

FINAL PROPOSAL
Michael Skolnik Medical Transparency Act of 2010

1 **12-30-101. [Formerly 24-34-110] Medical transparency act of 2010 -**
2 **disclosure of information about health care licensees - fines - rules - short title -**
3 **legislative declaration - repeal.** (1) THE SHORT TITLE OF this section shall be known
4 and may be cited as IS the "Michael Skolnik Medical Transparency Act of 2010".

5 (2) (a) The general assembly hereby finds and determines that:

6 (I) The people of Colorado need to be fully informed about the past practices of
7 persons practicing a health care profession in this state in order to make informed
8 decisions when choosing a health care provider and determining whether to proceed with
9 a particular regimen of care recommended by a health care provider;

10 (II) The purpose of this section is to provide transparency to the public regarding
11 the competency of persons engaged in the practice of certain health care professions in
12 this state to assist citizens in making informed health care decisions.

13 (b) The general assembly further finds and declares that it is important to make
14 information about persons engaged in the practice of a health care profession available to
15 the public in a manner that is efficient, cost-effective, and maintains the integrity of the
16 information, and to that end, the general assembly encourages persons to file the required
17 information with the division of professions and occupations electronically, to the extent
18 possible.

19 (3) (a) As used in this section, "applicant" means a person applying for a new,
20 active license, certification, or registration or to renew, reinstate, or reactivate an active
21 license, certification, or registration to practice:

22 (I) Audiology pursuant to article ~~29.9~~ **210** of THIS title 12; ~~C.R.S.;~~

23 (II) As a licensed hearing aid provider pursuant to part 2 of article ~~5.5~~ **230** of THIS
24 title 12; ~~C.R.S.;~~

25 (III) Acupuncture pursuant to article ~~29.5~~ **200** of THIS title 12; ~~C.R.S.;~~

26 (IV) Podiatry pursuant to article ~~32~~ **290** of THIS title 12; ~~C.R.S.;~~

27 (V) Chiropractic pursuant to article ~~33~~ **215** of THIS title 12; ~~C.R.S.;~~

28 (VI) Dentistry pursuant to article ~~35~~ **220** of THIS title 12; ~~C.R.S.;~~

29 (VII) Dental hygiene pursuant to article ~~35~~ **220** of THIS title 12; ~~C.R.S.;~~

30 (VIII) Medicine pursuant to article ~~36~~ **240** of THIS title 12 ~~C.R.S.;~~ or part 36 of
31 article 60 of ~~this~~ title ~~24~~;

32 (IX) As a physician assistant or an anesthesiologist assistant pursuant to article ~~36~~
33 **240** of THIS title 12; ~~C.R.S.;~~

34 (X) Direct-entry midwifery pursuant to article ~~37~~ **225** of THIS title 12; ~~C.R.S.;~~

35 (XI) Practical nursing, professional nursing, or advanced practice nursing
36 pursuant to article ~~38~~ **255** of THIS title 12; ~~C.R.S.;~~

