective July 1, 1991.)

(9) "Licensed veterinarian" means a person licensed pursuant to this article.

(9.5) "Ova transplantation" means a technique by which fertilized embryos are collected from a donor female and transferred to a recipient female that serves as a surrogate mother for the remainder of the pregnancy.

(9.7) "Patient" means an animal that is examined or treated by a licensed veterinarian and includes herds, flocks, litters, and other groups of animals.

(10) "Practice of veterinary medicine" means any of the following:

(a) The diagnosing, treating, correcting, changing, relieving, or preventing of animal disease, deformity, defect, injury, or other physical or mental conditions, including the prescription or administration of any drug, medicine, biologic, apparatus, application, anesthetic, or other therapeutic or diagnostic substance or technique and the use of any manual or mechanical procedure for artificial insemination, for ova transplantation, for testing for pregnancy, or for correcting sterility or infertility or to render advice or recommendation with regard thereto;

(b) The representation, directly or indirectly, publicly or privately, of an ability and willingness to do an act described in paragraph (a) of this subsection (10);

(c) The use of any title, words, abbreviation, or letters in a manner or under circumstances which induce the belief that a person using them is qualified to do any act described in paragraph (a) of this subsection (10);

(d) The application of principles of environmental sanitation, food inspection, environmental pollution control, animal nutrition, zoonotic disease control, and disaster medicine as applied to an act described in paragraph (a) of this subsection (10).

(11) "Respondent" means any person against whom a proceeding is initiated.

(12) "Rule" means any regulation, standard, or statement of policy adopted by the board to implement, interpret, or clarify the law which it enforces and administers and which governs its duties, functions, organization, and procedure.

(13) "School of veterinary medicine" means any veterinary school or department of a legally organized college or university whose course of study in the art and science of veterinary medicine has been approved by the board.

(14) "Unprofessional or unethical conduct" includes, but is not limited to, conduct of a character likely to deceive or defraud the public, false or misleading advertising, obtaining any fee or compensation by fraud or misrepresentation, sharing office space with any person illegally practicing veterinary medicine, employing either indirectly or directly any unlicensed person to practice veterinary medicine or to render any veterinary services except as provided in this article, or the violation of any rules adopted by the board which provide a code of professional ethics to be followed and carried out by persons licensed under this article.

(15) "Veterinarian" means a person who has received a doctor's degree in veterinary medicine, or its equivalent, from a school of veterinary medicine.

(15.5) "Veterinarian-client-patient relationship" means that relationship established when:

(a) The veterinarian has assumed the responsibility for making medical judgments regarding the health of an animal and the need for medical treatment, and the owner or other caretaker has agreed to follow the instruction of the veterinarian;

(b) There is sufficient knowledge of an animal by the veterinarian to initiate at least a general or preliminary diagnosis of the medical condition of the animal, which means that the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal by virtue of an examination of the animal or by medically appropriate and timely visits to the premises where the animal is kept; and

(c) The practicing veterinarian is readily available, or has arranged for emergency coverage, for follow-up evaluation in the event of adverse reactions or failure of the treatment regimen.

(16) "Veterinary medicine" includes veterinary surgery, obstetrics, dentistry, and all other branches or specialties of animal medicine.

(17) "Veterinary premises" or "premises" means a veterinary office, hospital, clinic, or temporary location in which veterinary medicine is being practiced by or under the direction and supervision of a licensed veterinarian.

(18) "Veterinary student" is a veterinary medical student who is enrolled in a school of veterinary medicine.

(19) "Veterinary student preceptor" is a veterinary medical student enrolled in a preceptor program in a school of veterinary medicine which has such a program.

(20) (Deleted by amendment, L. 2011, (SB 11-091), ch. 207, p. 891, § 11, effective July 1, 2011.)

Source: L. 67: R&RE, pp. 357, 571, §§ 1, 1. **C.R.S. 1963:** § 145-1-3. **L. 73:** p. 1509, § 2. **L. 79:** Entire section R&RE, p. 583, § 2, effective June 15. **L. 91:** (2) and (8) amended and (5.1), (5.2), (9.5), (15.5), and (20) added, p. 1467, § 1, effective July 1. **L. 2007:** (9) amended, p. 1588, § 1, effective July 1. **L. 2011:** (4.3), (4.5), (6.5), and (9.7) added and (5), (7), (9), (15.5)(c), (17),

and (20) amended, (SB 11-091), ch. 207, p. 891, § 11, effective July 1. **L. 2013:** (17) amended, (HB 13-1311), ch. 321, p. 1740, § 1, effective May 28.

12-64-104. License requirements and exceptions - definitions - rules. (1) No person may practice veterinary medicine in this state if the person is not a licensed veterinarian. No person may practice artificial insemination or ova transplantation of cattle or other animal species in this state except in accordance with section 12-64-105 (9)(c). This article does not prohibit:

(a) An employee of the federal, state, or local government from performing his or her official duties;

(b) A person who is a regular student in an approved school of veterinary medicine from performing duties or actions assigned by his or her instructors or working under the direct supervision of a licensed veterinarian;

(c) A person from advising with respect to, or performing acts which are, accepted livestock management practices;

(d) A veterinarian regularly licensed in another state from consulting with a licensed veterinarian in this state;

(e) Any merchant or manufacturer from selling, at his or her regular place of business, medicines, feed, appliances, or other products used in the prevention or treatment of animal diseases;

(f) (I) Except as provided in subparagraph (II) of this paragraph (f) and subject to subsection (2) of this section, the owner of an animal and the owner's employees from caring for and treating the animal belonging to such owner.

(II) Subparagraph (I) of this paragraph (f) does not apply in cases where the ownership of the animal was transferred for purposes of circumventing this article or where the primary reason for hiring the employee is to circumvent this article.

(g) A person from lecturing or giving instructions or demonstrations at a school of veterinary medicine or in connection with a continuing education course or seminar for veterinarians;

(h) Any person from selling or applying any pesticide, insecticide, or herbicide;

(i) Any person from engaging in bona fide scientific research which reasonably requires experimentation involving animals or commercial production of biologics or animal medicines;

(j) Any person from performing duties other than diagnosis, prescription, surgery, or initiating treatment under the direction and supervision of a licensed veterinarian who shall be responsible for such person's performance;

(k) A veterinary student or veterinary student preceptor from performing those acts permitted by this article;

(l) Any person otherwise appropriately licensed or approved by the state from performing the functions described in section 12-64-103 (10)(d);

(m) (Deleted by amendment, L. 2011, (SB 11-091), ch. 207, p. 883, § 4, effective July 1, 2011.)

(n) (Deleted by amendment, L. 91, p. 1468, § 2, effective July 1, 1991.)

(o) Any person from performing massage on an animal in accordance with section 12-35.5-110 (1)(f);

(p) The practice of animal chiropractic pursuant to section 12-33-127;

(q) The practice of animal physical therapy pursuant to section 12-41-113 (4);

(r) Any person from assisting in a surgical procedure under the immediate supervision of a licensed veterinarian, who is responsible for the person's performance.

(2) (a) Notwithstanding paragraph (f) of subsection (1) of this section and except as permitted by paragraph (j) of subsection (1) of this section, a person who is not a licensed veterinarian shall not administer, distribute, dispense, or prescribe prescription drugs. Except as provided in paragraph (b) of this subsection (2), a licensed veterinarian must have a veterinarian-client-patient relationship with the animal and its owner or other caretaker in order to administer, distribute, dispense, or prescribe prescription drugs to or for an animal.

(b) (I) In an emergency situation where a licensed veterinarian who has a veterinarian-client-patient relationship prescribes a prescription drug that the licensed veterinarian does not have in stock and is not available at a local pharmacy, another licensed veterinarian who does not have a veterinarian-client-patient relationship with the animal and owner or other caretaker may administer, distribute, or dispense the prescription drug to the animal based on the examining veterinarian's expertise and veterinarian-client-patient relationship.

(II) The board shall adopt rules defining what constitutes an emergency situation under which this paragraph (b) would apply, including a requirement that failure to administer, distribute, or dispense the prescription drug threatens the health and well-being of the animal and requiring detailed records documenting the emergency circumstances that include at least the following:

(A) A requirement that the examining veterinarian with the veterinarian-client-patient relationship document the emergency and the immediate need for the prescription drug;

(B) A requirement that the examining veterinarian with the veterinarian-client-patient relationship document his or her efforts to obtain the prescription drug from a local pharmacy, including documentation of contact with at least one pharmacy in the general proximity of the examination location that does not have the prescription drug immediately available; and

(C) A requirement that the licensed veterinarian who administers, distributes, or dispenses the prescription drug document the date the prescription is administered, distributed, or dispensed.

