

Second Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 08-1060.01 Kate Meyer

SENATE BILL 08-219

SENATE SPONSORSHIP

Romer, Groff, Morse, Tapia, and Tochtrop

HOUSE SPONSORSHIP

McFadyen and Rice, Carroll T., Kerr A., Liston, Looper, Merrifield, Middleton, Pommer, Primavera, Solano, and Stafford

Senate Committees

Business, Labor and Technology
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING LICENSURE OF MASSAGE THERAPISTS, AND MAKING AN**
102 **APPROPRIATION THEREFOR.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Repeals the "Colorado Massage Parlor Code". Enacts the "Massage Therapy Practice Act", requiring persons who are practicing massage therapy in Colorado to obtain licenses. Sets criteria for licensure. Makes the unauthorized practice of massage therapy grounds for discipline and criminal penalties. Identifies exceptions. Defines terms.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

SENATE
3rd Reading Unamended
April 23, 2008

SENATE
Amended 2nd Reading
April 22, 2008

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

2 **SECTION 1.** 12-48.5-103 (6), Colorado Revised Statutes, is
3 amended to read:

4 **12-48.5-103. Definitions.** As used in this article, unless the
5 context otherwise requires:

6 (6) "Massage parlor" means an establishment providing massage,
7 but it does not include training rooms of public and private schools
8 accredited by the state board of education or approved by the division
9 charged with the responsibility of approving private occupational schools,
10 training rooms of recognized professional or amateur athletic teams, and
11 licensed health care facilities. A facility ~~which~~ THAT is operated for the
12 purpose of massage therapy performed by a massage therapist is not a
13 massage parlor. For purposes of this subsection (6), "massage therapist"
14 means a person who has graduated from a massage therapy school
15 accredited by the state educational board or division charged with the
16 responsibility of approving private occupational schools, or from a school
17 with comparable approval or accreditation from another state with
18 transcripts indicating completion of at least five hundred hours of training
19 in massage therapy HAS THE MEANING SET FORTH IN SECTION 12-35.5-103.
20 For the purposes of this subsection (6), a massage therapy school may
21 include an equivalency program approved by the state educational board
22 or division charged with the responsibility of approving private
23 occupational schools.

24 **SECTION 2.** Title 12, Colorado Revised Statutes, is amended BY
25 THE ADDITION OF A NEW ARTICLE to read:

26 **ARTICLE 35.5**

1 **Massage Therapists**

2 **12-35.5-101. Short title.** THIS ARTICLE SHALL BE KNOWN AND
3 MAY BE CITED AS THE "MESSAGE THERAPY PRACTICE ACT".

4 **12-35.5-102. Legislative declaration.** (1) THE GENERAL
5 ASSEMBLY HEREBY FINDS AND DECLARES THAT IT IS IN THE INTEREST OF
6 THE PUBLIC HEALTH, SAFETY, AND WELFARE TO REQUIRE LICENSURE OF
7 MESSAGE THERAPISTS. BECAUSE PROPER AND SAFE MESSAGE THERAPY IS
8 OF STATEWIDE CONCERN, THIS ARTICLE IS DEEMED TO BE AN EXERCISE OF
9 THE POLICE POWERS OF THE STATE.

10 (2) THE GENERAL ASSEMBLY FURTHER DECLARES THAT THE
11 PRACTICE OF MESSAGE THERAPY BY ANY PERSON NOT IN POSSESSION OF
12 A VALID LICENSE ISSUED PURSUANT TO THIS ARTICLE IS ADVERSE TO THE
13 BEST INTERESTS OF THE PEOPLE OF THIS STATE. IT IS NOT, HOWEVER, THE
14 INTENT OF THE GENERAL ASSEMBLY IN ENACTING THIS ARTICLE TO
15 PREVENT, RESTRICT, OR INHIBIT THE PRACTICE OF MESSAGE THERAPY BY
16 ANY DULY LICENSED PERSON.

17 **12-35.5-103. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE
18 CONTEXT OTHERWISE REQUIRES:

19 (1) "ADVERTISE" MEANS TO PUBLISH, DISPLAY, OR DISSEMINATE
20 INFORMATION AND INCLUDES, BUT IS NOT LIMITED TO, THE ISSUANCE OF
21 ANY CARD, SIGN, OR DIRECT MAIL, OR CAUSING OR PERMITTING ANY SIGN
22 OR MARKING ON OR IN ANY BUILDING OR STRUCTURE OR IN ANY
23 NEWSPAPER, MAGAZINE, OR DIRECTORY, OR ANY ANNOUNCEMENT OR
24 DISPLAY VIA ANY TELEVISED, COMPUTERIZED, ELECTRONIC, OR
25 TELEPHONIC NETWORKS OR MEDIA.

26 (2) "ADVISORY COMMITTEE" MEANS THE MESSAGE THERAPIST
27 ADVISORY COMMITTEE CREATED PURSUANT TO SECTION 12-35.5-117.

1 (3) "APPLICANT" MEANS A PERSON APPLYING FOR A MASSAGE
2 THERAPY LICENSE.