- 1 (XII) Optometry pursuant to article ~~40~~ **275** of THIS title 12; ~~C.R.S.~~;
- 2 (XIII) Physical therapy pursuant to article ~~41~~ **285** of THIS title 12;
- 3 (XIV) Psychology pursuant to part 3 of article ~~43~~ **245** of THIS title 12; ~~C.R.S.~~;
- 4 (XV) Social work pursuant to part 4 of article ~~43~~ **245** of THIS title 12; ~~C.R.S.~~;
- 5 (XVI) Marriage and family therapy pursuant to part 5 of article ~~43~~ **245** of THIS
- 6 title 12; ~~C.R.S.~~;
- 7 (XVII) Professional counseling pursuant to part 6 of article ~~43~~ **245** of THIS title
- 8 12; ~~C.R.S.~~;
- 9 (XVIII) Psychotherapy pursuant to part 7 of article ~~43~~ **245** of THIS title 12;
- 10 ~~C.R.S.~~;
- 11 (XIX) Addiction counseling pursuant to part 8 of article ~~43~~ **245** of THIS title 12;
- 12 ~~C.R.S.~~;
- 13 (XX) Speech-language pathology pursuant to article ~~43.7~~ **305** of THIS title 12;
- 14 (XXI) Athletic training pursuant to article ~~29.7~~ **205** of THIS title 12; ~~C.R.S.~~;
- 15 (XXII) Massage therapy pursuant to article ~~35.5~~ **235** of THIS title 12; ~~C.R.S.~~;
- 16 (XXIII) As a certified nurse aide pursuant to ~~part 1 of~~ article ~~38.1~~ **260** of THIS
- 17 title 12; ~~C.R.S.~~;
- 18 (XXIV) Occupational therapy pursuant to article ~~40.5~~ **270** of THIS title 12; ~~C.R.S.~~;
- 19 (XXV) Respiratory therapy pursuant to article ~~41.5~~ **300** of THIS title 12; ~~C.R.S.~~;
- 20 (XXVI) Pharmacy pursuant to article ~~42.5~~ **280** of THIS title 12; ~~C.R.S.~~;
- 21 (XXVII) As a psychiatric technician pursuant to article ~~42~~ **295** of THIS title 12;
- 22 ~~C.R.S.~~;
- 23 (XXVIII) As a surgical assistant or surgical technologist pursuant to article ~~43.2~~
- 24 **310** of THIS title 12; ~~C.R.S.~~; and
- 25 (XXIX) Naturopathic medicine pursuant to article ~~37.3~~ **250** of THIS title 12.
- 26 ~~C.R.S.~~
- 27 (b) A person who is an applicant under this subsection (3) is not, by virtue of
- 28 inclusion in this section, a health care provider for purposes of any other provision of
- 29 Colorado law.
- 30 (4) When applying for a new license, certification, or registration or to renew,
- 31 reinstate, or reactivate a license, certification, or registration in this state, each applicant
- 32 shall provide the following information to the director, ~~of the division of professions and~~
- 33 ~~occupations~~, in a form and manner determined by the director, as applicable to each
- 34 profession:
- 35 (a) (I) The applicant's full name, including any known aliases;
- 36 (II) The applicant's current address of record and telephone number;
- 37 (III) The applicant's location of practice, if different than the address of record;
- 38 (IV) The applicant's education and training related to ~~his or her~~ THE APPLICANT'S
- 39 profession;
- 40 (V) Information pertaining to any license, certification, or registration to practice

1 in the profession for which the applicant seeks licensure, certification, or registration,
2 issued or held during the immediately preceding ten years, including the license,
3 certification, or registration status and year of issuance;

4 (VI) Any board certifications and specialties, if applicable;

5 (VII) Any affiliations with or clinical privileges held in hospitals or health care
6 facilities;

7 (VIII) Any health-care-related business ownership interests;

8 (IX) Information pertaining to the applicant's employer, if any, including name,
9 current address, and telephone number; and

10 (X) Information pertaining to any health-care-related employment contracts or
11 contracts establishing an independent contractor relationship with any entities if the
12 annual aggregate value of the contracts exceeds five thousand dollars, as adjusted by the
13 director during each license, certification, or registration renewal cycle to reflect changes
14 in the United States department of labor, bureau of labor statistics, consumer price index
15 for Denver-Aurora-Lakewood for all items and all urban consumers, or its applicable
16 predecessor or successor index. Nothing in this subsection (4)(a)(X) requires an applicant
17 to report such information regarding contracts with insurance carriers for reimbursement
18 of health care services provided to patients.

19 (b) Any public disciplinary action taken against the applicant by the director, the
20 applicable state board that regulates the applicant's profession, or the board or licensing
21 agency of any other state or country. The applicant shall provide a copy of the action to
22 the director at the time the application is made.

23 (c) Any agreement or stipulation entered into between the applicant and the
24 director, the applicable state board that regulates the applicant's profession, or the board
25 or licensing agency of any other state or country whereby the applicant agrees to
26 temporarily cease or restrict ~~his or her~~ THE APPLICANT'S practice, or any director or board
27 order restricting or suspending the applicant's license, certification, or registration. The
28 applicant shall provide a copy of the agreement, stipulation, or order to the director at the
29 time the application is made.

30 (d) (I) Any final action that results in an involuntary limitation or probationary
31 status on, or a reduction, nonrenewal, denial, revocation, or suspension of, the applicant's
32 medical staff membership or clinical privileges at any hospital or health care facility
33 occurring on or after September 1, 1990. The applicant shall not be required to report a
34 precautionary or administrative suspension of medical staff membership or clinical
35 privileges, as defined by the director by rule, unless the applicant resigns ~~his or her~~ THE
36 APPLICANT'S medical staff membership or clinical privileges while the precautionary or
37 administrative suspension is pending. To report the information required by this
38 ~~paragraph (d)~~ SUBSECTION (4)(d), the applicant shall complete a form developed by the
39 director that requires the applicant to report only the following information regarding the
40 action:

- 1 (A) The name of the facility or entity that took the action;
2 (B) The date the action was taken;
3 (C) The type of action taken, including any terms and conditions of the action;
4 (D) The duration of the action; and
5 (E) Whether the applicant has fulfilled the terms or conditions of the action, if
6 applicable.