(III) A veterinarian who administers, distributes, dispenses, or prescribes a prescription drug in accordance with this paragraph (b) is not subject to discipline pursuant to section 12-64-111 (1)(aa) if the veterinarian satisfies the requirements of this paragraph (b) and the rules adopted by the board.

(2.5) If a veterinarian complies with the requirements of section 12-42.5-118.5, the veterinarian may maintain an office stock of compounded drugs.

(3) (a) As used in this subsection (3), unless the context otherwise requires:

(I) "Cat" means a small, domesticated feline animal that is kept as a pet. "Cat" does not include a nondomesticated wild animal.

(II) "Dog" means any canine animal owned for domestic, companionship, service, therapeutic, or assistance purposes.

(III) "Emergency medical service provider" means an emergency medical service provider who is certified or licensed by the department of public health and environment, created under section 25-1-102, C.R.S.

(IV) "Employer" means an entity or organization that employs or enlists the services of an emergency medical service provider, regardless of whether the provider is paid or is a

volunteer. The employer may be a public, private, for-profit, or nonprofit organization or entity; or a special district.

(IV.5) "Office stock" has the same meaning as set forth in section 12-42.5-118.5 (5)(b).

(V) "Preveterinary emergency care" means the immediate medical stabilization of a dog or cat by an emergency medical service provider, in an emergency to which the emergency medical service provider is responding, through means including oxygen, fluids, medications, or bandaging, with the intent of enabling the dog or cat to be treated by a veterinarian. "Preveterinary emergency care" does not include care provided in response to an emergency call made solely for the purpose of tending to an injured dog or cat unless a person's life could be in danger attempting to save the life of a dog or cat.

(b) Notwithstanding any other provision of law, an emergency medical service provider may provide preveterinary emergency care to dogs and cats to the extent the provider has received commensurate training and is authorized by the employer to provide the care. The provision of preveterinary emergency care to dogs and cats by emergency medical service providers in accordance with this paragraph (b) is not a violation of this article. Requirements governing the circumstances under which emergency medical service providers may provide preveterinary emergency care to dogs and cats may be specified in the employer's policies governing the provision of care.

(c) Notwithstanding any other provision of law, nothing in paragraph (b) of this subsection (3) imposes upon an emergency medical service provider any obligation to provide care to a dog or cat, or to provide care to a dog or cat before a person.

Source: L. 67: R&RE, pp. 358, 571, §§ 1, 2. **C.R.S. 1963:** § 145-1-4. **L. 73:** p. 1511, § 3. **L. 79:** Entire section R&RE, p. 585, § 3, effective June 15. **L. 91:** IP(1), (1)(b), (1)(f), (1)(j), and (1)(n) amended, p. 1468, § 2, effective July 1. **L. 2007:** (1)(g) amended, p. 1588, § 2, effective July 1. **L. 2008:** (1)(o) added, p. 285, § 1, effective August 5. **L. 2009:** (1)(p) added, (SB 09-167), ch. 366, p. 1923, § 10, effective June 1. **L. 2011:** IP(1), (1)(a), (1)(b), (1)(e), (1)(f), (1)(j), (1)(m), and (1)(o) amended and (1)(q), (1)(r), and (2) added, (SB 11-091), ch. 207, pp. 883, 884, §§ 4, 5, effective July 1. **L. 2014:** (3) added, (SB 14-039), ch. 45, p. 220, § 3, effective August 6. **L. 2016:** (2.5) and (3)(a)(IV.5) added, (HB 16-1324), ch. 362, p. 1512, § 3, effective August 10.

Cross references: For the legislative declaration in SB 14-039, see section 1 of chapter 45, Session Laws of Colorado 2014.

12-64-105. Board of veterinary medicine - creation - powers. (1) The governor shall appoint a state board of veterinary medicine consisting of seven members. Each member shall be appointed for a term of four years. The governor shall appoint members of the board from qualified persons as described in subsection (2) of this section. The governor shall appoint members to fill vacancies on the board caused by death, resignation, or removal for the balance of the unexpired term. No person shall serve more than two consecutive four-year terms. A person appointed to serve out the balance of an unexpired term may be reappointed for an additional consecutive four-year term. Members of the board may remain on the board until a successor is appointed.

(2) The governor shall appoint five members to the board who are graduates of a school of veterinary medicine, who are residents of this state, and who have been licensed to practice

veterinary medicine in this state for the five years preceding the time of the appointment. The governor shall appoint two members to the board from the public at large who have no financial or professional association with the veterinary profession.

(3) Repealed.

(4) (Deleted by amendment, L. 91, p. 1469, § 3, effective July 1, 1991.)

(5) The governor may remove a member of the board for misconduct, incompetence, or neglect of duty or other sufficient cause.

(6) The board shall meet at least once each quarter during the year at a time and place fixed by the board. Other meetings may be called from time to time by the president of the board. Except as otherwise provided, a majority of the board constitutes a quorum. Meetings shall be conducted as provided in article 6 of title 24, C.R.S.

(7) (Deleted by amendment, L. 91, p. 1469, § 3, effective July 1, 1991.)

(8) All moneys collected or received by the board, except as provided in section 12-64-111 (4), shall be transmitted to the state treasurer, who shall credit the same pursuant to section 24-34-105, C.R.S., and the general assembly shall make annual appropriations pursuant to said section for the expenditures of the board incurred in the performance of its duties under this article, which expenditures shall be made from such appropriations upon vouchers and warrants drawn pursuant to law.

(9) The board has the power to:

(a) Examine and determine the qualifications and fitness of applicants for a license to practice veterinary medicine in this state;

(b) Issue, renew, deny, suspend, or revoke licenses to practice veterinary medicine in the state or otherwise discipline or fine, or both, licensees consistent with this article and the rules adopted by the board under this article;

(c) Regulate artificial insemination and ova transplantation of cattle or other animal species by establishing rules and regulations for standards of practice, including rules relating to methods and procedures for safe artificial insemination and ova transplantation;

(d) Establish, pursuant to section 24-34-105, C.R.S., and publish annually a schedule of fees for licensing and registration of veterinarians. The board shall base the fee on its anticipated financial requirements for the year.

(e) (I) Conduct investigations;

(II) Administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board. The board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the board pursuant to paragraph (f) of this subsection (9).

(III) Upon failure of a witness to comply with a subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board and with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the board; 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 to obey the order of the court may be punished by the court as a contempt of court.

(f) Hold hearings on all matters properly brought before the board. An administrative law judge may conduct all hearings for denying, suspending, or revoking a license or for any other similar matter properly brought before the board and assigned by the board to the administrative law judge, subject to appropriations made to the department of personnel. An administrative law judge shall be appointed pursuant to part 10 of article 30 of title 24, C.R.S. Disciplinary and punitive actions of the board shall be made public.

(g) (Deleted by amendment, L. 91, p. 1469, § 3, effective July 1, 1991.)

(h) (Deleted by amendment, L. 2011, (SB 11-091), ch. 207, p. 889, § 9, effective July 1, 2011.)

(i) Bring proceedings in the courts for the enforcement of this article or any regulations made by the board;

(j) Adopt, amend, or repeal rules necessary for the administration and enforcement of this article. The board shall adopt rules to establish a uniform system and schedule of fines that it may impose on licensees for violations of this article or of rules adopted pursuant to this article.

(k) (Deleted by amendment, L. 91, p. 1469, § 3, effective July 1, 1991.)

(l) Issue a cease-and-desist order;

(m) Impose fines against corporations in accordance with section 12-64-123 (2).

(10) The board may, at any time, inspect veterinary premises to assure that they are clean and sanitary.

(11) The powers of the board are granted to enable the board to effectively supervise the practice of veterinary medicine and are to be construed liberally to accomplish this objective.

(12) (Deleted by amendment, L. 91, p. 1469, § 3, effective July 1, 1991.)

(13) The board shall consult with the state physical therapy board created in section 12-41-103.3 concerning rules that the board intends to adopt with regard to physical therapy of animals.