3 (4) "APPROVED MASSAGE SCHOOL" MEANS:

4 (a) A MASSAGE THERAPY EDUCATIONAL SCHOOL THAT HAS A
5 VALID CERTIFICATE OF APPROVAL FROM THE DIVISION OF PRIVATE AND
6 OCCUPATIONAL SCHOOLS ___ IN ACCORDANCE WITH THE PROVISIONS OF
7 ARTICLE 59 OF THIS TITLE;

8 (b) A MASSAGE THERAPY EDUCATIONAL PROGRAM CERTIFIED BY
9 THE COLORADO COMMUNITY COLLEGE SYSTEM; OR

10 (c) A MASSAGE THERAPY EDUCATIONAL ENTITY OR PROGRAM
11 THAT IS ACCREDITED BY A NATIONALLY RECOGNIZED ACCREDITING
12 AGENCY. ___

13 (5) "COMPENSATION" MEANS SOMETHING OF VALUE OR BENEFIT,
14 WHETHER IN CASH, IN KIND, OR IN ANY OTHER FORM.

15 (6) "DIRECTOR" MEANS THE DIRECTOR OF THE DIVISION.

16 (7) "DIVISION" MEANS THE DIVISION OF REGISTRATIONS IN THE
17 DEPARTMENT OF REGULATORY AGENCIES.

18 (8) "LICENSE" MEANS A VALID AND CURRENT LICENSE TO PRACTICE
19 MASSAGE THERAPY ISSUED PURSUANT TO THIS ARTICLE.

20 (9) "LICENSEE" MEANS A MASSAGE THERAPIST WITH A LICENSE.

21 (10) "MASSAGE" OR "MASSAGE THERAPY" MEANS A SYSTEM OF
22 STRUCTURED TOUCH, PALPATION, OR MOVEMENT OF THE SOFT TISSUE OF
23 ANOTHER PERSON'S BODY IN ORDER TO ENHANCE OR RESTORE THE
24 GENERAL HEALTH AND WELL-BEING OF THE RECIPIENT. SUCH SYSTEM
25 INCLUDES, BUT IS NOT LIMITED TO, TECHNIQUES SUCH AS EFFLEURAGE,
26 COMMONLY CALLED STROKING OR GLIDING; PETRISSAGE, COMMONLY
27 CALLED KNEADING; TAPOTEMENT OR PERCUSSION; FRICTION; VIBRATION;

1 COMPRESSION; PASSIVE AND ACTIVE STRETCHING WITHIN THE NORMAL
2 ANATOMICAL RANGE OF MOVEMENT; HYDROMASSAGE; AND THERMAL
3 MASSAGE. SUCH TECHNIQUES MAY BE APPLIED WITH OR WITHOUT THE AID
4 OF LUBRICANTS, SALT OR HERBAL PREPARATIONS, WATER, HEAT, OR A
5 MASSAGE DEVICE THAT MIMICS OR ENHANCES THE ACTIONS POSSIBLE BY
6 HUMAN HANDS. "MASSAGE" OR "MASSAGE THERAPY" DOES NOT INCLUDE
7 THERAPEUTIC EXERCISE, INTENTIONAL JOINT MOBILIZATION OR
8 MANIPULATION, OR ANY OF THE METHODS DESCRIBED IN SECTION
9 12-35.5-110(1)(e).

10 (11) "MASSAGE THERAPIST" MEANS AN INDIVIDUAL LICENSED BY
11 THIS STATE TO ENGAGE IN THE PRACTICE OF MASSAGE THERAPY. THE
12 TERMS "MASSEUSE" AND "MASSEUR" ARE SYNONYMOUS WITH THE TERM
13 "MASSAGE THERAPIST".

14 (12) "PERSON" MEANS A NATURAL PERSON ONLY.

15 ==
16 ==

17 **12-35.5-104. Use of massage titles restricted.** ONLY A PERSON
18 LICENSED UNDER THIS ARTICLE AS A MASSAGE THERAPIST MAY USE THE
19 TITLES "MASSAGE THERAPIST", "LICENSED MASSAGE THERAPIST",
20 "MASSAGE PRACTITIONER", "MASSEUSE", "MASSEUR", THE LETTERS "M.T."
21 OR "L.M.T.", OR ANY OTHER GENERALLY ACCEPTED TERMS, LETTERS, OR
22 FIGURES THAT INDICATE THAT THE PERSON IS A MASSAGE THERAPIST.

23 **12-35.5-105. Limitations on authority.** (1) NOTHING IN THIS
24 ARTICLE SHALL BE CONSTRUED AS AUTHORIZING A MASSAGE THERAPIST
25 TO PERFORM ANY OF THE FOLLOWING ACTS:

26 (a) THE PRACTICE OF MEDICINE PURSUANT TO ARTICLE 36 OF THIS
27 TITLE;

1 (b) THE PRACTICE OF PHYSICAL THERAPY PURSUANT TO ARTICLE
2 41 OF THIS TITLE;

3 (c) THE PRACTICE OF CHIROPRACTIC PURSUANT TO ARTICLE 33 OF
4 THIS TITLE; OR

5 (d) ANY OTHER FORMS OF HEALING OR HEALING ARTS NOT
6 AUTHORIZED BY THIS ARTICLE.

7 **12-35.5-106. License required.** ON OR AFTER APRIL 1, 2009,
8 EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE, A PERSON IN THIS
9 STATE WHO PRACTICES MASSAGE THERAPY OR WHO REPRESENTS ONESELF
10 AS BEING ABLE TO PRACTICE MASSAGE THERAPY MUST POSSESS A VALID
11 LICENSE ISSUED BY THE DIRECTOR PURSUANT TO THIS ARTICLE AND RULES
12 PROMULGATED PURSUANT TO THIS ARTICLE.

