

ARTICLE 37 225
Direct-Entry Midwives

12-37-101. 12-225-101.	<i>Applicability of common provisions.</i>
12-37-101. 12-225-102.	Scope of article - exemptions - legislative declaration.
12-37-102. 12-225-103.	Definitions.
12-37-103. 12-225-104.	Requirement for registration with the division - annual fee - grounds for revocation.
12-37-104. 12-225-105.	Mandatory disclosure of information to clients.
12-37-105. 12-225-106.	Prohibited acts - practice standards - informed consent - emergency plan - risk assessment - referral - rules.
12-37-105.3.	Reporting requirements task force - director to convene - report - repeal. (Repealed)
12-37-105.5. 12-225-107.	Limited use of certain medications - limited use of sutures - limited administration of intravenous fluids - emergency medical procedures - rules.
12-37-106. 12-225-108.	Director - powers and duties.
12-37-107. 12-225-109.	Disciplinary action authorized - grounds for discipline - injunctions - rules.
12-37-108. 12-225-110.	Unauthorized practice - penalties.
12-37-108.5. 12-225-111.	Confidential agreement to limit practice - violation - grounds for discipline.
12-37-109. 12-225-112.	Assumption of risk - no vicarious liability - legislative declaration - professional liability insurance required.
12-37-109.5.	Immunity. <{<i>Repeal - total redundancy with common provision 12-20-402</i>>
12-37-109.7. 12-225-113.	Confidential files.
12-37-110. 12-225-114.	Repeal of article.

1 **12-225-101. Applicability of common provisions. ARTICLES 1, 20, AND 30 OF**
2 **THIS TITLE 12 APPLY, ACCORDING TO THEIR TERMS, TO THIS ARTICLE 225.**

3
4 **12-225-102. [Formerly 12-37-101] Scope of article - exemptions - legislative**
5 **declaration.** (1) (a) This article 225 applies only to direct-entry midwives and does not
6 apply to those persons who are otherwise licensed by the state of Colorado under this
7 title 12 if the practice of midwifery is within the scope of such THAT licensure.

8 (b) (I) A person who is a certified nurse-midwife authorized pursuant to section
9 ~~12-38-111.5~~ **12-255-111** or a physician as provided in article ~~36~~ **240** of this title 12 shall
10 not simultaneously be so licensed and also be registered under this article 225. A

1 physician or certified nurse-midwife who holds a license in good standing may relinquish
2 the license and subsequently be registered under this article 225.

3 (II) A direct-entry midwife shall not represent himself or herself as a
4 nurse-midwife or certified nurse-midwife.

5 (III) The fact that a direct-entry midwife may hold a practical or professional
6 nursing license does not expand the scope of practice of the direct-entry midwife.

7 (IV) The fact that a practical or professional nurse may be registered as a
8 direct-entry midwife does not expand the scope of practice of the nurse.

9 (c) It is the intent of the general assembly that health care be provided pursuant to
10 this article 225 as an alternative to traditional licensed health care and not for the purpose
11 of enabling providers of traditional licensed health care to circumvent the regulatory
12 oversight to which they are otherwise subject under any other article of this title 12.

13 (2) Nothing in this article 225 shall be construed to prohibit, or to require
14 registration under this article 225, with regard to:

15 (a) The gratuitous rendering of services in an emergency;

16 (b) The rendering of services by a physician licensed pursuant to article 36 240 of
17 this title 12 or otherwise legally authorized to practice in this state;

18 (c) The rendering of services by certified nurse-midwives properly licensed and
19 practicing in accordance with the provisions of article 38 255 of this title 12; or

20 (d) The practice by persons licensed or registered under any law of this state, in
21 accordance with such THAT law, to practice a limited field of the healing arts not
22 specifically designated in this section.

23
24 **12-225-103. [Formerly 12-37-102] Definitions.** As used in this article 225,
25 unless the context otherwise requires:

26 (1) "Client" means a pregnant woman for whom a direct-entry midwife performs
27 services. For purposes of perinatal or postpartum care, "client" includes the woman's
28 newborn.

29 (2) "Direct-entry midwife" means a person who practices direct-entry midwifery.

30 (3) "Direct-entry midwifery" or "practice of direct-entry midwifery" means the
31 advising, attending, or assisting of a woman during pregnancy, labor and natural
32 childbirth at home, and during the postpartum period in accordance with this article 225.

33 (4) "Director" means the director of the division. <{Redundant with definitions
34 common provision, 12-20-102 (6)}>

35 (5) "Division" means the division of professions and occupations in the
36 department of regulatory agencies. <{Redundant with definitions common provision,
37 12-20-102 (7)}>

38 (6) (4) "Natural childbirth" means the birth of a child without the use of

1 instruments, surgical procedures, or prescription drugs other than those for which the
2 direct-entry midwife has specific authority under this article 225 to obtain and
3 administer.

4 ~~(6.5)~~ (5) "Perinatal" means the period from the twenty-eighth week of pregnancy
5 through seven days after birth.

6 ~~(7)~~ (6) "Postpartum period" means the period of six weeks after birth.

7 ~~(8) "Registrant" means a direct-entry midwife registered pursuant to section~~
8 ~~12-37-103. <{Redundant with definitions common provision, 12-20-102 (12).~~
9 ~~Recommend repealing.}>~~

10
11 **12-225-104. [Formerly 12-37-103] Requirement for registration with the**
12 **division - annual fee - grounds for revocation.** (1) Every direct-entry midwife shall
13 register with the division of professions and occupations by applying to the director in
14 the form and manner the director requires. ~~Said~~ THE application shall include the
15 information specified in section ~~12-37-104~~ **12-225-105.**

16 (2) Any changes in the information required by subsection (1) of this section shall
17 be reported within thirty days after the change to the division in the form and manner
18 required by the director.