Source: L. 67: R&RE, pp. 359, 571, §§ 1, 1. **C.R.S. 1963:** § 145-1-5. **L. 73:** pp. 1378, 1511-1513, §§ 46, 4-6. **L. 76:** (9)(f) R&RE, p. 582, § 11, effective May 24; (12) added, p. 582, § 35, effective July 1. **L. 78:** (9)(f) amended, p. 260, § 37, effective June 15. **L. 79:** (2), (3), (8), (9)(b), (9)(c), (9)(d), (9)(f), (9)(g), (9)(h), and (10) amended and (4), (7), and (9)(e) R&RE, pp. 586, 587, §§ 4, 5, effective June 15; (3) repealed, p. 912, § 16, effective July 1; (7)(e) amended, p. 440, § 26, effective July 1; (8) amended, p. 1659, § 115, effective July 1. **L. 80:** (4) amended, p. 794, § 46, effective June 5. **L. 83:** (6) and (7)(a) amended, p. 595, § 1, effective July 1. **L. 87:** (9)(f) amended, p. 952, § 54, effective March 13; (1) amended, p. 905, § 10, effective June 15. **L. 91:** (2), (4), (5), (7), (9)(b), (9)(c), (9)(e), (9)(g), (9)(k), and (12) amended and (9)(l) added, p. 1469, § 3, effective July 1. **L. 95:** (9)(f) amended, p. 638, § 23, effective July 1. **L. 2001:** (1), (2), and (9)(l) amended, p. 475, § 1, effective July 1. **L. 2004:** (8) and (9)(e) amended, p. 1857, § 116, effective August 4. **L. 2006:** (9)(l) amended, p. 818, § 42, effective July 1. **L. 2007:** (13) added, p. 1589, § 3, effective July 1. **L. 2011:** (1), (2), (5), (9)(b), (9)(d), (9)(e)(III), (9)(h), and (9)(j) amended and (9)(m) added, (SB 11-091), ch. 207, pp. 889, 893, §§ 9, 14, effective July 1; (13) amended, (SB11-169), ch. 172, p. 631, § 33, effective July 1. **L. 2013:** (13) amended, (HB 13-1300), ch. 316, p. 1673, § 31, effective August 7.

Editor's note: Amendments to subsection (7) and (7)(e) by Senate Bill 79-293 and House Bill 79-1338 were harmonized.

12-64-105.5. Immunity from civil process. Any member of the board, any member of the board's staff, any person acting as a witness or consultant to the board, 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 liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as board member, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this article shall be immune from any civil or criminal liability that may result from such participation.

Source: L. 91: Entire section added, p. 1470, § 4, effective July 1. **L. 2004:** Entire section amended, p. 1858, § 117, effective August 4.

12-64-106. Status of persons previously licensed. A person holding a valid license to practice veterinary medicine in this state on July 1, 1973, is recognized as a licensed veterinarian and is entitled to retain this status as long as he or she complies with this article and rules adopted pursuant to this article, including compliance with the requirement to renew the license according to the schedule established pursuant to section 12-64-110.

Source: L. 67: R&RE, p. 361, § 1. **C.R.S. 1963:** § 145-1-6. **L. 73:** p. 1513, § 7. **L. 2011:** Entire section amended, (SB 11-091), ch. 207, p. 893, § 15, effective July 1.

12-64-107. Application for license - qualifications. (1) Any person twenty-one years of age or older desiring a license to practice veterinary medicine in this state shall apply for the license in a manner approved by the board.

(2) (Deleted by amendment, L. 91, p. 1470, 5, effective July 1, 1991.)

(3) In the application for licensure, the applicant shall demonstrate that he or she has:

(a) (I) Graduated from an accredited school of veterinary medicine; or

(II) Graduated from a nonaccredited school of veterinary medicine and received a certificate from a national program approved by the board that assesses educational equivalency of graduates from nonaccredited schools of veterinary medicine; and

(b) Passed an examination approved by the board by rule.

(c) (Deleted by amendment, L. 2011, (SB 11-091), ch. 207, p. 893, § 16, effective July 1, 2011.)

(4) The board may deny a license or may grant a license subject to terms of probation if the board determines that an applicant for a license:

(a) Does not possess the qualifications required by this article;

(b) Has engaged in conduct that constitutes grounds for discipline pursuant to section 12-64-111 (1);

(c) Has been disciplined in another state or jurisdiction with respect to his or her license to practice veterinary medicine in that state or jurisdiction; or

(d) Has not actively practiced veterinary medicine for the two-year period immediately preceding the date of receipt of the application or has not otherwise maintained continued competence, as determined by the board.

(5) If the board denies a license to an applicant or grants a license subject to terms of probation, the applicant may seek review of the board's decision pursuant to section 24-4-104 (9), C.R.S.; except that, by accepting a license that is subject to probationary terms, the applicant waives any remedies available pursuant to section 24-4-104 (9), C.R.S.

Source: L. 67: R&RE, p. 361, § 1. **C.R.S. 1963:** § 145-1-7. **L. 73:** pp. 531, 1513, §§ 79, 8. **L. 77:** (1) amended, p. 644, § 12, effective March 16. **L. 79:** Entire section R&RE, p. 588, § 6, effective June 15. **L. 83:** Entire section R&RE, p. 595, § 2, effective July 1. **L. 89:** (3)(b) amended, p. 746, § 1, effective July 1. **L. 91:** (1), (2), IP(3), (3)(a), (3)(c), and (4) amended, p. 1470, § 5, effective July 1. **L. 2001:** (4) amended, p. 476, § 2, effective July 1. **L. 2011:** Entire section amended, (SB 11-091), ch. 207, p. 893, § 16, effective July 1.

12-64-107.5. Academic license. (1) A veterinarian who is employed at a school of veterinary medicine in this state and who practices veterinary medicine in the course of his or her employment responsibilities shall either apply, in a manner approved by the board, for an academic license in accordance with this section or shall otherwise become licensed pursuant to sections 12-64-107 and 12-64-108.

(2) A person who applies for an academic license shall submit proof to the board that he or she:

(a) Graduated from a school of veterinary medicine located in the United States or another country; and

(b) Is employed by an accredited school of veterinary medicine in this state.

(3) An applicant for an academic license shall not be required to comply with the requirements of sections 12-64-107 and 12-64-108.

(4) An academic license shall authorize the licensee to practice veterinary medicine only while engaged in the performance of his or her official duties as a university employee. An academic licensee may not use an academic license to practice veterinary medicine outside of his or her academic responsibilities.

(5) In addition to the requirements of this section, an applicant for an academic license shall complete all procedures for academic licensing established by the board to become licensed.

Source: L. 2007: Entire section added, p. 1589, § 4, effective January 1, 2008. **L. 2011:** (1) and (3) amended, (SB 11-091), ch. 207, p. 894, § 17, effective July 1.

12-64-108. License by endorsement - rules. The board may issue a license by endorsement to engage in the practice of veterinary medicine in this state to an applicant who has a license in good standing as a veterinarian in another jurisdiction if the applicant presents proof satisfactory to the board that, at the time of application for a Colorado license by endorsement, the applicant possesses credentials and qualifications that are substantially equivalent to the Colorado requirements for licensure set forth in section 12-64-107. The board may specify, by rule, what constitutes substantially equivalent credentials and qualifications.

Source: L. 67: R&RE, p. 362, § 1. **C.R.S. 1963:** § 145-1-8. **L. 73:** p. 1513, §§ 9, 10. **L. 79:** (1) and (5) amended, p. 588, § 7, effective June 15. **L. 91:** (1), (2), and (4) amended, p. 1472, § 6, effective July 1. **L. 2011:** Entire section R&RE, (SB 11-091), ch. 207, p. 895, § 18, effective July 1.

12-64-109. Temporary permit. (Repealed)

Source: L. 67: R&RE, p. 362, § 1. **C.R.S. 1963:** § 145-1-10. **L. 79:** Entire section R&RE, p. 589, § 8, effective June 15. **L. 83:** (1) amended, p. 596, § 3, effective July 1. **L. 91:** Entire section repealed, p. 1473, § 7, effective July 1.

12-64-110. License renewal.

(1) (Deleted by amendment, L. 2004, p. 1859, § 118, effective August 4, 2004.)

(2) All licenses must be renewed or reinstated pursuant to a schedule established by the director of the division of professions and occupations within the department of regulatory agencies pursuant to section 24-34-102 (8), C.R.S. The director of the division of professions and occupations within the department of regulatory agencies may establish renewal fees and delinquency fees for renewal and fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license pursuant to the schedule established by the director of the division of professions and occupations, the license expires. A person whose license expires is subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

(3) The board, by rule, may waive a licensed veterinarian's renewal fee while he or she is on active duty with any branch of the armed services of the United States. The period during which the renewal fee is waived cannot exceed the longer of three years or the duration of a national emergency.