13 **12-35.5-107. Licensure - reciprocity - denial of license**
14 **application.** (1) EVERY APPLICANT FOR A LICENSE TO PRACTICE
15 MASSAGE THERAPY SHALL:

16 (a) ATTAIN A DEGREE, DIPLOMA, OR OTHERWISE SUCCESSFULLY
17 COMPLETE A MASSAGE THERAPY PROGRAM THAT CONSISTS OF AT LEAST
18 FIVE HUNDRED TOTAL HOURS OF COURSE WORK AND CLINICAL WORK FROM
19 AN APPROVED MASSAGE SCHOOL;

20 (b) PASS ONE OF THE FOLLOWING EXAMINATIONS:

21 (I) THE MASSAGE AND BODYWORK EXAMINATION OFFERED BY THE
22 FEDERATION OF STATE MASSAGE THERAPY BOARDS;

23 (II) A NATIONAL CERTIFICATION EXAMINATION OFFERED BY THE
24 NATIONAL CERTIFICATION BOARD OF THERAPEUTIC MASSAGE AND
25 BODYWORK; OR

26 (III) AN EXAMINATION APPROVED BY THE DIRECTOR;

27 (c) SUBMIT AN APPLICATION IN THE FORM AND MANNER SPECIFIED

1 BY THE DIRECTOR;

2 (d) PAY A FEE IN AN AMOUNT DETERMINED BY THE DIRECTOR; AND

3 (e) SUBMIT TO A CRIMINAL HISTORY RECORD CHECK IN THE FORM
4 AND MANNER AS DESCRIBED IN SUBSECTION (2) OF THIS SECTION.

5 (2) IN ADDITION TO THE REQUIREMENTS OF SUBSECTION (1) OF THIS
6 SECTION, EACH APPLICANT SHALL HAVE HIS OR HER FINGERPRINTS TAKEN
7 BY A LOCAL LAW ENFORCEMENT AGENCY FOR THE PURPOSE OF OBTAINING
8 A FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK. THE
9 APPLICANT IS REQUIRED TO SUBMIT PAYMENT BY CERTIFIED CHECK OR
10 MONEY ORDER FOR THE FINGERPRINTS AND FOR THE ACTUAL COSTS OF THE
11 RECORD CHECK AT THE TIME THE FINGERPRINTS ARE SUBMITTED TO THE
12 COLORADO BUREAU OF INVESTIGATION. UPON RECEIPT OF FINGERPRINTS
13 AND RECEIPT OF THE PAYMENT FOR COSTS, THE COLORADO BUREAU OF
14 INVESTIGATION SHALL CONDUCT A STATE AND NATIONAL
15 FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK UTILIZING
16 RECORDS OF THE COLORADO BUREAU OF INVESTIGATION AND THE
17 FEDERAL BUREAU OF INVESTIGATION AND SHALL FORWARD THE RESULTS
18 OF THE CRIMINAL HISTORY RECORD CHECK TO THE DIRECTOR. _____

19 (3) AFTER AN APPLICANT HAS FULFILLED THE REQUIREMENTS OF
20 SUBSECTIONS (1) AND (2) OF THIS SECTION, THE DIRECTOR SHALL ISSUE A
21 LICENSE TO THE APPLICANT.

22 _____
23 (4) THE DIRECTOR SHALL ISSUE A LICENSE TO AN APPLICANT WHO
24 OTHERWISE MEETS THE QUALIFICATIONS SET FORTH IN THIS ARTICLE AND
25 WHO SUBMITS SATISFACTORY PROOF AND CERTIFIES UNDER PENALTY OF
26 PERJURY THAT THE APPLICANT CURRENTLY POSSESSES AN UNRESTRICTED
27 LICENSE IN GOOD STANDING TO PRACTICE MASSAGE THERAPY UNDER THE

1 LAWS OF ANOTHER STATE OR TERRITORY OF THE UNITED STATES OR A
2 FOREIGN COUNTRY IF:

3 (a) THE DIRECTOR DETERMINES THAT THE QUALIFICATIONS FOR
4 MASSAGE THERAPY LICENSURE IN THE OTHER STATE, TERRITORY, OR
5 FOREIGN COUNTRY ARE SUBSTANTIALLY EQUIVALENT TO THOSE REQUIRED
6 BY THIS SECTION;

7 (b) THE APPLICANT SUBMITS PROOF OF EXPERIENCE AND
8 COMPETENCY ON A FORM DETERMINED BY THE DIRECTOR;

9 (c) THE APPLICANT SUBMITS TO A CRIMINAL HISTORY RECORD
10 CHECK PURSUANT TO SUBSECTION (2) OF THIS SECTION; AND

11 (d) THE DIRECTOR REVIEWS ANY DISCIPLINARY ACTIONS TAKEN
12 AGAINST THE APPLICANT.

13 (5) NOTWITHSTANDING ANY PROVISION OF THIS SECTION, THE
14 DIRECTOR MAY DENY A LICENSE IF THE APPLICANT HAS COMMITTED ANY
15 ACT THAT WOULD BE GROUNDS FOR DISCIPLINARY ACTION UNDER SECTION
16 12-35.5-111 OR IF THE DIRECTOR DETERMINES, SUBSEQUENT TO THE
17 CRIMINAL HISTORY RECORD CHECK, THAT THE APPLICANT WAS CONVICTED
18 OF OR PLEAD GUILTY TO A CHARGE OF A SEX OFFENSE AS DEFINED IN
19 SECTION 18-1.3-1003, C.R.S., OR ANY PROSTITUTION-RELATED OFFENSE,
20 WHETHER OR NOT THE ACT WAS COMMITTED IN COLORADO.