7 (II) Notwithstanding PART 2 OF THIS article ~~36.5 of title 12 30~~, article 3 of title 25,
8 C.R.S., and any provision of law to the contrary, the form completed by the applicant
9 pursuant to this ~~paragraph (d)~~ SUBSECTION (4)(d) is a public record and is not
10 confidential. Compliance with this ~~paragraph (d)~~ SUBSECTION (4)(d) does not constitute a
11 waiver of any privilege or confidentiality conferred by any applicable state or federal
12 law.

13 (e) Any final action of an employer that results in the applicant's loss of
14 employment where the grounds for termination constitute a violation of the laws
15 governing the applicant's practice. To report the information required by this ~~paragraph~~
16 ~~(e)~~ SUBSECTION (4)(e), the applicant shall complete a form developed by the director that
17 requires the applicant to report only the following information regarding the action:

- 18 (I) The name of the employer that terminated the employment; and
19 (II) The date the termination occurred or became effective.

20 (f) Any involuntary surrender of the applicant's United States drug enforcement
21 administration registration. The applicant shall provide a copy of the order requiring the
22 surrender of ~~such~~ THE registration to the director at the time the application is made.

23 (g) Any final criminal conviction or plea arrangement resulting from the
24 commission or alleged commission of a felony or crime of moral turpitude in any
25 jurisdiction at any time after the ~~person~~ APPLICANT has been issued a license,
26 certification, or registration to practice ~~his or her~~ THE APPLICANT'S health care profession
27 in any state or country. The applicant shall provide a copy of the final conviction or plea
28 arrangement to the director at the time the application is made.

29 (h) Any final judgment against, settlement entered into by, or arbitration award
30 paid on behalf of the applicant on or after September 1, 1990, for malpractice. To report
31 the information required by this ~~paragraph (h)~~ SUBSECTION (4)(h), the applicant shall
32 complete a form developed by the director that requires the applicant to report only the
33 following information regarding the malpractice action:

- 34 (I) Whether the action was resolved by a final judgment against, settlement
35 entered into by, or arbitration award paid on behalf of the applicant;
36 (II) The date of the judgment, settlement, or arbitration award;
37 (III) The location or jurisdiction in which the action occurred or was resolved;

38 and

39 (IV) The court in which the final judgment was ordered, the mediator that aided
40 in the settlement, if applicable, or the arbitrator that granted the arbitration award.

1 (i) Any refusal by an issuer of professional liability insurance to issue a policy to
2 the applicant due to past claims experience. The applicant shall provide a copy of the
3 refusal to the director at the time the application is made.

4 (5) In addition to the information required by subsection (4) of this section, an
5 applicant may submit information regarding awards and recognitions ~~he or she~~ THE
6 APPLICANT has received or charity care ~~he or she~~ THE APPLICANT has provided. The
7 director may remove information regarding awards and recognitions that the director
8 finds to be unrelated to the applicant's profession or offensive or inappropriate.

9 (6) The director shall make the information specified in subsections (4) and (5) of
10 this section that is submitted by an applicant readily available to the public in a manner
11 that allows the public to search the information by name, license number, board
12 certification or specialty area, if applicable, or city of the applicant's address of record.
13 The director may satisfy this requirement by posting and allowing the ability to search the
14 information on the director's website or on the website for the state regulatory board that
15 oversees the applicant's practice. If the information is made available on either website,
16 the director shall ensure that the website is updated at least monthly and that the date on
17 which the update occurs is indicated on the website. If the information made available
18 pursuant to this subsection (6) is the same or substantially similar to information the
19 director must make available pursuant to section ~~12-43.2-102 (3), C.R.S.~~ **12-310-**____,
20 the director may elect to use this database as the exclusive means for making the
21 information required by section ~~12-43.2-102 (3), C.R.S.~~ **12-310-**____ publicly available.

22 (7) When disclosing information regarding an applicant to the public, the director
23 or applicable state board that regulates the applicant's profession shall include the
24 following statement or a similar statement that communicates the same meaning:

25 Some studies have shown that there is no significant correlation between
26 malpractice history and a [insert applicable type of health care provider]'s
27 competence. At the same time, the [director or board of _____, as
28 applicable] believes that consumers should have access to malpractice
29 information. To make the best health care decisions, you should view this
30 information in perspective. You could miss an opportunity for high quality
31 care by selecting a health care provider based solely on malpractice history.