19 (3) Every applicant for registration shall pay a registration fee to be established by
20 the director in the manner authorized by section ~~24-34-105, C.R.S.~~ **12-20-105.**

21 Registrations ~~shall be renewed or reinstated pursuant to, a schedule established by the~~
22 ~~director and shall be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S.~~
23 ~~The director may establish renewal fees and delinquency fees for reinstatement pursuant~~
24 ~~to section 24-34-105., C.R.S. If a person fails to renew his or her registration pursuant to~~
25 ~~the schedule established by the director, such registration shall expire~~ ARE SUBJECT TO

26 THE RENEWAL, EXPIRATION, REINSTATEMENT, AND DELINQUENCY FEE PROVISIONS
27 SPECIFIED IN SECTION 12-20-202 (1) AND (2). Any person whose registration has expired
28 shall be subject to the penalties provided in this article 225 or section ~~24-34-102 (8),~~
29 ~~C.R.S. 12-20-202 (1).~~ ~~<{Redundant with reinstatement/renewal/fees common~~
30 ~~provision, 12-20-202. Recommend amendment as indicated.}>~~

31 ~~(4) (Deleted by amendment, L. 96, p. 395, § 2, effective April 17, 1996.)~~

32 ~~(4.5) A person who has had his or her registration revoked shall not apply for a~~
33 ~~new registration until at least two years have elapsed since the date of the revocation.~~
34 ~~<{Redundant with waiting period common provision, 12-20-404 (3). Recommend~~
35 ~~repeal of subsection (4.5).}>~~

36 ~~(5)~~ (4) To qualify to register, a direct-entry midwife must have successfully
37 completed an examination evaluated and approved by the director as an appropriate test
38 to measure competency in the practice of direct-entry midwifery, which examination

1 must have been developed by a person or entity other than the director or the division and
2 the acquisition of which shall require no expenditure of state funds. The national registry
3 examination administered by the Midwives' Alliance of North America, ~~incorporated~~, or
4 its successor, must be among those evaluated by the director. The director is authorized
5 to approve any existing test meeting all the criteria set forth in this subsection ~~(5)~~ (4). In
6 addition to successfully completing ~~such~~ THE examination, a direct-entry midwife is
7 qualified to register if ~~such~~ THE person has:

- 8 (a) Attained the age of nineteen years;
9 (b) Earned at least a high school diploma or the equivalent;
10 (c) Successfully completed training approved by the director in:
11 (I) The provision of care during labor and delivery and during the antepartum and
12 postpartum periods;
13 (II) Parenting education for prepared childbirth;
14 (III) Aseptic techniques and universal precautions;
15 (IV) Management of birth and immediate care of the mother and the newborn;
16 (V) Recognition of early signs of possible abnormalities;
17 (VI) Recognition and management of emergency situations;
18 (VII) Special requirements for home birth;
19 (VIII) Recognition of communicable diseases affecting the pregnancy, birth,
20 newborn, and postpartum periods; and
21 (IX) Recognition of the signs and symptoms of increased risk of medical,
22 obstetric, or neonatal complications or problems as set forth in section ~~12-37-105~~ (3)
23 **12-225-106 (3)**;
24 (d) Acquired practical experience including, at a minimum, experience with the
25 conduct of at least one hundred prenatal examinations on no fewer than thirty different
26 women and observation of at least thirty births;
27 (e) Participated as a birth attendant, including rendering care from the prenatal
28 period through the postpartum period, in connection with at least thirty births; and
29 (f) Filed documentation with the director that the direct-entry midwife is currently
30 certified by the American Heart Association or the American Red Cross to perform adult
31 and infant cardiopulmonary resuscitation ("CPR").

32 ~~(6)~~ (5) Effective July 1, 2003, in order to be deemed qualified to register, a
33 direct-entry midwife must have graduated from an accredited midwifery educational
34 program or obtained a substantially equivalent education approved by the director. ~~Such~~
35 THE educational requirement does not apply to direct-entry midwives who have
36 registered with the division before July 1, 2003.

37 ~~(7)~~ (6) For purposes of registration under this article **225**, no credential, licensure,
38 or certification issued by any other state meets the requirements of this article **225**, and

1 therefore there is no reciprocity with other states.

2
3 **12-225-105. [Formerly 12-37-104] Mandatory disclosure of information to**
4 **clients.** (1) Every direct-entry midwife shall provide the following information in
5 writing to each client during the initial client contact:

6 (a) The name, business address, and business phone number of the direct-entry
7 midwife;

8 (b) A listing of the direct-entry midwife's education, experience, degrees,
9 membership in any professional organization whose membership includes not less than
10 one-third of all registrants, certificates or credentials related to direct-entry midwifery
11 awarded by any ~~such~~ PROFESSIONAL organization, and the length of time and number of
12 contact hours required to obtain ~~said~~ THE degrees, certificates, or credentials;

13 (c) A statement indicating whether or not the direct-entry midwife is covered
14 under a policy of liability insurance for the practice of direct-entry midwifery;

15 (d) A listing of any license, certificate, or registration in the health care field
16 previously or currently held by the direct-entry midwife and suspended or revoked by any
17 local, state, or national health care agency;

18 (e) A statement that the practice of direct-entry midwifery is regulated by the
19 department of regulatory agencies. The statement must provide the address and telephone
20 number of the office of midwifery registration in the division and shall state that
21 violation of this article **225** may result in revocation of registration and of the authority to
22 practice direct-entry midwifery in Colorado.