21 **12-35.5-108. License expiration - effect - renewal -**
22 **reinstatement - penalty.** (1) LICENSES ISSUED PURSUANT TO THIS
23 ARTICLE SHALL BE VALID FOR THE PERIOD OF TIME ESTABLISHED BY THE
24 DIRECTOR. LICENSES SHALL BE RENEWED IN ACCORDANCE WITH THE
25 SCHEDULE SET FORTH BY THE DIRECTOR.

26 (2) A LICENSE NOT RENEWED WITHIN THE TIME PERIOD SPECIFIED
27 IN THE SCHEDULE ESTABLISHED BY THE DIRECTOR SHALL BE DEEMED

1 EXPIRED. A PERSON IN POSSESSION OF AN EXPIRED LICENSE SHALL NOT
2 PRACTICE MASSAGE THERAPY UNTIL HE OR SHE REINSTATES SUCH LICENSE.

3 (3) THE DIRECTOR SHALL ESTABLISH APPLICATION FORMS AND FEE
4 AMOUNTS FOR RENEWAL OF LICENSES AND REINSTATEMENT OF EXPIRED
5 LICENSES. A PERSON RENEWING OR REINSTATING A LICENSE SHALL
6 SUBMIT AN APPLICATION IN THE FORM AND MANNER SET FORTH BY THE
7 DIRECTOR AND SHALL PAY A FEE IN AN AMOUNT SET FORTH BY THE
8 DIRECTOR.

9 **12-35.5-109. Fees.** ALL FEES COLLECTED PURSUANT TO THIS
10 ARTICLE SHALL BE DETERMINED, COLLECTED, AND APPROPRIATED IN THE
11 MANNER SET FORTH IN SECTION 24-34-105, C.R.S., AND PERIODICALLY
12 ADJUSTED IN ACCORDANCE WITH SECTION 24-75-402, C.R.S. THE FEES
13 SHALL BE ADEQUATE TO COVER THE DIRECT AND INDIRECT EXPENSES
14 INCURRED FOR IMPLEMENTATION OF THIS ARTICLE.

15 **12-35.5-110. Scope of article - exclusions - authority for**
16 **clinical setting.** (1) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO
17 PROHIBIT OR REQUIRE A MASSAGE THERAPY LICENSE FOR ANY OF THE
18 FOLLOWING:

19 (a) THE PRACTICE OF MASSAGE THERAPY THAT IS A PART OF A
20 PROGRAM OF STUDY BY STUDENTS ENROLLED IN A MASSAGE THERAPY
21 PROGRAM AT AN APPROVED MASSAGE THERAPY SCHOOL. STUDENTS
22 ENROLLED IN SUCH PROGRAMS SHALL BE IDENTIFIED AS "STUDENT
23 MASSAGE THERAPISTS" AND SHALL NOT HOLD THEMSELVES OUT AS
24 LICENSED MASSAGE THERAPISTS. STUDENT MASSAGE THERAPISTS SHALL
25 PRACTICE MASSAGE THERAPY ONLY UNDER THE IMMEDIATE SUPERVISION
26 OF A MASSAGE THERAPIST HOLDING A VALID AND CURRENT LICENSE.
27 FACULTY MEMBERS TEACHING NONCLINICAL ASPECTS OF MASSAGE

1 THERAPY SHALL NOT BE REQUIRED TO BE LICENSED MASSAGE THERAPISTS.

2 (b) THE PRACTICE OF MASSAGE THERAPY BY A PERSON EMPLOYED
3 BY THE UNITED STATES GOVERNMENT OR ANY FEDERAL GOVERNMENTAL
4 ENTITY WHILE ACTING IN THE COURSE AND SCOPE OF SUCH EMPLOYMENT;

5 (c) THE PRACTICE OF MASSAGE THERAPY BY A PERSON WHO IS A
6 RESIDENT OF ANOTHER STATE AND WHO IS IN COLORADO TEMPORARILY
7 UNDER ONE OF THE FOLLOWING CIRCUMSTANCES:

8 (I) THE PERSON IS TRAVELING WITH AND ADMINISTERING MASSAGE
9 THERAPY TO MEMBERS OF A PROFESSIONAL OR AMATEUR SPORTS
10 ORGANIZATION, DANCE TROUPE, OR OTHER SUCH ATHLETIC
11 ORGANIZATION;

12 (II) THE PERSON PROVIDES MASSAGE THERAPY, WITHOUT
13 COMPENSATION, AT A PUBLIC ATHLETIC EVENT SUCH AS THE OLYMPIC
14 GAMES, SPECIAL OLYMPICS, YOUTH OLYMPICS, OR MARATHONS, IF THE
15 MASSAGE THERAPY IS PROVIDED NO EARLIER THAN FORTY-EIGHT HOURS
16 PRIOR TO THE COMMENCEMENT OF THE EVENT AND NO LATER THAN
17 TWENTY-FOUR HOURS AFTER THE CONCLUSION OF THE EVENT;

18 (III) THE PERSON IS PART OF AN EMERGENCY RESPONSE TEAM OR
19 IS OTHERWISE WORKING WITH OR FOR DISASTER RELIEF OFFICIALS TO
20 PROVIDE MASSAGE THERAPY IN CONNECTION WITH A DISASTER SITUATION;
21 OR

22 (IV) THE PERSON IS PARTICIPATING AS A STUDENT IN OR
23 INSTRUCTOR OF AN EDUCATIONAL PROGRAM, IF:

24 (A) THE PROGRAM DOES NOT EXCEED SIXTEEN DAYS IN DURATION;
25 OR

26 (B) THE PROGRAM EXCEEDS SIXTEEN DAYS IN DURATION AND THE
27 PERSON OBTAINS A GRANT OF AN EXTENSION OF TIME FROM THE DIRECTOR

1 PRIOR TO THE SEVENTEENTH DAY;

2 (d) THE PERSON PROVIDES MASSAGE THERAPY TO MEMBERS OF THE
3 PERSON'S IMMEDIATE FAMILY;

4 (e) THE PERSON PROVIDES ALTERNATIVE METHODS THAT EMPLOY
5 CONTACT AND DOES NOT HOLD HIMSELF OR HERSELF OUT AS A MASSAGE
6 THERAPIST. FOR THE PURPOSES OF THIS PARAGRAPH (e), "ALTERNATIVE
7 METHODS THAT EMPLOY CONTACT" INCLUDE, BUT ARE NOT LIMITED TO:

8 (I) PRACTICES IN WHICH ONLY THE SOFT TISSUE OF A PERSON'S
9 HANDS, FEET, OR EARS ARE MANIPULATED;

10 (II) PRACTICES USING TOUCH, WORDS, AND DIRECTED MOVEMENTS
11 TO DEEPEN A PERSON'S AWARENESS OF MOVEMENT PATTERNS IN HIS OR
12 HER BODY, SUCH AS THE FELDENKRAIS METHOD, THE TRAGER APPROACH,
13 AND BODY-MIND CENTERING;

14 (III) PRACTICES USING TOUCH TO AFFECT THE HUMAN ENERGY
15 SYSTEMS, SUCH AS REIKI, SHIATSU, AND ASIAN OR POLARITY BODYWORK
16 THERAPY; AND

17 (IV) STRUCTURAL INTEGRATION PRACTICES SUCH AS ROLFING,
18 HELLERWORK, AND MUSCLE ACTIVATION TECHNIQUES.

19 **12-35.5-111. Grounds for discipline.** (1) THE DIRECTOR IS
20 AUTHORIZED TO TAKE DISCIPLINARY ACTION PURSUANT TO SECTION
21 12-35.5-112 AGAINST ANY PERSON WHO HAS:

22 (a) ADVERTISED, REPRESENTED, OR HELD HIMSELF OR HERSELF
23 OUT AS A LICENSED MASSAGE THERAPIST AFTER THE EXPIRATION,
24 SUSPENSION, OR REVOCATION OF HIS OR HER LICENSE;

25 (b) COMMITTED AN ACT THAT DOES NOT MEET THE GENERALLY
26 ACCEPTED STANDARDS OF MASSAGE THERAPY PRACTICE, OR HAS FAILED
27 TO PERFORM AN ACT NECESSARY TO MEET GENERALLY ACCEPTED

1 STANDARDS OF MASSAGE THERAPY PRACTICE;

2 (c) ENGAGED IN A SEXUAL ACT WITH A CLIENT WHILE A
3 THERAPEUTIC RELATIONSHIP EXISTS. FOR THE PURPOSES OF THIS
4 PARAGRAPH (c):

5 (I) "SEXUAL ACT" MEANS SEXUAL CONTACT, SEXUAL INTRUSION,
6 OR SEXUAL PENETRATION AS DEFINED IN SECTION 18-3-401, C.R.S.

7 (II) "THERAPEUTIC RELATIONSHIP" MEANS THE PERIOD OF TIME
8 COMMENCING WITH THE INITIAL SESSION OF MASSAGE AND ENDING UPON
9 WRITTEN TERMINATION OF THE RELATIONSHIP FROM EITHER PARTY.

10 (d) FAILED TO REFER A PATIENT TO A GENERAL HEALTH CARE
11 PRACTITIONER WHEN THE SERVICES REQUIRED BY THE CLIENT ARE BEYOND
12 THE LEVEL OF COMPETENCE OF THE MASSAGE THERAPIST OR BEYOND THE
13 SCOPE OF MASSAGE PRACTICE;

14 (e) FAILED TO PROVIDE ADEQUATE SUPERVISION TO STUDENT
15 MASSAGE THERAPISTS ACTING UNDER THE DIRECTION OF THE LICENSEE;

16 (f) FAILED TO KEEP ACCURATE AND CURRENT RECORDS OR
17 FALSIFIED OR MADE INCORRECT ENTRIES OF AN ESSENTIAL NATURE ON
18 RECORDS;

19 (g) FALSIFIED INFORMATION IN ANY APPLICATION OR ATTEMPTED
20 TO OBTAIN OR OBTAINED A LICENSE BY FRAUD, DECEPTION, OR
21 MISREPRESENTATION;

22 (h) FRAUDULENTLY OBTAINED OR FURNISHED A MASSAGE
23 THERAPY LICENSE; A RENEWAL OR REINSTATEMENT OF A LICENSE,
24 DIPLOMA, CERTIFICATE, OR RECORD; OR AIDED AND ABETTED ANY SUCH
25 ACTS;

26 (i) A DEPENDENCE ON OR ADDICTION TO ALCOHOL OR ANY
27 HABIT-FORMING DRUG OR ABUSES OR ENGAGES IN THE HABITUAL OR

1 EXCESSIVE USE OF ANY SUCH HABIT-FORMING DRUG OR ANY CONTROLLED
2 SUBSTANCE AS DEFINED IN SECTION 18-18-102, C.R.S., BUT THE DIRECTOR
3 MAY TAKE INTO ACCOUNT THE LICENSEE'S PARTICIPATION IN A
4 REHABILITATION PROGRAM WHEN CONSIDERING DISCIPLINARY ACTION;

