
Colorado Revised Statutes 2016

TITLE 12

Professions and Occupations

ARTICLE 35.5

Massage Therapists

DISCLAIMER: This is not an official copy of the Colorado Revised Statutes. The Colorado Revised Statutes are available for public use at www.lexisnexis.com/hottopics/colorado by the Committee on Legal Services of the Colorado General Assembly through a contractual arrangement with the LexisNexis Group.

The statutes are copyrighted by the state of Colorado (please see §2-5-115, C.R.S.). Any person wishing to reprint and distribute all or a substantial part of the statutes in either printed or electronic format must obtain prior permission of the Committee on Legal Services; permission is not required to reprint fewer than 200 sections of C.R.S. (please see §2-5-118, C.R.S.).

LexisNexis Group customer support can be reached at 1-800-543-6862.

TITLE 12
Professions and Occupations

ARTICLE 35.5
Massage Therapists

12-35.5-101. Short title. This article shall be known and may be cited as the "Massage Therapy Practice Act".

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.

12-35.5-103. Definitions. As used in this article, 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 division of private and occupational schools in accordance with the provisions of article 59 of this title;

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

(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 "masseur" and "masseuse" are synonymous with the term "massage therapist".

(9) "Person" means a natural person only.

(10) Repealed.

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", "masseur", "masseuse", 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.

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.

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.

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 shall have his or her fingerprints taken by a local law enforcement agency 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 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.

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.

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.

12-35.5-110. Scope of article - exclusions - authority for clinical setting. (1) Nothing in this article 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 59 of this title, 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 12-59-104.

(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 in 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.

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

(g) (I) Failed to notify the director of a physical or mental condition or illness that affects the licensee's ability to treat clients with reasonable skill and safety or that may endanger the health or safety of clients receiving massage services from the licensee;

(II) Failed to act within the limitations created by a physical or mental illness or condition that renders the licensee unable to practice massage therapy with reasonable skill and safety or that may endanger the health or safety of persons under his or her care; or

(III) Failed to comply with the limitations agreed to under a confidential agreement entered pursuant to section 12-35.5-116.5;

(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; or

(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;

(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 paragraph (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) "Therapeutic relationship" means the period of time beginning with the initial massage therapy session and ending upon written termination of the relationship by either party.

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.

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.

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.

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.

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.

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.

12-35.5-116.5. Confidential agreement to limit practice - violation - grounds for discipline. (1) If a massage therapist has a physical or mental illness or condition that renders him or her unable to practice massage therapy with reasonable skill and safety to clients, the massage therapist shall notify the director of the illness or condition in a manner and within a period determined by the director. The director may require the massage therapist to submit to an examination to evaluate the extent of the illness or condition and its impact on the massage therapist's ability to practice massage therapy with reasonable skill and safety to clients.

(2) (a) Upon determining that a massage therapist with a physical or mental illness or condition is able to render limited services with reasonable skill and safety to clients, the director may enter into a confidential agreement with the massage therapist in which the massage therapist agrees to limit his or her practice based on the restrictions imposed by the illness or condition, as determined by the director.

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

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

(3) By entering into an agreement with the director pursuant to this section to limit his or her practice, a 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).

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.

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.

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.

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.