(4) (a) In order to obtain license renewal, each licensee, except as otherwise provided, must complete a board-approved veterinary continuing educational program of at least thirty-two hours biennially. The courses may be taken at any time during the period since the license was last renewed and before the license is due to be renewed. The licensee shall provide satisfactory proof of the completion of all delinquent continuing education requirements. For good cause, the board may prescribe the type and character of continuing education courses to be taken by any doctor of veterinary medicine in order to comply with the requirements of this article.

(b) The board shall have the authority to excuse licensees, as groups or individuals, from biennially continuing educational requirements for a good and sufficient reason.

(c) The board may employ qualified personnel to aid in the implementation of this section.

Source: L. 67: R&RE, p. 363, § 1. **C.R.S. 1963:** § 145-1-11. **L. 73:** p. 1514, § 11. **L. 79:** (1), (2), and (4)(c) amended, p. 589, § 9, effective June 15; (1) amended, p. 441, § 27, effective July 1. **L. 83:** (1) amended, p. 596, § 4, effective July 1. **L. 91:** (4)(a) amended, p. 900, § 41, effective June 5; (1), (2), and (4)(a) amended, p. 1473, § 8, effective July 1. **L. 2001:** (2)(b), (4)(a), and (4)(b) amended, p. 476, § 3, effective July 1. **L. 2004:** (1), (2), and (4)(a) amended, p. 1859, § 118, effective August 4. **L. 2011:** (2), (3), and (4)(a) amended, (SB 11-091), ch. 207, p. 895, § 19, effective July 1.

Editor's note: Amendments to subsection (1) by Senate Bill 79-293 and House Bill 79-1338 were harmonized.

Cross references: For the authority of the executive director of the department of regulatory agencies to change the period of validity and renewal date of any license or certificate issued by any examining or licensing board or commission in the division of professions and occupations, see § 24-34-102 (7) and (8).

12-64-110.5. Inactive license. (1) Upon notice to the board, a person licensed to practice veterinary medicine shall have his or her license transferred to inactive status. If a person whose license is in inactive status wishes to resume the practice of veterinary medicine, he or she shall apply to the board in a form and manner approved by the board and shall demonstrate, to the satisfaction of the board, continued competency to practice veterinary medicine. The board may approve the application and issue a license or may deny the application pursuant to section 12-64-107 (4).

(2) The board may pursue disciplinary proceedings pursuant to section 12-64-111 against a veterinarian whose license is in inactive status pursuant to this section for conduct that violates this article that the person engages in while in inactive status.

(3) (Deleted by amendment, L. 2011, (SB 11-091), ch. 207, p. 895, § 20, effective July 1, 2011.)

Source: L. 77: Entire section added, p. 777, § 1, effective March 16. **L. 79:** Entire section amended, p. 441, § 28, effective July 1. **L. 91:** Entire section amended, p. 1474, § 9, effective July 1. **L. 2001:** Entire section amended, p. 476, § 4, effective July 1. **L. 2011:** Entire section amended, (SB 11-091), ch. 207, p. 895, § 20, effective July 1.

12-64-111. Discipline of licensees. (1) Upon receipt of a signed complaint by a complainant or upon its own motion, the board may proceed to a hearing in conformity with section 12-64-112. After a hearing, and by a concurrence of a majority of members, the board may deny a license to an applicant or revoke or suspend the license of, place on probation, or otherwise discipline or fine, a licensed veterinarian for any of the following reasons:

(a) Violation of any of the provisions of this article or any of the rules of the board;

(a.5) Violation of section 12-42.5-118.5 or any rules of the pharmacy board promulgated pursuant to that section;

(b) Fraud, misrepresentation, or deception in attempting to obtain or in obtaining a license;

(c) (Deleted by amendment, L. 2011, (SB 11-091), ch. 207, p. 890, § 10, effective July 1, 2011.)

(d) Fraud, deception, misrepresentation, or dishonest or illegal practices in or connected with the practice of veterinary medicine;

(e) Misrepresentation in the inspection of food for human consumption;

(f) Fraudulent issuance or use of any health certificate, vaccination certificate, test chart, or blank form used in the practice of veterinary medicine to prevent the dissemination of animal disease, transportation of diseased animals, or the sale of inedible products of animal origin for human consumption;

(g) Fraud or dishonesty in the application or reporting of any test for disease in animals;

(h) Failure to keep veterinary premises and equipment in a clean and sanitary condition;

(i) Refusal to permit the board to inspect veterinary premises during business hours;

(j) Use of advertising or solicitation which is false or misleading;

(k) Incompetence, negligence, or other malpractice in the practice of veterinary medicine;

(l) Unprofessional or unethical conduct or engaging in practices in connection with the practice of veterinary medicine that are in violation of generally accepted standards of veterinary practice as defined in this article or prescribed by the rules of the board;

(m) Willful making of any false statement as to any material matter in any oath or affidavit which is required by this article;

(n) (Deleted by amendment, L. 91, p. 1474, § 10, effective July 1, 1991.)

(o) Conviction of a charge of cruelty to animals;

(p) Conviction of a violation of the "Uniform Controlled Substances Act of 2013", article 18 of title 18, C.R.S., the federal "Controlled Substances Act", or the federal "Controlled Substances Import and Export Act", or any of them;

(q) Conviction of a crime in the courts of this state or of a crime in any other state, any territory, or any other country for an offense related to the conduct regulated by this article, regardless of whether the sentence is deferred. For the purposes of this paragraph (q), a plea of guilty or a plea of nolo contendere accepted by the court shall be considered as a conviction.

(r) Conviction upon charges which involve the unlawful practice of veterinary medicine, and, based upon a record of such conviction, without any other testimony, the board may take temporary disciplinary action, even though an appeal for review by a higher court may be pending;

(s) Permitting another to use his or her license for the purpose of treating or offering to treat sick, injured, or afflicted animals;

(t) Practicing veterinary medicine under a false or assumed name, or impersonating another practitioner of a like, similar, or different name;

(u) Maintenance of a professional or business connection with any other person who continues to violate any of the provisions of this article or rules of the board after ten days following receipt of the board's written request for termination of such connection;

(v) Habitual or excessive use or abuse of alcohol beverages, a habit-forming drug, or a controlled substance as defined in section 18-18-102 (5), C.R.S.;

(w) A determination that he or she is mentally incompetent by a court of competent jurisdiction and such court has entered, pursuant to part 3 or part 4 of article 14 of title 15 or section 27-65-109 (4) or 27-65-127, C.R.S., an order specifically finding that the mental incompetency is of such a degree that he or she is incapable of continuing to practice veterinary medicine;

(x) Engaging in the practice of veterinary medicine while in inactive status or while the person's license is expired;

(y) (Deleted by amendment, L. 2011, (SB 11-091), ch. 207, p. 890, § 10, effective July 1, 2011.)

(z) Failing to report a known violation of any of the provisions of this section;

(aa) Administering, dispensing, distributing, or prescribing any prescription drug other than in the course of a veterinarian-client-patient relationship, except in accordance with section 12-64-104 (2)(b);

(bb) An act or omission which fails to meet generally accepted standards of veterinary practice;

(cc) Practicing or performing services beyond a licensee's scope of competence;

(dd) Engaging in any act prohibited in article 42.5 of this title;

(ee) Failure to respond to a complaint against the licensed veterinarian;

(ff) Failure to provide to the board an updated mailing address and other contact information as required by the board within thirty days after a change in the information;

(gg) Failure to properly supervise a veterinary student or veterinary staff;

(hh) Failure to provide a written prescription to a wholesaler within three business days after issuing an oral prescription order, as required by section 12-42.5-118 (3)(b);

(ii) Failure to comply with terms agreed to under a confidential agreement entered into under section 12-64-126.

(1.5) (a) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the board, does not warrant formal action by the board but that should not be dismissed as being without merit, a letter of admonition may be issued and sent, by certified mail, to the licensee.

(b) When a letter of admonition is sent by the board, by certified mail, to a licensee, such licensee shall be advised that he or she has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(c) If the request for adjudication is timely made, the letter of admonition shall be deemed vacated and the matter shall be processed by means of formal disciplinary proceedings.