5 (j) A PHYSICAL OR MENTAL CONDITION OR DISABILITY THAT
6 RENDERS THE LICENSEE UNABLE TO PROVIDE MASSAGE THERAPY WITH
7 REASONABLE SKILL AND SAFETY OR THAT MAY ENDANGER THE HEALTH OR
8 SAFETY OF CLIENTS RECEIVING MASSAGE SERVICES;

9 (k) REFUSED TO SUBMIT TO A PHYSICAL OR MENTAL EXAMINATION
10 WHEN SO ORDERED BY THE DIRECTOR PURSUANT TO SECTION 12-35.5-114;

11 (l) FAILED TO NOTIFY THE DIRECTOR, IN WRITING, OF THE ENTRY
12 OF A FINAL JUDGMENT BY A COURT OF COMPETENT JURISDICTION IN FAVOR
13 OF ANY PARTY AND AGAINST THE LICENSEE FOR MALPRACTICE OF
14 MASSAGE THERAPY OR ANY SETTLEMENT BY THE LICENSEE IN RESPONSE
15 TO CHARGES OR ALLEGATIONS OF MALPRACTICE OF MASSAGE THERAPY.
16 SUCH NOTICE SHALL BE GIVEN WITHIN NINETY DAYS AFTER THE ENTRY OF
17 THE JUDGMENT OR SETTLEMENT AND, IN THE CASE OF A JUDGMENT, SHALL
18 CONTAIN THE NAME OF THE COURT, THE CASE NUMBER, AND THE NAMES
19 OF ALL PARTIES TO THE ACTION.

20 (m) BEEN CONVICTED OF A FELONY OR PLED GUILTY OR NOLO
21 CONTENDERE TO A FELONY OR COMMITTED ANY ACT SPECIFIED IN SECTION
22 12-35.5-113. A CERTIFIED COPY OF THE JUDGMENT OF A COURT OF
23 COMPETENT JURISDICTION OF A CONVICTION OR PLEA SHALL BE
24 CONCLUSIVE EVIDENCE OF THE CONVICTION OR PLEA. IN CONSIDERING THE
25 DISCIPLINARY ACTION, THE DIRECTOR SHALL BE GOVERNED BY THE
26 PROVISIONS OF SECTION 24-5-101, C.R.S.

27 (n) ADVERTISED, REPRESENTED, HELD HIMSELF OR HERSELF OUT

1 IN ANY MANNER, OR USED ANY DESIGNATION IN CONNECTION WITH HIS OR
2 HER NAME AS A MASSAGE THERAPIST WITHOUT BEING LICENSED OR
3 EXEMPT PURSUANT TO THIS ARTICLE; OR

4 (o) VIOLATED OR AIDED OR ABETTED A VIOLATION OF ANY
5 PROVISION OF THIS ARTICLE, ANY RULE ADOPTED UNDER THIS ARTICLE, OR
6 ANY LAWFUL ORDER OF THE DIRECTOR.

7 **12-35.5-112. Disciplinary proceedings - injunctions -**
8 **investigations - letters of admonition - hearings - judicial review.**

9 (1) THE DIRECTOR MAY REVOKE, SUSPEND, DENY, OR REFUSE TO RENEW
10 A LICENSE OR PLACE ON PROBATION OR ISSUE A LETTER OF ADMONITION TO
11 A LICENSEE IN ACCORDANCE WITH THE DISCIPLINARY PROCEEDINGS
12 DESCRIBED IN THIS SECTION UPON PROOF THAT THE PERSON COMMITTED
13 A VIOLATION OF SECTION 12-35.5-111.

14 (2) THE DIRECTOR MAY REQUEST THE ATTORNEY GENERAL TO
15 SEEK AN INJUNCTION, IN ANY COURT OF COMPETENT JURISDICTION, TO
16 ENJOIN ANY PERSON FROM COMMITTING AN ACT PROHIBITED BY THIS
17 ARTICLE. WHEN SEEKING AN INJUNCTION UNDER THIS SUBSECTION (2),
18 THE ATTORNEY GENERAL SHALL NOT BE REQUIRED TO ALLEGE OR PROVE
19 THE INADEQUACY OF ANY REMEDY AT LAW OR THAT SUBSTANTIAL OR
20 IRREPARABLE DAMAGE IS LIKELY TO RESULT FROM A CONTINUED
21 VIOLATION OF THIS ARTICLE.

22 (3) (a) THE DIRECTOR IS AUTHORIZED TO INVESTIGATE, HOLD
23 HEARINGS, AND GATHER EVIDENCE IN ALL MATTERS RELATED TO THE
24 EXERCISE AND PERFORMANCE OF THE POWERS AND DUTIES OF THE
25 DIRECTOR PURSUANT TO ARTICLE 4 OF TITLE 24, C.R.S., AND THIS
26 ARTICLE.

27 (b) THE DIRECTOR OR AN ADMINISTRATIVE LAW JUDGE SHALL

1 HAVE THE POWER TO ADMINISTER OATHS, TAKE AFFIRMATIONS OF
2 WITNESSES, AND ISSUE SUBPOENAS TO COMPEL THE ATTENDANCE OF
3 WITNESSES AND THE PRODUCTION OF ALL RELEVANT PAPERS, BOOKS,
4 RECORDS, DOCUMENTARY EVIDENCE, AND MATERIALS IN ANY HEARING,
5 INVESTIGATION, ACCUSATION, OR OTHER MATTER COMING BEFORE THE
6 DIRECTOR. THE DIRECTOR MAY APPOINT AN ADMINISTRATIVE LAW JUDGE
7 PURSUANT TO PART 10 OF ARTICLE 30 OF TITLE 24, C.R.S., TO CONDUCT
8 HEARINGS, TAKE EVIDENCE, AND TO MAKE FINDINGS AND REPORT THEM TO
9 THE DIRECTOR.