23 (f) A copy of the emergency plan as provided in section ~~12-37-105 (6)~~
24 **12-225-106 (6)**;

25 (g) A statement indicating whether or not the direct-entry midwife will administer
26 vitamin K to the client's newborn infant and, if not, a list of qualified health care
27 practitioners who can provide that service; and

28 (h) A statement indicating whether or not the direct-entry midwife will administer
29 Rho(D) immune globulin to the client if she is determined to be Rh-negative and, if not,
30 a list of qualified health care practitioners who can provide that service.

31 (2) Any changes in the information required by subsection (1) of this section shall
32 be reflected in the mandatory disclosure within five days ~~of~~ AFTER the ~~said~~ change.

33 ~~(3) (Deleted by amendment, L. 2011, (SB 11-088), ch. 283, p. 1261, § 7, effective~~
34 ~~July 1, 2011.)~~

35
36 **12-225-106. [Formerly 12-37-105] Prohibited acts - practice standards -**
37 **informed consent - emergency plan - risk assessment - referral - rules.** (1) A
38 direct-entry midwife shall not dispense or administer any medication or drugs except in

1 accordance with section ~~12-37-105.5~~ **12-225-107**.

2 (2) A direct-entry midwife shall not perform any operative or surgical procedure;
3 except that a direct-entry midwife may perform sutures of perineal tears in accordance
4 with section ~~12-37-105.5~~ **12-225-107**.

5 (3) A direct-entry midwife shall not provide care to a pregnant woman who,
6 according to generally accepted medical standards, exhibits signs or symptoms of
7 increased risk of medical or obstetric or neonatal complications or problems during the
8 completion of her pregnancy, labor, delivery, or the postpartum period. ~~Such~~ THOSE
9 conditions include but are not limited to signs or symptoms of diabetes, multiple
10 gestation, hypertensive disorder, or abnormal presentation of the fetus.

11 (4) A direct-entry midwife shall not provide care to a pregnant woman who,
12 according to generally accepted medical standards, exhibits signs or symptoms of
13 increased risk that her child may develop complications or problems during the first six
14 weeks of life.

15 (5) (a) A direct-entry midwife shall keep appropriate records of midwifery-related
16 activity, including but not limited to the following:

17 (I) The direct-entry midwife shall complete and file a birth certificate for every
18 delivery in accordance with section 25-2-112. ~~C.R.S.~~

19 (II) The direct-entry midwife shall complete and maintain appropriate client
20 records for every client.

21 (III) Before accepting a client for care, the direct-entry midwife shall obtain the
22 client's informed consent, which shall be evidenced by a written statement in a form
23 prescribed by the director and signed by both the direct-entry midwife and the client. The
24 form shall certify that full disclosure has been made and acknowledged by the client as to
25 each of the following items, with the client's acknowledgment evidenced by a separate
26 signature or initials adjacent to each item in addition to the client's signature at the end of
27 the form:

28 (A) The direct-entry midwife's educational background and training;

29 (B) The nature and scope of the care to be given, including the possibility of and
30 procedure for transport of the client to a hospital and transferral of care prenatally;

31 (C) A description of the available alternatives to direct-entry midwifery care,
32 including a statement that the client understands she is not retaining a certified nurse
33 midwife or a nurse midwife;

34 (D) A description of the risks of birth, including those that are different from
35 those of hospital birth and those conditions that may arise during delivery;

36 (E) A statement indicating whether or not the direct-entry midwife is covered
37 under a policy of liability insurance for the practice of direct-entry midwifery; and

38 (F) A statement informing the client that, if subsequent care is required resulting

1 from the acts or omissions of the direct-entry midwife, any physician, nurse, prehospital
2 emergency personnel, and health care institution rendering ~~such~~ SUBSEQUENT care shall
3 be held only to a standard of gross negligence or willful and wanton conduct.

4 (IV) (A) Until the liability insurance required pursuant to ~~section 12-37-109 (3)~~
5 **12-225-112 (2)** is available, each direct-entry midwife shall, before accepting a client for
6 care, provide the client with a disclosure statement indicating that the midwife does not
7 have liability insurance. To comply with this section, the direct-entry midwife shall
8 ensure that the disclosure statement is printed in at least twelve-point bold-faced type and
9 shall read the statement to the client in a language the client understands. Each client
10 shall sign the disclosure statement acknowledging that the client understands the effect of
11 its provisions. The direct-entry midwife shall also sign the disclosure statement and
12 provide a copy of the signed disclosure statement to the client.

13 (B) In addition to the information required in ~~sub-subparagraph (A) of this~~
14 ~~subparagraph (IV)~~ SUBSECTION (5)(a)(IV)(A) OF THIS SECTION, the direct-entry midwife
15 shall include the following statement in the disclosure statement and shall display the
16 statement prominently and deliver the statement orally to the client before the client signs
17 the disclosure statement: "Signing this disclosure statement does not constitute a waiver
18 of any right (insert client's name) has to seek damages or redress from the undersigned
19 direct-entry midwife for any act of negligence or any injury (insert client's name) may
20 sustain in the course of care administered by the undersigned direct-entry midwife."

21 (b) As used in this subsection (5), "full disclosure" includes reading the informed
22 consent form to the client, in a language understood by the client, and answering any
23 relevant questions.

24 (6) A direct-entry midwife shall prepare a plan, in the form and manner required by
25 the director, for emergency situations. The plan must include procedures to be followed in
26 situations in which the time required for transportation to the nearest facility capable of
27 providing appropriate treatment exceeds limits established by the director by rule. A copy
28 of ~~such~~ THE plan shall be given to each client as part of the informed consent required by
29 subsection (5) of this section.