(1.7) When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the board and, in the opinion of the board, the complaint should be dismissed, but the board has noticed indications of possible errant conduct by the licensee that could lead to serious consequences if not corrected, a confidential letter of concern may be issued and sent to the licensee.

(2) The record of conviction of a felony in a court of competent jurisdiction shall be sufficient evidence for such disciplinary action to be taken as may be deemed proper by the board. For the purposes of this article, a conviction shall be deemed to be a conviction which has been upheld by the highest appellate court having jurisdiction or a conviction upon which the time for filing an appeal has passed.

(2.5) With respect to denying the issuance of a veterinary license or to taking disciplinary action against a veterinarian, the board may accept as prima facie evidence of grounds for such action any federal or state action taken against a veterinarian from another jurisdiction if the violation which prompted the disciplinary action in such jurisdiction would constitute grounds for disciplinary action under this section.

(3) Repealed.

(4) In addition to any other penalty that may be imposed pursuant to this section, any person violating any provision of this article or any rules promulgated pursuant to this article may be fined not less than one hundred dollars nor more than one thousand dollars for any such

violation. Any moneys collected pursuant to this subsection (4) shall be transmitted to the state treasurer, who shall credit the moneys to the general fund.

(5) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(6) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person or on the board's own motion, that a licensed veterinarian 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 license, the board may issue an order to cease and desist such activity. The order must 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 unlicensed practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (6), the respondent may request a hearing on the question of whether acts or practices in violation of this article have occurred. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(7) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person or on the board's own motion, that a person has violated any other portion of this article, in addition to any specific powers granted pursuant to this article, the board may issue to the person an order to show cause why the board should not issue a final order directing the person to cease and desist from the unlawful act or unlicensed practice.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (7) shall be promptly notified by the board of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the board for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order is issued. Personal service or mailing of an order or document pursuant to this subsection (7) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the board as provided in paragraph (b) of this subsection (7). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (7) does not appear at the hearing, the board may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (7) and such other evidence related to the matter as the board deems appropriate. The board shall issue the order within ten days after the board's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the board reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required license, or has or is about to engage in acts

or practices constituting violations of this article, a final cease-and-desist order may be issued, directing such person to cease and desist from further unlawful acts or unlicensed practices.

(IV) The board shall provide notice, in the manner set forth in paragraph (b) of this subsection (7), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

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

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

(10) A person aggrieved by the final cease-and-desist order may seek judicial review of the board's determination or of the board's final order in a court of competent jurisdiction.

(11) The board may suspend the license of a veterinarian who fails to comply with an order of the board issued in accordance with this section. The board may impose the license suspension until the licensee complies with the board's order.

Source: L. 67: R&RE, p. 363, § 1. **C.R.S. 1963:** § 145-1-12. **L. 69:** p. 828, § 4. **L. 73:** p. 1514, § 12. **L. 75:** (1)(z) R&RE, p. 924, § 15, effective July 14. **L. 77:** (1)(aa) added, p. 777, § 2, effective March 16. **L. 79:** (1) R&RE and (2) amended, pp. 590, 591, §§ 10, 11, effective June 15. **L. 81:** (1)(p), (1)(v), and (1)(y) amended, p. 736, § 16, effective July 1. **L. 83:** IP(1) amended, p. 596, § 5, effective July 1. **L. 91:** IP(1), (1)(b), (1)(c), (1)(e), (1)(i), (1)(k), (1)(n), (1)(q), and (1)(v) amended and (1)(z), (1)(aa), (1)(bb), (1)(cc), (1)(dd), (1.5), (2.5), and (4) added, pp. 1474, 1475, §§ 10, 11, effective July 1; (1)(w) added, p. 1783, § 9, effective July 1. **L. 94:** (1)(p) amended, p. 1632, § 35, effective May 31. **L. 99:** (1.5) amended, p. 620, §12, effective August 4. **L. 2001:** (1)(l), (1)(q), (1.5), and (3) amended, p. 477, § 5, effective July 1. **L. 2004:** (1)(v) amended, p. 1197, § 47, effective August 4; (1.5) and (4) amended and (5) added, p. 1859, § 119, effective August 4. **L. 2006:** (1.7) and (6) to (10) added, p. 818, § 43, effective July 1. **L. 2010:** (1)(w) amended, (SB 10-175), ch. 188, p. 780, § 14, effective April 29. **L. 2011:** IP(1), (1)(c), (1)(s), (1)(v), (1)(x), (1)(y), (1)(aa), (6)(a), and (7)(a) amended, (1)(ee) to (1)(gg) and (11) added, and (3) repealed, (SB 11-091), ch. 207, pp. 890, 885, 892, §§ 10, 6, 12, 7, effective July 1. **L. 2012:** (1)(v) and (1)(dd) amended and (1)(hh) added, (HB 12-1311), ch. 281, p. 1595, § 4, effective July 1. **L. 2013:** (1)(p) amended, (SB 13-250), ch. 333, p. 1939, § 59, effective October 1. **L. 2015:** (1)(ii) added, (HB 15-1187), ch. 161, p. 491, § 1, effective May 8. **L. 2016:** (1)(a.5) added, (HB 16-1324), ch. 362, p. 1512, § 4, effective August 10.

Cross references: For the "Colorado Licensing of Controlled Substances Act", see part 2 of article 80 of title 27; for the federal "Controlled Substances Act", see 21 U.S.C. sec. 802 et seq., Pub.L. 93-281, May 14, 1974, and amendments thereto; for the federal "Controlled

Substances Import and Export Act", see 21 U.S.C. secs. 952, 953, Pub.L. 95-633, November 10, 1978; for an alternative disciplinary action for persons licensed, registered, or certified pursuant to this article, see § 24-34-106.

12-64-111.5. Review of board - disciplinary actions. (Repealed)

Source: L. 91: Entire section added, p. 1476, § 12, effective July 1. **L. 2004:** Entire section repealed, p. 192, § 4, effective August 4.

12-64-112. Hearing procedure.

(1) Repealed.

(2) Hearings shall be conducted in conformity with sections 24-4-105 and 24-4-106, C.R.S. The court of appeals shall have initial jurisdiction to review all final agency actions and orders pursuant to section 24-4-106 (11), C.R.S.

Source: L. 67: R&RE, p. 364, § 1. **C.R.S. 1963:** § 145-1-13. **L. 73:** p. 1516, § 13. **L. 79:** (1) repealed, p. 592, § 16, effective June 15. **L. 2001:** (2) amended, p. 478, § 6, effective July 1.

12-64-113. Revocation. Any person whose license is revoked is ineligible to apply for a license under this article for at least two years after the date of revocation of the license. The board shall treat a subsequent application for licensure from a person whose license was revoked as an application for a new license under this article.

Source: L. 67: R&RE, p. 364, § 1. **C.R.S. 1963:** § 145-1-14. **L. 2011:** Entire section amended, (SB 11-091), ch. 207, p. 892, § 13, effective July 1.

12-64-114. Unauthorized practice - penalties. (1) No person who practices veterinary medicine without a currently valid license may receive any compensation for services so rendered.

(2) Any person who practices or offers or attempts to practice veterinary medicine 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 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(3) The board or a citizen of this state may bring an action to enjoin a person from practicing veterinary medicine without a currently valid license. If the court finds that the person is violating, or is threatening to violate, this article, it may enter an injunction restraining him or her from such unlawful acts.

(4) The successful maintenance of an action based on any one of the remedies set forth in this section shall in no way prejudice the prosecution of an action based on any other of the remedies.

Source: L. 67: R&RE, p. 364, § 1. **C.R.S. 1963:** § 145-1-15. **L. 85:** (2) amended, p. 410, § 21, effective July 1. **L. 91:** (1) and (3) amended, p. 1476, § 13, effective July 1. **L. 2002:** (2)

amended, p. 1487, § 119, effective October 1. **L. 2006:** (2) amended, p. 96, § 63, effective August 7. **L. 2011:** (3) amended, (SB 11-091), ch. 207, p. 896, § 21, effective July 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-64-115. Abandonment of animals. (1) An animal placed in the custody of a licensed veterinarian for treatment, boarding, or other care that is unclaimed by its owner or his or her agent for more than ten days after written notice, by certified mail, return receipt requested, is given to the addressee at his or her last-known address is deemed to be abandoned and may be turned over to the nearest humane society or animal shelter or disposed of in a manner deemed appropriate by the custodian.

(2) The giving of notice to the owner, or the agent of the owner, of such animal by the licensed veterinarian, as provided in subsection (1) of this section, shall relieve the licensed veterinarian and any custodian to whom such animal may be given of any further liability for disposal. Such procedure by the licensed veterinarian shall not constitute grounds for disciplining procedure under this article.