10 (c) UPON FAILURE OF ANY WITNESS TO COMPLY WITH SUCH
11 SUBPOENA OR PROCESS, THE DISTRICT COURT OF THE COUNTY IN WHICH
12 THE SUBPOENAED PERSON OR LICENSEE RESIDES OR CONDUCTS BUSINESS,
13 UPON APPLICATION BY THE DIRECTOR WITH NOTICE TO THE SUBPOENAED
14 PERSON OR LICENSEE, MAY ISSUE TO THE PERSON OR LICENSEE AN ORDER
15 REQUIRING THAT PERSON OR LICENSEE TO APPEAR BEFORE THE DIRECTOR;
16 TO PRODUCE THE RELEVANT PAPERS, BOOKS, RECORDS, DOCUMENTARY
17 EVIDENCE, OR MATERIALS IF SO ORDERED; OR TO GIVE EVIDENCE
18 TOUCHING THE MATTER UNDER INVESTIGATION OR IN QUESTION. FAILURE
19 TO OBEY THE ORDER OF THE COURT MAY BE PUNISHED BY THE COURT AS
20 A CONTEMPT OF COURT.

21 (4) (a) THE DIRECTOR, THE DIRECTOR'S STAFF, ANY PERSON ACTING
22 AS A WITNESS OR CONSULTANT TO THE DIRECTOR, ANY WITNESS
23 TESTIFYING IN A PROCEEDING AUTHORIZED UNDER THIS ARTICLE, AND ANY
24 PERSON WHO LODGES A COMPLAINT PURSUANT TO THIS ARTICLE SHALL BE
25 IMMUNE FROM LIABILITY IN ANY CIVIL ACTION BROUGHT AGAINST HIM OR
26 HER FOR ACTS OCCURRING WHILE ACTING IN HIS OR HER CAPACITY AS
27 DIRECTOR, STAFF, CONSULTANT, OR WITNESS, RESPECTIVELY, IF SUCH

1 INDIVIDUAL WAS ACTING IN GOOD FAITH WITHIN THE SCOPE OF HIS OR HER
2 RESPECTIVE CAPACITY, MADE A REASONABLE EFFORT TO OBTAIN THE
3 FACTS OF THE MATTER AS TO WHICH HE OR SHE ACTED, AND ACTED IN THE
4 REASONABLE BELIEF THAT THE ACTION TAKEN BY HIM OR HER WAS
5 WARRANTED BY THE FACTS.

6 (b) A PERSON WHO IN GOOD FAITH MAKES A COMPLAINT OR
7 REPORT OR PARTICIPATES IN AN INVESTIGATIVE OR ADMINISTRATIVE
8 PROCEEDING PURSUANT TO THIS ARTICLE SHALL BE IMMUNE FROM
9 LIABILITY, CIVIL OR CRIMINAL, THAT OTHERWISE MIGHT RESULT FROM
10 SUCH PARTICIPATION.

11 (5) AN EMPLOYER OF A MASSAGE THERAPIST SHALL REPORT TO
12 THE DIRECTOR ANY DISCIPLINARY ACTION TAKEN AGAINST THE MASSAGE
13 THERAPIST OR THE RESIGNATION OF SUCH MASSAGE THERAPIST IN LIEU OF
14 DISCIPLINARY ACTION FOR CONDUCT THAT VIOLATES THIS ARTICLE.

15 (6) ON COMPLETION OF AN INVESTIGATION, THE DIRECTOR SHALL
16 FIND ONE OF THE FOLLOWING:

17 (a) THE COMPLAINT IS WITHOUT MERIT AND NO FURTHER ACTION
18 NEED BE TAKEN WITH REFERENCE THERETO;

19 (b) THERE IS NO REASONABLE CAUSE TO WARRANT FURTHER
20 ACTION;

21 (c) THE INVESTIGATION DISCLOSES AN INSTANCE OF CONDUCT
22 THAT DOES NOT WARRANT FORMAL ACTION BY THE DIRECTOR AND
23 SHOULD BE DISMISSED, BUT IN WHICH THE INQUIRY PANEL HAS NOTICED
24 INDICATIONS OF POSSIBLE ERRANT CONDUCT BY THE LICENSEE THAT
25 COULD LEAD TO SERIOUS CONSEQUENCES IF NOT CORRECTED. IN SUCH A
26 CASE, A CONFIDENTIAL LETTER OF CONCERN MAY BE ISSUED AND SENT TO
27 THE LICENSEE. ==

1 (d) THE COMPLAINT OR INVESTIGATION DISCLOSES AN INSTANCE
2 OF CONDUCT THAT, IN THE OPINION OF THE DIRECTOR, DOES NOT WARRANT
3 FORMAL ACTION BUT SHOULD NOT BE DISMISSED AS BEING WITHOUT
4 MERIT. IN SUCH CASES, A LETTER OF ADMONITION MAY BE ISSUED TO THE
5 LICENSEE PURSUANT TO SUBSECTION (7) OF THIS SECTION.