30 (7) A direct-entry midwife shall prepare and transmit appropriate specimens for
31 newborn screening in accordance with section 25-4-1004 ~~C.R.S.~~, and shall refer every
32 newborn child for evaluation, within seven days after birth, to a licensed health care provider
33 with expertise in pediatric care.

34 (8) A direct-entry midwife shall ensure that appropriate laboratory testing, as
35 determined by the director, is completed for each client.

36 (9) (a) A direct-entry midwife shall provide eye prophylactic therapy to all newborn
37 children in the direct-entry midwife's care in accordance with section 25-4-301. ~~C.R.S.~~

38 (b) A direct-entry midwife shall inform the parents of all newborn children in the

1 direct-entry midwife's care of the importance of critical congenital heart defect screening
2 using pulse oximetry in accordance with section 25-4-1004.3. ~~C.R.S.~~ If a direct-entry
3 midwife is not properly trained in the use of pulse oximetry or does not have the use of or
4 own a pulse oximeter, the direct-entry midwife shall refer the parents to a health care
5 provider who can perform the screening. If a direct-entry midwife is properly trained in the
6 use of pulse oximetry and has the use of or owns a pulse oximeter, the direct-entry midwife
7 shall perform the critical congenital heart defect screening on newborn children in ~~his or her~~
8 THE DIRECT-ENTRY MIDWIFE'S care in accordance with section 25-4-1004.3. ~~C.R.S.~~

9 (10) A direct-entry midwife shall be knowledgeable and skilled in aseptic procedures
10 and the use of universal precautions and shall use them with every client.

11 (11) To assure that proper risk assessment is completed and that clients who are
12 inappropriate for direct-entry midwifery are referred to other health care providers, the
13 director shall establish, by rule, a risk assessment procedure to be followed by a direct-entry
14 midwife for each client and standards for appropriate referral. ~~Such~~ THE assessment shall
15 be a part of each client's record as required in section ~~12-37-105 (5)(a)(II)~~ SUBSECTION
16 (5)(a)(II) OF THIS SECTION.

17 (12) At the time of renewal of a registration, each registrant shall submit the
18 following data in the form and manner required by the director:

19 (a) The number of women to whom care was provided since the previous
20 registration;

21 (b) The number of deliveries performed;

22 (c) The Apgar scores of delivered infants, in groupings established by the director;

23 (d) The number of prenatal transfers;

24 (e) The number of transfers during labor, delivery, and immediately following birth;

25 (f) Any perinatal deaths, including the cause of death and a description of the
26 circumstances; and

27 (g) Other morbidity statistics as required by the director.

28 (13) A registered direct-entry midwife may purchase, possess, carry, and administer
29 oxygen. The department of regulatory agencies shall promulgate rules concerning minimum
30 training requirements for direct-entry midwives with respect to the safe administration of
31 oxygen. Each registrant shall complete the minimum training requirements and submit proof
32 of having completed ~~such~~ THE requirements to the director before administering oxygen to
33 any client.

34 (14) A registrant shall not practice beyond the scope of ~~his or her~~ THE REGISTRANT'S
35 education and training.

36
37 **~~12-225-106.3. [Formerly 12-37-105.3] Reporting requirements task force -~~**
38 **~~director to convene - report - repeal. (Repealed)~~**

1 **12-225-107. [Formerly 12-37-105.5] Limited use of certain medications - limited**
2 **use of sutures - limited administration of intravenous fluids - emergency medical**
3 **procedures - rules.** (1) A registrant may obtain prescription medications to treat conditions
4 specified in this section from a registered prescription drug outlet, registered manufacturer,
5 or registered wholesaler. An entity that provides a prescription medication to a registrant in
6 accordance with this section, and who relies in good faith upon the registration information
7 provided by the registrant, is not subject to liability for providing the medication.

8 (2) Except as otherwise provided in subsection (3) of this section, a registrant may
9 obtain and administer:

10 (a) Vitamin K to newborns by intramuscular injection;

11 (b) Rho(D) immune globulin to Rh-negative mothers by intramuscular injection;

12 (c) Postpartum antihemorrhagic drugs to mothers;

13 (d) Eye prophylaxis; and

14 (e) Local anesthetics, as specified by the director by rule, to use in accordance with
15 subsection (6) of this section.

16 (3) (a) If a client refuses a medication listed in ~~paragraph (a) or (b) of subsection (2)~~
17 ~~SUBSECTION (2)(a) OR (2)(b)~~ of this section, the registrant shall provide the client with an
18 informed consent form containing a detailed statement of the benefits of the medication and
19 the risks of refusal, and shall retain a copy of the form acknowledged and signed by the
20 client.

21 (b) If a client experiences uncontrollable postpartum hemorrhage and refuses
22 treatment with antihemorrhagic drugs, the registrant shall immediately initiate the
23 transportation of the client in accordance with the emergency plan.

24 (4) A registrant shall, as part of the emergency medical plan required by section
25 ~~12-37-105(6)~~ **12-225-106 (6)**, inform the client that:

26 (a) If she experiences uncontrollable postpartum hemorrhage, the registrant is
27 required by Colorado law to initiate emergency medical treatment, which may include the
28 administration of an antihemorrhagic drug by the registrant to mitigate the postpartum
29 hemorrhaging while initiating the immediate transportation of the client in accordance with
30 the emergency plan.

31 (b) If she experiences postpartum hemorrhage, the registrant is prepared and
32 equipped to administer intravenous fluids to restore volume lost due to excessive bleeding.