(3) For the purpose of this article, the term "abandoned" means to forsake entirely, or to neglect or refuse to provide or perform the legal obligations for care and support of an animal by its owner, or his or her agent. Abandonment constitutes the relinquishment of all rights and claims by the owner to the animal.

Source: L. 67: R&RE, p. 364, § 1. **C.R.S. 1963:** § 145-1-16. **L. 79:** (1) amended, p. 591, § 12, effective June 15; (1) amended, p. 441, § 29, effective July 1. **L. 2011:** (1) and (3) amended, (SB 11-091), ch. 207, p. 896, § 22, effective July 1.

Editor's note: Amendments to subsection (1) by Senate Bill 79-293 and House Bill 79-1338 were harmonized.

12-64-116. Veterinary students. (1) All duties performed by a veterinary student must be under the direct supervision of a licensed veterinarian. If the student does not conform to the following requirements, the licensed veterinarian is in violation of this article. A veterinary student may:

(a) Administer drugs only under the direct supervision of a licensed veterinarian; and

(b) Perform surgery, only if he or she is competent and has the necessary training and experience, under the direct supervision of a licensed veterinarian.

(c) and (d) (Deleted by amendment, L. 2011, (SB 11-091), ch. 207, p. 897, § 23, effective July 1, 2011.)

(2) It is unlawful for a veterinary student to participate in the operation of a branch office, clinic, or allied establishment unless the veterinary student is under the direct supervision of a licensed veterinarian.

Source: L. 73: R&RE, p. 1516, § 14. **C.R.S. 1963:** § 145-1-17. **L. 79:** Entire section amended, p. 592, § 13, effective June 15. **L. 91:** IP(1) amended, p. 1477, § 14, effective July 1. **L. 2011:** Entire section amended, (SB 11-091), ch. 207, p. 897, § 23, effective July 1.

12-64-117. Veterinary student preceptors. (Repealed)

Source: L. 73: p. 1517, § 15. **C.R.S. 1963:** § 145-1-18. **L. 79:** Entire section amended, p. 592, § 14, effective June 15. **L. 2011:** Entire section repealed, (SB 11-091), ch. 207, p. 897, § 24, effective July 1.

12-64-118. Emergency care or treatment. A licensed veterinarian who in good faith administers emergency care or treatment, or euthanasia for humane reasons, to an animal, without compensation, either voluntarily or at the request of a state or local governmental officer or employee, is not liable for civil damages for good-faith acts in the administration of such care or treatment. This immunity does not apply in the event of a wanton or reckless disregard of the rights of the owner of the animal.

Source: L. 73: p. 1517, § 15. **C.R.S. 1963:** § 145-1-19. **L. 79:** Entire section amended, p. 592, § 15, effective June 15. **L. 2011:** Entire section amended, (SB 11-091), ch. 207, p. 897, § 25, effective July 1.

Cross references: For the exemption of persons rendering emergency assistance from civil liability, see § 13-21-108.

12-64-119. Review of board of veterinary medicine - repeal of article. This article is repealed, effective September 1, 2022. Prior to such repeal the state board of veterinary medicine shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: L. 91: Entire section added, p. 1477, § 15, effective July 1. **L. 2001:** Entire section amended, p. 478, § 7, effective July 1. **L. 2011:** Entire section amended, (SB 11-091), ch. 207, p. 882, § 1, effective July 1.

12-64-120. Veterinary records in custody of animal care providers - definition - rules. (1) As used in this section, unless the context otherwise requires, "animal care provider" means any veterinary practice or veterinary hospital, including the veterinary teaching hospital at Colorado state university, that provides veterinary care or treatment to animals.

(2) Animal care providers shall make available the veterinary records in their custody as follows:

(a) The owner of an animal or the owner's designated representative shall have reasonable access to such animal's records for inspection;

(b) The owner or the owner's designated representative may obtain a summary of such animal's records upon request, following termination of care or treatment; and

(c) Copies of veterinary records, including digital records, digital images, diagnostic quality X rays, CT SCANs, MRIs, or other films, shall be furnished to:

(I) The owner or the owner's designated representative upon payment of reasonable costs; and

(II) Local law enforcement authorities and the bureau of animal protection in the department of agriculture in connection with an investigation of animal cruelty pursuant to section 18-9-202, C.R.S., or animal fighting pursuant to section 18-9-204, C.R.S.

(3) (a) Records concerning an animal's care are available to the public unless a veterinary-patient-client privilege exists with respect to such animal, as provided in section 24-72-204 (3)(a)(XIV), C.R.S.

(b) All practicing veterinarians in this state shall maintain accurate records for every new or existing veterinarian-client-patient relationship as defined in section 12-64-103 (15.5). In the animal patient records, the licensed veterinarian shall justify and describe the assessment, diagnosis, and treatment administered or prescribed and all medications and dosages prescribed in a legible, written, printed, or electronically prepared document that is unalterable. The licensed veterinarian shall prepare the records in a manner that allows any subsequent evaluation of the same animal patient record to yield comprehensive medical, patient, and veterinarian identifying information. Licensed veterinarians shall maintain animal patient records for a minimum of three years after the animal patient's last medical examination.

(c) The board shall promulgate rules including, but not limited to, criteria by which animal patient records may be adapted in the case of herds, flocks, litters, large volume, or specialty veterinary practices and identify exceptions to paragraph (a) of this subsection (3), if necessary, for veterinarians rendering emergency care or treatment.

Source: L. 99: Entire section added, p. 371, § 2, effective August 4. **L. 2001:** (3) amended, p. 478, § 8, effective July 1. **L. 2007:** (2)(c) amended, p. 1589, § 5, effective July 1. **L. 2011:** (3)(b) amended, (SB 11-091), ch. 207, p. 897, § 26, effective July 1.

12-64-121. Reporting requirements - immunity for reporting - veterinary-patient-client privilege inapplicable. (1) A licensed veterinarian who, during the course of attending or treating an animal, has reasonable cause to know or suspect that the animal has been subjected to cruelty in violation of section 18-9-202, C.R.S., or subjected to animal fighting in violation of section 18-9-204, C.R.S., shall report or cause a report to be made of the animal cruelty or animal fighting to a local law enforcement agency or the bureau of animal protection.

(2) A licensed veterinarian shall not knowingly make a false report of animal cruelty or animal fighting to a local law enforcement agency or to the bureau of animal protection.

(3) A licensed veterinarian who willfully violates the provisions of subsection (1) or (2) of this section commits a class 1 petty offense, punishable as provided in section 18-1.3-503, C.R.S.

(4) A licensed veterinarian who in good faith reports a suspected incident of animal cruelty or animal fighting to the proper authorities in accordance with subsection (1) of this section shall be immune from liability in any civil or criminal action brought against the veterinarian for reporting the incident. In any civil or criminal proceeding in which the liability of a veterinarian for reporting an incident described in subsection (1) of this section is at issue, the good faith of the veterinarian shall be presumed.

(5) The veterinary-patient-client privilege described in section 24-72-204 (3)(a)(XIV), C.R.S., may not be asserted for the purpose of excluding or refusing evidence or testimony in a prosecution for an act of animal cruelty under section 18-9-202, C.R.S., or for an act of animal fighting under section 18-9-204, C.R.S.

Source: L. 2001: Entire section added, p. 479, § 9, effective July 1. **L. 2007:** Entire section R&RE, p. 1590, § 6, effective July 1.

12-64-122. Corporate structure for the practice of veterinary medicine - definitions. (1) A licensed veterinarian shall not practice veterinary medicine in or through a corporation except in accordance with this section.

(2) One or more persons may form or own shares in a corporation for the practice of veterinary medicine if the corporation is organized and operated in accordance with this section. A corporation formed pursuant to this section may exercise the powers and privileges conferred upon corporations by the laws of Colorado.

(3) The practice of veterinary medicine by a corporation pursuant to this section must be performed by or under the supervision of a licensed veterinarian. Lay directors, officers, and shareholders of the corporation shall not exercise any authority whatsoever over the independent medical judgment of licensed veterinarians performing or supervising the practice of veterinary medicine by or on behalf of the corporation.

(4) The corporation shall not engage in any act or omission that, if engaged in by a licensed veterinarian employed by the corporation, would violate section 12-64-111 (1). A violation of section 12-64-111 (1) is grounds for the board to discipline a licensee pursuant to section 12-64-111.