32 When considering malpractice data, please keep in mind:

33 Malpractice histories tend to vary by profession and, as applicable, by
34 specialty. Some professions or specialties are more likely than others to be
35 the subject of litigation.

36 You should take into account how long the health care provider has been in
37 practice when considering malpractice averages.

38 The incident causing the malpractice claim may have happened years
39 before a malpractice action is finally resolved. Sometimes, it takes a long
40 time for a malpractice lawsuit to move through the legal system.

1 Some health care providers work primarily with high-risk patients. These
2 health care providers may have malpractice histories that are higher than
3 average because they specialize in cases or patients who are at very high
4 risk for problems.

5 Settlement of a claim may occur for a variety of reasons that do not
6 necessarily reflect negatively on the professional competence or conduct of
7 the health care provider. A payment in settlement of a malpractice action or
8 claim should not be construed as creating a presumption that malpractice
9 has occurred.

10 You may wish to discuss information provided by the [director or board of
11 _____, as applicable], and malpractice generally, with your health
12 care provider.

13 The information posted on the [director's or board of _____]'s, as
14 applicable] website was provided by applicants for a license and applicants
15 for renewal, reinstatement, or reactivation of a license.

16 (8) (a) Except as specified in ~~paragraph (b) of this subsection (8)~~ SUBSECTION
17 (8)(b) OF THIS SECTION, an applicant, licensee, certificate holder, or registrant shall ensure
18 that the information required by subsection (4) of this section is current and shall report
19 any updated information and provide copies of the required documentation to the director
20 within thirty days after the date of the action described in said subsection (4) or as
21 otherwise provided in the article of THIS title 12 C.R.S., that regulates the applicant's,
22 licensee's, certificate holder's, or registrant's profession to ensure that the information
23 provided to the public is as accurate as possible.

24 (b) An applicant shall report updated information regarding the applicant's
25 employer, any health-care-related business ownership interests, and any
26 health-care-related employment contracts or contracts establishing an independent
27 contractor relationship, as required by ~~paragraph (a) of subsection (4)~~ SUBSECTION (4)(a)
28 of this section, within one year after a change in that information.

29 (9) (a) The director may impose an administrative fine not to exceed five
30 thousand dollars against an applicant, licensee, certificate holder, or registrant who fails
31 to comply with this section. The director shall notify the applicable state board that
32 regulates the profession when the director imposes a fine pursuant to this subsection (9).
33 Any fine imposed pursuant to this subsection (9) shall be deposited in the general fund.

34 (b) The imposition of an administrative fine pursuant to this subsection (9) shall
35 not constitute a disciplinary action pursuant to the laws governing the applicant's,
36 licensee's, certificate holder's, or registrant's practice area and shall not preclude the state
37 regulatory board that oversees the applicant's, licensee's, certificate holder's, or
38 registrant's practice area from taking disciplinary action against an applicant, licensee,
39 certificate holder, or registrant for failure to comply with this section. A license,
40 certification, or registration shall not be issued, renewed, reinstated, or reactivated if the

1 applicant has failed to pay a fine imposed pursuant to this subsection (9).

2 (c) Failure of an applicant, licensee, certificate holder, or registrant to comply
3 with this section constitutes unprofessional conduct or grounds for discipline under the
4 specific article of THIS title 12 ~~C.R.S.~~, that regulates the applicant's, licensee's, certificate
5 holder's, or registrant's profession.

6 (10) Nothing in this section relieves an applicant, licensee, certificate holder, or
7 registrant from ~~his or her~~ THE obligation to report adverse actions to the director or
8 applicable state board that regulates the applicant's, LICENSEE'S, CERTIFICATE HOLDER'S
9 OR REGISTRANT'S profession, as required by the applicable laws in THIS title 12 ~~C.R.S.~~,
10 regulating that profession.

11 (11) The director may adopt rules, as necessary, to implement this section.

12 (12) This section is repealed, effective September 1, 2021. ~~Prior to the~~ BEFORE
13 ITS repeal, ~~the department of regulatory agencies shall review~~ the functions of the
14 program under this section as ~~provided in~~ ARE SCHEDULED FOR REVIEW IN ACCORDANCE
15 WITH section 24-34-104.