33 (5) The director shall promulgate rules to implement this section. In promulgating
34 ~~such~~ THE rules, the director shall seek the advice of knowledgeable medical professionals
35 to set standards for education, training, and administration that reflect current generally
36 accepted professional standards for the safe and effective use of the medications, methods
37 of administration, and procedures described in this section, including a requirement that, to
38 administer intravenous fluids, the registrant complete an intravenous therapy course or

1 program approved by the director. The director shall establish a preferred drug list that
2 displays the medications that a registrant can obtain.

3 (6) (a) Subject to ~~paragraph (b) of this subsection~~ (6) SUBSECTION (6)(b) OF THIS
4 SECTION, a registrant may perform sutures of first-degree and second-degree perineal tears,
5 as defined by the director by rule, on a client and may administer local anesthetics to the
6 client in connection with suturing perineal tears.

7 (b) In order to perform sutures of first-degree and second-degree perineal tears, the
8 registrant shall apply to the director, in the form and manner required by the director, and
9 pay any application fee the director may impose, for an authorization to perform sutures of
10 first-degree and second-degree perineal tears. As part of the application, the registrant shall
11 demonstrate to the director that the registrant has received education and training approved
12 by the director on suturing of perineal tears within the year immediately preceding the date
13 of the application or within ~~such other~~ ANOTHER time the director, by rule, determines to be
14 appropriate. The director may grant the authorization to the registrant only if the registrant
15 has complied with the education and training requirement specified in this ~~paragraph (b)~~
16 SUBSECTION (6)(b). An authorization issued under this ~~paragraph (b)~~ SUBSECTION (6)(b) is
17 valid, and need not be renewed, if the direct-entry midwife holds a valid registration under
18 this article 225.

19
20 **12-225-108. [Formerly 12-37-106] Director - powers and duties.** (1) In addition
21 to any other powers and duties conferred on the director by law, the director has the
22 following powers and duties:

23 (a) To adopt such rules as may be necessary to carry out the provisions of this article
24 PURSUANT TO SECTION 12-20-105; <{*Redundant with general rule-making authority*
25 *common provision, 12-20-204. Recommend amending as indicated.*}>

26 (b) To establish the fees for registration and renewal of registration in the manner
27 authorized by section ~~24-34-105, C.R.S.~~ 12-20-105;

28 (c) To prepare or adopt suitable education standards for applicants and to adopt a
29 registration examination;

30 (d) To accept applications for registration that meet the requirements set forth in this
31 article 225, and to collect the annual registration fees authorized by this article 225;

32 (e) ~~To seek through the office of the attorney general, an injunction in a court of~~
33 ~~competent jurisdiction to enjoin any person from committing an act prohibited by this article.~~
34 ~~When seeking an injunction under this paragraph (e), the director shall not be required to~~
35 ~~allege or prove the inadequacy of any remedy at law or that substantial or irreparable damage~~
36 ~~is likely to result from a continued violation of this article~~ IN ACCORDANCE WITH SECTION
37 12-20-406. <{*Redundant with injunctive relief common provision 12-20-406. Recommend*
38 *amending as indicated.*}>

1 (f) To summarily suspend a registration upon the failure of the registrant to comply
2 with any condition of a stipulation or order imposed by the director until the registrant
3 complies with the condition, unless compliance is beyond the control of the registrant.
4

5 **12-225-109. [Formerly 12-37-107] Disciplinary action authorized - grounds for**
6 **discipline - injunctions - rules.** (1) If a direct-entry midwife has violated any of the
7 provisions of section ~~12-37-103, 12-37-104, 12-37-105~~ **12-225-104, 12-225-105,**
8 **12-225-106,** or ~~12-37-109 (3)~~ **12-225-112 (2),** the director may **deny, revoke, or suspend a**
9 **registration, issue a letter of admonition to a registrant, place a registrant on probation TAKE**
10 **DISCIPLINARY OR OTHER ACTION AS AUTHORIZED BY SECTION 12-20-404,** or apply for a
11 temporary or permanent injunction against a direct-entry midwife, through the attorney
12 general, in any court of competent jurisdiction, enjoining ~~such~~ THE direct-entry midwife
13 from practicing midwifery or committing any ~~such~~ violation. Injunctive proceedings under
14 this subsection (1) shall be in addition to, and not in lieu of, any other penalties or remedies
15 provided in this article **225.** <{***Redundant with disciplinary actions common provision,***
16 ***12-20-404. Recommend amending as indicated.***}>

17 (2) (a) (H) The director may assess a civil penalty in the form of a fine, not to exceed
18 five thousand dollars, for violation of a rule or order of the director or any other act or
19 omission prohibited by this article **225.**

20 (H) (b) The director shall adopt rules establishing a fine structure and the
21 circumstances under which fines may be imposed.