(5) Nothing in this section diminishes or changes the obligation of each licensed veterinarian employed by the corporation to conduct his or her practice so as not to violate section 12-64-111 (1). A licensed veterinarian who, by act or omission, causes the corporation to act or fail to act in a way that violates section 12-64-111 (1) or any provision of this section is personally responsible for such act or omission and is subject to discipline for the act or omission.

(6) Nothing in this section modifies the veterinarian-patient-client privilege specified in section 24-72-204 (3)(a)(XIV), C.R.S.

(7) As used in this section, unless the context otherwise requires:

(a) "Corporation" means a domestic entity, as defined in section 7-90-102 (13), C.R.S., a foreign entity, as defined in section 7-90-102 (23), C.R.S., registered to do business in Colorado, or a sole proprietorship.

(b) "Director" and "officer" of a corporation includes a member and a manager of a limited liability company and a partner in a registered limited liability partnership.

(c) "Shareholder" includes a member of a limited liability company and a partner in a registered limited liability partnership.

Source: L. 2011: Entire section added, (SB 11-091), ch. 207, p. 885, § 8, effective July 1.

12-64-123. Veterinary premises - licensed veterinarian responsible for veterinary medical decisions. (1) At all times when a patient is present on a veterinary premises, a licensed veterinarian must be designated as responsible for the veterinary medical decisions and care provided to the patient.

(2) At all times when a patient is present on a veterinary premises, a licensed veterinarian must be designated as responsible for the premises. The board may fine a corporation organized and operated in accordance with section 12-64-122 that owns or operates a veterinary premises up to one thousand dollars per day for each day the corporation fails to have a licensed veterinarian designated as responsible for the veterinary premises.

Source: L. 2011: Entire section added, (SB 11-091), ch. 207, p. 886, § 8, effective July 1.

12-64-124. Veterinarian peer health assistance program - fees - administration - rules. (1) (a) On and after July 1, 2011, as a condition of licensure and renewal in this state, every veterinarian applying for a new license or to renew his or her license shall pay to the board, for use by the administering entity selected by the board pursuant to this subsection (1), an amount not to exceed forty dollars per year, which maximum amount may be adjusted on January 1, 2012, and annually thereafter by the board to reflect changes in the United States bureau of statistics consumer price index for the Denver-Boulder consolidated metropolitan statistical area for all urban consumers or goods, or its successor index. The board shall forward the fee to the chosen administering entity for use in supporting designated providers selected by the board to provide assistance to veterinarians needing help in dealing with physical, emotional, or psychological conditions that may be detrimental to their ability to practice veterinary medicine.

(b) The board shall select one or more peer health assistance programs as designated providers. To be eligible for designation by the board, a peer health assistance program must:

(I) Provide for the education of veterinarians with respect to the recognition and prevention of physical, emotional, and psychological conditions and provide for intervention when necessary or under circumstances established by the board by rule;

(II) Offer assistance to a veterinarian in identifying physical, emotional, or psychological conditions;

(III) Evaluate the extent of physical, emotional, or psychological conditions and refer the veterinarian for appropriate treatment;

(IV) Monitor the status of a veterinarian who has been referred for treatment;

(V) Provide counseling and support for the veterinarian and for the family of any veterinarian referred for treatment;

(VI) Agree to receive referrals from the board; and

(VII) Agree to make its services available to all licensed Colorado veterinarians.

(c) The board may select an entity to administer the veterinarian peer health assistance program. An administering entity must be a nonprofit private foundation that is qualified under section 501 (c)(3) of the federal "Internal Revenue Code of 1986", as amended, and that is dedicated to providing support for charitable, benevolent, educational, and scientific purposes that are related to veterinary medicine, veterinary medical education, veterinary medical research and science, and other veterinary medical charitable purposes.

(d) The administering entity shall:

(I) Distribute the moneys collected by the board, less expenses, to the designated provider, as directed by the board;

(II) Provide an annual accounting to the board of all amounts collected, expenses incurred, and amounts disbursed; and

(III) Post a surety performance bond in an amount specified by the board to secure performance under the requirements of this section. The administering entity may recover the actual administrative costs incurred in performing its duties under this section in an amount not to exceed ten percent of the total amount collected.

(e) The board shall collect the required annual payments payable to the administering entity for the benefit of the administering entity and shall transfer all such payments to the administering entity. All required annual payments collected or due to the board for each fiscal year are custodial funds that are not subject to appropriation by the general assembly, and the distribution of payments to the administering entity or expenditure of the payments by the administering entity does not constitute state fiscal year spending for purposes of section 20 of article X of the state constitution.

(2) (a) Upon receipt of a signed complaint by a complainant, the board may require any veterinarian to participate in a peer health assistance program and to enter into a stipulation with the board pursuant to section 12-64-111 (8) before participating in the program. The agreement must contain specific requirements and goals to be met by the participant, including the conditions under which the program will be successfully completed or terminated, and a provision that a failure to comply with the requirements and goals are to be promptly reported to the board and that such failure will result in disciplinary action by the board.

(b) Notwithstanding sections 12-64-111 and 24-4-104, C.R.S., the board may immediately suspend the license of any veterinarian who is referred to a peer health assistance program by the board and who fails to attend or to complete the program. If the veterinarian objects to the suspension, he or she may submit a written request to the board for a formal hearing on the suspension within ten days after receiving notice of the suspension, and the board shall grant the request. In the hearing, the veterinarian bears the burden of proving that his or her license should not be suspended.

(c) Any veterinarian who self-refers and is accepted into a peer health assistance program shall affirm that, to the best of his or her knowledge, information, and belief, he or she knows of no instance in which he or she has violated this article or the rules of the board, except in those instances affected by the veterinarian's physical, emotional, or psychological conditions.

(3) Nothing in this section creates any liability on the board or the state of Colorado for the actions of the board in making grants to peer health assistance programs, and no civil action may be brought or maintained against the board or the state for an injury alleged to have been the result of the activities of any state-funded peer health assistance program or the result of an act or omission of a veterinarian participating in or referred by a state-funded peer health assistance program. However, the state remains liable under the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S., if an injury alleged to have been the result of an act or omission of a veterinarian participating in or referred by a state-funded peer health assistance program occurred while such veterinarian was performing duties as an employee of the state.

(4) The board may promulgate rules necessary to implement this section.

Source: L. 2011: Entire section added, (SB 11-091), ch. 207, p. 887, § 8, effective July 1. **L. 2015:** (2)(a) amended, (HB 15-1187), ch. 161, p. 491, § 2, effective May 8.

12-64-125. Mental health and substance use disorder evaluations of licensees. (1) (a) (I) If, upon receipt of a signed complaint by a complainant, the board has reasonable cause to believe that a licensed veterinarian is unable to practice veterinary medicine with reasonable skill and safety to patients or clients due to a behavioral, mental health, or substance use disorder, the board may require in writing that the licensed veterinarian submit to an examination to evaluate:

(A) The existence and extent of the behavioral, mental health, or substance use disorder; and

(B) Any impact the behavioral, mental health, or substance use disorder has on the licensed veterinarian's ability to practice veterinary medicine with reasonable skill and safety to patients and clients.

(II) A qualified professional employed by or contracting with a veterinarian peer health assistance program that the board has selected as a designated provider under section 12-64-124 shall conduct an examination required by subparagraph (I) of this paragraph (a).

(b) If a licensed veterinarian fails to submit to an examination required under paragraph (a) of this subsection (1), the board may suspend the licensed veterinarian's license to practice veterinary medicine until the licensed veterinarian submits to the examination; however, if the licensed veterinarian demonstrates to the satisfaction of the board that his or her failure to submit to the examination is due to circumstances beyond his or her control, the board shall not suspend the licensed veterinarian's license.

(2) Every person licensed to practice veterinary medicine in this state is deemed, by practicing or applying for a renewal of the person's license, to have:

(a) Given his or her consent to submit to an examination that the board may require under subsection (1) of this section; and

(b) Waived an objection to the admissibility of the examining professional's testimony or examination reports at a board hearing on grounds that the testimony or reports are privileged communications.

(3) (a) A person shall not use the results of an examination ordered under subsection (1) of this section as evidence in any proceeding other than a proceeding before the board.

(b) Except as provided in paragraph (a) of this subsection (3), any examination results, the fact that the examination was administered, and the complaint that prompted the examination shall be kept confidential. They are not public records and are not available to the public.