22 (b) ~~Any moneys collected pursuant to this subsection (2) shall be transmitted to the~~
23 ~~state treasurer, who shall credit such moneys to the general fund.~~ <{***Redundant with***
24 ***disposition of fines common provision, 12-20-404 (6). Recommend repealing.***}>

25 (3) The director may ~~deny, revoke, or suspend a registration or issue a letter of~~
26 ~~admonition or place a registrant on probation~~ TAKE DISCIPLINARY ACTION AS AUTHORIZED
27 BY SECTION 12-20-404 (1)(a) OR (1)(d) for any of the following acts or omissions:
28 <{***Recommend amending to add reference to disciplinary actions common provision,***
29 ***12-20-404.***}>

30 (a) Any violation of section ~~12-37-103, 12-37-104, 12-37-105~~ **12-225-104,**
31 **12-225-105, 12-225-106,** or ~~12-37-109 (3)~~ **12-225-112 (2);**

32 (b) Failing to provide any information required pursuant to, or to pay any fee
33 assessed in accordance with, section ~~12-37-103~~ **12-225-104** or providing false, deceptive,
34 or misleading information to the division that the direct-entry midwife knew or should
35 reasonably have known was false, deceptive, or misleading;

36 (c) Failing to respond in an honest, materially responsive, and timely manner to a
37 letter of complaint from the director;

38 (d) Failing to comply with an order of the director, including an order placing

1 conditions or restrictions on the registrant's practice;

2 (e) Engaging in any act or omission that does not meet generally accepted standards
3 of safe care for women and infants, whether or not actual injury to a client is established;

4 (f) Abuse or habitual or excessive use of a habit-forming drug, a controlled substance
5 as defined in section 18-18-102 (5), ~~C.R.S.~~, or alcohol;

6 (g) Procuring or attempting to procure a registration in this or any other state or
7 jurisdiction by fraud, deceit, misrepresentation, misleading omission, or material
8 misstatement of fact;

9 (h) Having had a license or registration to practice direct-entry midwifery or any
10 other health care profession or occupation suspended or revoked in any jurisdiction;

11 (i) Violating any law or regulation governing the practice of direct-entry midwifery
12 in another state or jurisdiction. A plea of nolo contendere or its equivalent accepted by any
13 state agency of another state or jurisdiction may be considered to be the same as a finding
14 of violation for purposes of a proceeding under this article **225**.

15 (j) Falsifying, failing to make essential entries in, or in a negligent manner making
16 incorrect entries in client records;

17 (k) Conviction of a felony or acceptance by a court of a plea of guilty or nolo
18 contendere to a felony. A certified copy of the judgment of a court of competent jurisdiction
19 of ~~such~~ A conviction or plea shall be prima facie evidence of ~~such~~ THE conviction.

20 (l) Aiding or knowingly permitting any person to violate any provision of this article
21 **225**;

22 (m) Advertising through newspapers, magazines, circulars, direct mail, directories,
23 radio, television, website, e-mail, text message, or otherwise that the registrant will perform
24 any act prohibited by this article **225**; or

25 (n) (I) Failing to notify the director, as required by section ~~12-37-108.5~~ (1)
26 **12-225-111**, of a physical illness; a physical condition; or a behavioral, mental health, or
27 substance use disorder that renders the registrant unable, or limits the registrant's ability, to
28 practice direct-entry midwifery with reasonable skill and safety to the client;

29 (II) Failing to act within the limitations created by a physical illness; a physical
30 condition; or a behavioral, mental health, or substance use disorder that renders the registrant
31 unable to practice direct-entry midwifery with reasonable skill and safety or that may
32 endanger the health or safety of persons under ~~his or her~~ THE REGISTRANT'S care; or

33 (III) Failing to comply with the limitations agreed to under a confidential agreement
34 entered pursuant to section ~~12-37-108.5~~ SECTIONS 12-30-107 AND 12-225-111.

35 (4) Any proceeding to deny, suspend, or revoke a registration or place a registrant
36 on probation shall be conducted pursuant to sections **12-20-403, 24-4-104, and 24-4-105.**
37 **~~C.R.S. Such proceeding may be conducted by an administrative law judge designated~~**
38 **~~pursuant to part 10 of article 30 of title 24, C.R.S. SECTION 12-20-408 GOVERNS JUDICIAL~~**

1 REVIEW OF any final decision of the director. shall be subject to judicial review by the court
2 of appeals pursuant to section 24-4-106 (11), C.R.S. <{*Redundant with disciplinary*
3 *procedures common provision, 12-20-403, and judicial review common provision,*
4 *12-20-408. Recommend amending as indicated.*>

5 (5) The director may accept as prima facie evidence of grounds for disciplinary
6 action any disciplinary action taken against a registrant by another jurisdiction if the
7 violation that prompted such THE disciplinary action would be grounds for disciplinary
8 action under this article 225.

9 (6) (a) ~~WHEN the director or an administrative law judge may administer oaths, take~~
10 ~~affirmations of witnesses, and issue ISSUES subpoenas IN ACCORDANCE WITH SECTION~~
11 ~~12-20-403 (2) to compel the attendance of witnesses and the production of all relevant~~
12 ~~papers, books, records, documentary evidence, and materials, in any hearing, investigation,~~
13 ~~accusation, or other matter coming before the director. The director may appoint an~~
14 ~~administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence~~
15 ~~and to make findings and report them to the director, including copies of hospital and~~
16 ~~physician records; the provider of such THE copies shall prepare the copies from the original~~
17 ~~record and shall delete the name of the patient or client, to be retained by the custodian of~~
18 ~~the records from which the copies were made, but shall identify the patient or client by a~~
19 ~~numbered code. Upon certification by the custodian that the copies are true and complete~~
20 ~~except for the patient's or client's name, the copies shall be deemed authentic, subject to the~~
21 ~~right to inspect the originals for the limited purpose of ascertaining the accuracy of the~~
22 ~~copies. No privilege of confidentiality exists with respect to such copies and no liability lies~~
23 ~~against the director or the custodian or the director's or custodian's authorized employees for~~
24 ~~furnishing or using such copies in accordance with this section.~~

25 (b) ~~Upon failure of any witness to comply with such subpoena or process, the district~~
26 ~~court of the county in which the subpoenaed person or registrant resides or conducts~~
27 ~~business, upon application by the director with notice to the subpoenaed person or registrant,~~
28 ~~may issue to the person or registrant an order requiring that person or registrant to appear~~
29 ~~before the director; to produce the relevant papers, books, records, documentary evidence,~~
30 ~~or materials if so ordered; or to give evidence touching the matter under investigation or in~~
31 ~~question. Failure to obey the order of the court may be punished by the court as a contempt~~
32 ~~of court. <{*Partially redundant with disciplinary procedures/subpoena powers common*~~
33 ~~*provision, 12-20-403 (2) and (3). Recommend amending subsection (6) as indicated.*>~~

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

38 (b) ~~When the director sends a letter of admonition to a registrant, the director shall~~

1 inform the registrant that he or she has the right to request in writing, within twenty days
2 after receipt of the letter, that the director initiate formal disciplinary proceedings to
3 adjudicate the propriety of the conduct upon which the letter of admonition is based.

4 (c) If the request for adjudication is timely made, the letter of admonition is vacated
5 and the matter shall be processed by means of formal disciplinary proceedings.
6 <{***Redundant with letter of admonition common provision, 12-20-404 (4). Recommend***
7 ***repealing.***>

8 (7.5) When a complaint or investigation discloses an instance of conduct that does
9 not warrant formal action by the director and, in the opinion of the director, the complaint
10 should be dismissed, but the director has noticed indications of possible errant conduct by
11 the registrant that could lead to serious consequences if not corrected, a confidential letter
12 of concern may be issued and sent to the registrant. <{***Redundant with***
13 ***discipline/confidential letter of concern common provision, 12-20-405 (5). Recommend***
14 ***repealing.***>

15 (8) When a complaint or an investigation discloses an instance of misconduct that,
16 in the opinion of the director, warrants formal action, the complaint shall not be resolved by
17 a deferred settlement, action, judgment, or prosecution. <{***Redundant with discipline/no***
18 ***deferral common provision, 12-20-404 (2). Recommend repealing.***>

19 (9) (a) If it appears to the director, based upon credible evidence as presented in a
20 written complaint by any person, that a registrant is acting in a manner that is an imminent
21 threat to the health and safety of the public or a person is acting or has acted without the
22 required registration, the director may issue an order to cease and desist such activity. The
23 order shall set forth the statutes and rules alleged to have been violated, the facts alleged to
24 have constituted the violation, and the requirement that all unlawful acts or unregistered
25 practices immediately cease.

26 (b) Within ten days after service of the order to cease and desist pursuant to
27 paragraph (a) of this subsection (9), the respondent may request a hearing on the question
28 of whether acts or practices in violation of this article have occurred. Such hearing shall be
29 conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

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

36 (b) A person against whom an order to show cause has been issued pursuant to
37 paragraph (a) of this subsection (10) shall be promptly notified by the director of the
38 issuance of the order, along with a copy of the order, the factual and legal basis for the order,

1 and the date set by the director for a hearing on the order. Such notice may be served by
2 personal service, by first-class United States mail, postage prepaid, or as may be practicable
3 upon any person against whom such order is issued. Personal service or mailing of an order
4 or document pursuant to this subsection (10) shall constitute notice thereof to the person.

5 (e) (I) The hearing on an order to show cause shall be commenced no sooner than
6 ten and no later than forty-five calendar days after the date of transmission or service of the
7 notification by the director as provided in paragraph (b) of this subsection (10). The hearing
8 may be continued by agreement of all parties based upon the complexity of the matter,
9 number of parties to the matter, and legal issues presented in the matter, but in no event shall
10 the hearing commence later than sixty calendar days after the date of transmission or service
11 of the notification.

12 (II) If a person against whom an order to show cause has been issued pursuant to
13 paragraph (a) of this subsection (10) does not appear at the hearing, the director may present
14 evidence that notification was properly sent or served upon such person pursuant to
15 paragraph (b) of this subsection (10) and such other evidence related to the matter as the
16 director deems appropriate. The director shall issue the order within ten days after the
17 director's determination related to reasonable attempts to notify the respondent, and the order
18 shall become final as to that person by operation of law. Such hearing shall be conducted
19 pursuant to sections 24-4-104 and 24-4-105, C.R.S.

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

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

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

36 (12) If any person fails to comply with a final cease-and-desist order or a stipulation,
37 the director may request the attorney general or the district attorney for the judicial district
38 in which the alleged violation exists to bring, and if so requested such attorney shall bring,

1 suit for a temporary restraining order and for injunctive relief to prevent any further or
2 continued violation of the final order.

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

6 (7) THE DIRECTOR MAY ISSUE CEASE-AND-DESIST ORDERS UNDER THE
7 CIRCUMSTANCES AND IN ACCORDANCE WITH THE PROCEDURES SPECIFIED IN SECTION
8 12-20-405. <{Subsections (9) through (13) are redundant with cease-and-desist orders
9 common provision, 12-20-405. Recommend repealing and adding cross-reference to
10 common provision, as indicated.}>

11
12 **12-225-110. [Formerly 12-37-108] Unauthorized practice - penalties.** Any person
13 who practices or offers or attempts to practice direct-entry midwifery without an active
14 registration issued under this article commits a class 2 misdemeanor and shall be punished
15 as provided in section 18-1.3-501, C.R.S., for the first offense, and, for the second or any
16 subsequent offense, such person commits a class 6 felony and shall be punished as provided
17 in section 18-1.3-401., C.R.S. 225 IS SUBJECT TO PENALTIES PURSUANT TO SECTION
18 12-20-407 (1)(a).<{Redundant with unauthorized practice common provision, 12-20-407.
19 Recommend amendment as indicated.}>

20
21 **12-225-111 [Formerly 12-37-108.5] Confidential agreement to limit practice -
22 violation - grounds for discipline.** (1) If a registered direct-entry midwife has a physical
23 illness; a physical condition; or a behavioral or mental health disorder that renders him or
24 her unable to practice direct-entry midwifery with reasonable skill and safety to clients, the
25 registrant shall notify the director of the physical illness; the physical condition; or the
26 behavioral or mental health disorder in a manner and within a period determined by the
27 director. The director may require the registrant to submit to an examination to evaluate the
28 extent of the physical illness; the physical condition; or the behavioral or mental health
29 disorder and its impact on the registrant's ability to practice direct-entry midwifery with
30 reasonable skill and safety to clients.