Source: L. 2015: Entire section added, (HB 15-1187), ch. 161, p. 492, § 3, effective May 8. **L. 2017:** (1)(a)(I) amended, (SB 17-242), ch. 263, p. 1291, § 103, effective May 25.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-64-126. Confidential agreements to limit practice - violation grounds for discipline. (1) (a) If the board determines that a licensed veterinarian who submitted to an examination under section 12-64-125 is able to render limited services with reasonable skill and safety to patients and clients, the board may enter into a confidential agreement with the licensed veterinarian in which the licensed veterinarian agrees to limit his or her practice based on the restrictions imposed by the illness, condition, or disorder, as determined by the board.

(b) As part of the agreement, the licensed veterinarian is subject to periodic reevaluations or monitoring, as determined appropriate by the board.

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

(2) By entering into an agreement with the board under this section to limit his or her practice, a licensed veterinarian is not engaging in conduct that is grounds for discipline under

section 12-64-111. The agreement does not constitute a restriction or discipline by the board; however, if the licensed veterinarian fails to comply with the terms of an agreement entered into under this section, the failure constitutes grounds for disciplinary action under section 12-64-111 (1)(ii), and the licensed veterinarian is subject to discipline under section 12-64-111.

(3) This section does not apply to a licensed veterinarian subject to discipline for habitual or excessive use or abuse of alcohol beverages, a habit-forming drug, or a controlled substance as defined in section 18-18-102 (5), C.R.S.

Source: L. 2015: Entire section added, (HB 15-1187), ch. 161, p. 493, § 4, effective May 8.

12-64-127. Prescription of opioids - limitations - repeal. (1) (a) A veterinarian shall not prescribe more than a seven-day supply of an opioid to a patient who has not had an opioid prescription in the last twelve months by that veterinarian, and may exercise discretion to include a second fill for a seven-day supply. The limits on initial prescribing do not apply if, in the judgment of the veterinarian, the patient:

(I) Has chronic pain that typically lasts longer than ninety days or past the time of normal healing, as determined by the veterinarian, or following transfer of care from another veterinarian who prescribed an opioid to the patient;

(II) Has been diagnosed with cancer and is experiencing cancer-related pain; or

(III) Is experiencing post-surgical pain that, because of the nature of the procedure, is expected to last more than fourteen days.

(b) Prior to prescribing the second fill of any opioid prescription pursuant to this section, a veterinarian must comply with the requirements of section 12-42.5-404 (3.6). Failure to comply with section 12-42.5-404 (3.6) constitutes grounds for discipline under section 12-64-111 only if the veterinarian repeatedly fails to comply.

(2) A veterinarian licensed pursuant to this article 64 may prescribe opioids electronically.

(3) A violation of this section does not create a private right of action or serve as the basis of a cause of action. A violation of this section does not constitute negligence per se or contributory negligence per se and does not alone establish a standard of care. Compliance with this section does not alone establish an absolute defense to any alleged breach of the standard of care.

(4) This section is repealed, effective September 1, 2021.

Source: L. 2018: Entire section added, (SB 18-022), ch. 221, p. 1407, § 7, effective May 21.

ARTICLE 65

Hearing Aid Dealers

12-65-101 to 12-65-121. (Repealed)

Source: L. 86: Entire article repealed, p. 447, § 6, effective April 17, 1986.

Editor's note: This article was added in 1975. For amendments to this article prior to its repeal in 1986, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 66

Wholesale Sales Representatives

12-66-101 to 12-66-104. (Repealed)

Source: L. 2017: Entire article repealed, (HB 17-1243), ch. 241, p. 992, § 2, effective August 9.

Editor's note: This article 66 was added in 1993 and was not amended prior to its repeal in 2017. For the text of this article 66 prior to 2017, consult the 2016 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume. This article 66 was relocated to part 13 of article 21 of title 13. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

ARTICLE 70

Inactive License Status Authorized

12-70-101. Inactive license - rights and responsibilities. (1) Persons licensed (which for purposes of this article shall include persons referred to as certified) to practice any profession or occupation under this title for which postgraduate study or attendance at educational institutions is required in order to obtain renewal of such licenses may have their names transferred to an inactive licensees category under this section. Every board authorized under this title to issue licenses shall maintain a list of inactive licensees, and upon written notice to such board, any such licensee shall not be required to comply with any postgraduate educational requirements so long as such licensee remains inactive in the profession or occupation. Each such inactive licensee shall continue to meet the normal registration requirements imposed upon his profession or occupation.

(2) Such inactive status shall be noted on the face of any license issued while the licensee remains inactive. Should such person wish to resume the practice of his profession or occupation after being placed on an inactive list, he shall file a proper application therefor, pay the registration renewal fee, and meet any postgraduate study or in-service requirements which the governing board may determine to be applicable to such resumption of practice.

(3) Engaging in the practice of a profession or occupation while on inactive status pursuant to this article may be grounds for revocation.

Source: L. 79: Entire article added, p. 594, § 1, effective July 1.

12-70-102. Active military personnel - exemptions from licensing requirements. Each board or division, except the division of real estate, that regulates persons licensed, certified, or registered pursuant to this title shall exempt licensed, certified, or registered military personnel who have been called to federally funded active duty for more than one hundred twenty days for the purpose of serving in a war, emergency, or contingency from the payment of any professional or occupational license, certification, or registration fees, including renewal fees, and from any continuing education or professional competency requirements pursuant to this title for a renewal cycle that falls within the period of service or within the six months following the completion of service in the war, emergency, or contingency.

Source: L. 2011: Entire section added, (HB 11-1013), ch. 104, p. 326, § 1, effective August 10.

ARTICLE 71

Regulation of Military Individuals and Spouses

12-71-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Agency" means an agency of the state that regulates a profession or occupation under this title.

(2) "Authority to practice" or "authorized to practice" means the holding of a currently valid license to practice in a profession or occupation or a currently valid certification or registration necessary to practice in a profession or occupation if the person is licensed, certified, or registered under this title or a substantially similar law in another state.

(3) "Military spouse" means the spouse of a person who is actively serving in the United States armed forces and who is stationed in Colorado in accordance with military orders.

Source: L. 2012: Entire article added, (HB 12-1059), ch. 271, p. 1426, § 1, effective July 1.

12-71-102. Authority to practice - reciprocity. (1) Notwithstanding any other article of this title, a person need not obtain authority to practice an occupation or profession under this title during the person's first year of residence in Colorado if:

(a) The person is a military spouse who is authorized to practice that occupation or profession in another state;

(b) Other than the person's lack of licensure, registration, or certification in Colorado, there is no basis to disqualify the person under this title; and

(c) The person consents, as a condition of practicing in Colorado, to be subject to the jurisdiction and disciplinary authority of the appropriate agency.

(2) This section does not prevent an agency from entering into a reciprocity agreement with the regulating authority of another state or jurisdiction if otherwise authorized by law.

(3) This section does not apply to authority to practice under article 25, 28, 36, 40, or 61 of this title.

Source: L. 2012: Entire article added, (HB 12-1059), ch. 271, p. 1427, § 1, effective July 1.

12-71-103. Notice. (1) **Agency.** If a person who is practicing in Colorado under section 12-71-102 applies for authority to continue to practice after the first year under another article of this title, the applicant shall notify the agency receiving the application of the following:

(a) The applicant is currently practicing in Colorado under this article;

(b) The date the applicant began practicing in Colorado; and

(c) The name and contact information of any person employing the applicant to practice in Colorado.

(2) **Employer.** If an agency denies the application for authority to practice under this title, the agency shall notify the employer that the person was denied authority to continue to practice under this title.

Source: L. 2012: Entire article added, (HB 12-1059), ch. 271, p. 1427, § 1, effective July 1.

12-71-104. Continuing education - regulated service members - rules. (1) An agency may accept, from a person with authority to practice, continuing education, training, or service completed as a member of the armed forces or reserves of the United States, the National Guard of any state, the military reserves of any state, or the naval militia of any state toward the educational qualifications to renew the person's authority to practice.

(2) An agency may promulgate rules establishing educational standards and procedures necessary to implement this section.

Source: L. 2012: Entire article added, (HB 12-1059), ch. 271, p. 1427, § 1, effective July 1.

12-71-105. Rules. The director of the division of professions and occupations may promulgate rules reasonably necessary to implement this article.

Source: L. 2012: Entire article added, (HB 12-1059), ch. 271, p. 1428, § 1, effective July 1.