31 (2) (a) Upon determining that a registrant with a physical illness; a physical
32 condition; or a behavioral or mental health disorder is able to render limited services with
33 reasonable skill and safety to clients, the director may enter into a confidential agreement
34 with the registrant in which the registrant agrees to limit his or her practice based on the
35 restrictions imposed by the physical illness; the physical condition; or the behavioral or
36 mental health disorder, as determined by the director.

37 (b) As part of the agreement, the registrant is subject to periodic reevaluations or
38 monitoring as determined appropriate by the director.

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

3 ~~(3) By entering into an agreement with the director pursuant to this section to limit~~
4 ~~his or her practice, a registrant is not engaging in activities that are grounds for discipline~~
5 ~~under section 12-37-107 (3). The agreement does not constitute a restriction or discipline~~
6 ~~by the director. However, if the registrant fails to comply with the terms of an agreement~~
7 ~~entered into pursuant to this section, the failure constitutes a ground for discipline pursuant~~
8 ~~to section 12-37-107 (3)(n), and the registrant is subject to discipline in accordance with~~
9 ~~section 12-37-107.~~

10 ~~(4) This section does not apply to a registrant who is subject to discipline for~~
11 ~~engaging in activities as described in section 12-37-107 (3)(f).~~

12 ~~SECTION 12-30-107 CONCERNING CONFIDENTIAL AGREEMENTS TO LIMIT PRACTICE~~
13 ~~APPLIES TO THIS ARTICLE 225. <{*Redundant with confidential agreement common*~~
14 ~~*provision, 12-30-107. Recommend repealing and replacing with reference to common*~~
15 ~~*provision.*>~~

16
17 **12-225-112. [Formerly 12-37-109] Assumption of risk - no vicarious liability -**
18 **legislative declaration - professional liability insurance required.** (1) (a) It is the policy
19 of this state that registrants shall be liable for their acts or omissions in the performance of
20 the services that they provide, and that no licensed physician, nurse, prehospital emergency
21 medical personnel, or health care institution shall be liable for any act or omission resulting
22 from the administration of services by any registrant. This subsection (1) does not relieve
23 any physician, nurse, prehospital emergency personnel, or health care institution from
24 liability for any willful and wanton act or omission or any act or omission constituting gross
25 negligence, or under circumstances where a registrant has a business or supervised
26 relationship with ~~any such~~ THE physician, nurse, prehospital emergency personnel, or health
27 care institution. A physician, nurse, prehospital emergency personnel, or health care
28 institution may provide consultation or education to the registrant without establishing a
29 business or supervisory relationship, and is encouraged to accept referrals from registrants
30 pursuant to this article **225**.

31 ~~(b) (Deleted by amendment, L. 2011, (SB 11-088), ch. 283, p. 1268, § 12, effective~~
32 ~~July 1, 2011.)~~

33 ~~(2) (Deleted by amendment, L. 2011, (SB 11-088), ch. 283, p. 1268, § 12, effective~~
34 ~~July 1, 2011.)~~

35 ~~(3)(a) (2) If the director finds that liability insurance is available at an affordable~~
36 ~~price, registrants shall be required to carry ~~such~~ LIABILITY insurance.~~

37 ~~(b) Repealed.~~

1 ~~**12-37-109.5 Immunity.** The director, the director's staff, any person acting as a~~
2 ~~witness or consultant to the director, any witness testifying in a proceeding authorized under~~
3 ~~this article, and any person who lodges a complaint pursuant to this article shall be immune~~
4 ~~from liability in any civil action brought against him or her for acts occurring while acting~~
5 ~~in his or her capacity as director, staff, consultant, or witness, respectively, if such individual~~
6 ~~was acting in good faith within the scope of his or her respective capacity, made a~~
7 ~~reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in~~
8 ~~the reasonable belief that the action taken by him or her was warranted by the facts. Any~~
9 ~~person participating in good faith in lodging a complaint or participating in any investigative~~
10 ~~or administrative proceeding pursuant to this article shall be immune from any civil or~~
11 ~~criminal liability that may result from such participation.~~ <{*Redundant with immunity*
12 *common provision, 12-20-402. Recommend repealing.*}>
13

14 **12-225-113. [Formerly 12-37-109.7] Confidential files.** The director may keep
15 confidential all files and information concerning an investigation authorized under this
16 article 225 until the results of the investigation are provided to the director and either the
17 complaint is dismissed or notice of hearing and charges are served upon the person subject
18 to the investigation.

19
20 **12-225-114. [Formerly 12-37-110] Repeal of article.** (1) This article 225 is
21 repealed, effective September 1, 2021.

22 (2) ~~Prior to the BEFORE ITS repeal, the department of regulatory agencies shall review~~
23 ~~the registering of direct-entry midwives by the division of professions and occupations as~~
24 ~~provided in IS SCHEDULED FOR REVIEW IN ACCORDANCE WITH section 24-34-104. C.R.S.~~