6 (e) THE COMPLAINT DISCLOSES MISCONDUCT BY THE LICENSEE
7 THAT WARRANTS FORMAL ACTION. WHEN A COMPLAINT OR AN
8 INVESTIGATION DISCLOSES AN INSTANCE OF MISCONDUCT THAT, IN THE
9 OPINION OF THE DIRECTOR, WARRANTS FORMAL ACTION, THE COMPLAINT
10 SHALL NOT BE RESOLVED BY A DEFERRED SETTLEMENT, ACTION,
11 JUDGMENT, OR PROSECUTION. RATHER, THE DIRECTOR SHALL INITIATE
12 DISCIPLINARY PROCEEDINGS PURSUANT TO SUBSECTION (8) OF THIS
13 SECTION.

14 (7) (a) WHEN A COMPLAINT OR INVESTIGATION DISCLOSES AN
15 INSTANCE OF MISCONDUCT THAT, IN THE OPINION OF THE DIRECTOR, DOES
16 NOT WARRANT FORMAL ACTION BY THE DIRECTOR BUT THAT SHOULD NOT
17 BE DISMISSED AS BEING WITHOUT MERIT, A LETTER OF ADMONITION MAY
18 BE ISSUED AND SENT, BY CERTIFIED MAIL, TO THE LICENSEE.

19 (b) WHEN A LETTER OF ADMONITION IS SENT BY THE DIRECTOR, BY
20 CERTIFIED MAIL, TO A LICENSEE, THE LICENSEE SHALL BE ADVISED THAT
21 HE OR SHE HAS THE RIGHT TO REQUEST IN WRITING, WITHIN TWENTY DAYS
22 AFTER RECEIPT OF THE LETTER, THAT FORMAL DISCIPLINARY PROCEEDINGS
23 BE INITIATED TO ADJUDICATE THE PROPRIETY OF THE CONDUCT UPON
24 WHICH THE LETTER OF ADMONITION IS BASED.

25 (c) IF THE REQUEST FOR ADJUDICATION IS TIMELY MADE, THE
26 LETTER OF ADMONITION SHALL BE DEEMED VACATED AND THE MATTER
27 SHALL BE PROCESSED BY MEANS OF FORMAL DISCIPLINARY PROCEEDINGS.

1 (8) (a) A DISCIPLINARY PROCEEDING SHALL BE COMMENCED WHEN
2 THE DIRECTOR HAS REASONABLE GROUNDS TO BELIEVE THAT A LICENSEE
3 HAS COMMITTED ANY ACT THAT VIOLATES SECTION 12-35.5-111.

4 (b) DISCIPLINARY PROCEEDINGS SHALL BE CONDUCTED PURSUANT
5 TO ARTICLE 4 OF TITLE 24, C.R.S., AND THE HEARING AND OPPORTUNITY
6 FOR REVIEW SHALL BE CONDUCTED PURSUANT TO THAT ARTICLE BY THE
7 DIRECTOR OR BY AN ADMINISTRATIVE LAW JUDGE, AT THE DIRECTOR'S
8 DISCRETION.

9 (c) IF, AFTER THE HEARING, THE DIRECTOR FINDS THE CHARGES
10 PROVEN AND ORDERS THAT DISCIPLINE BE IMPOSED, HE OR SHE SHALL
11 ALSO DETERMINE THE EXTENT OF SUCH DISCIPLINE. THE DIRECTOR MAY
12 REVOKE, SUSPEND, DENY, OR REFUSE TO RENEW A LICENSE, OR PLACE A
13 LICENSEE ON PROBATION.

14 (d) IF THE DIRECTOR FINDS THE CHARGES AGAINST THE LICENSEE
15 PROVED AND ORDERS THAT DISCIPLINE BE IMPOSED, THE DIRECTOR MAY
16 REQUIRE, AS A CONDITION OF REINSTATEMENT, THAT THE LICENSEE TAKE
17 THERAPY OR COURSES OF TRAINING OR EDUCATION AS MAY BE NEEDED TO
18 CORRECT ANY DEFICIENCY FOUND.

19 (9) A FINAL ACTION OF THE DIRECTOR MAY BE JUDICIALLY
20 REVIEWED BY THE COURT OF APPEALS IN ACCORDANCE WITH SECTION
21 24-4-106 (11), C.R.S., AND JUDICIAL PROCEEDINGS FOR THE
22 ENFORCEMENT OF AN ORDER OF THE DIRECTOR MAY BE INSTITUTED IN
23 ACCORDANCE WITH SECTION 24-4-106, C.R.S.

24 **12-35.5-113. Cease-and-desist orders.** (1) (a) IF IT APPEARS TO
25 THE DIRECTOR, BASED UPON CREDIBLE EVIDENCE AS PRESENTED IN A
26 WRITTEN COMPLAINT BY ANY PERSON, THAT A LICENSEE IS ACTING IN A
27 MANNER THAT IS AN IMMINENT THREAT TO THE HEALTH AND SAFETY OF

1 THE PUBLIC, OR A PERSON IS ACTING OR HAS ACTED WITHOUT THE
2 REQUIRED LICENSE, THE DIRECTOR MAY ISSUE AN ORDER TO CEASE AND
3 DESIST SUCH ACTIVITY. THE ORDER SHALL SET FORTH THE STATUTES AND
4 RULES ALLEGED TO HAVE BEEN VIOLATED, THE FACTS ALLEGED TO HAVE
5 CONSTITUTED THE VIOLATION, AND THE REQUIREMENT THAT ALL
6 UNLAWFUL ACTS OR UNLICENSED PRACTICES IMMEDIATELY CEASE.

7 (b) WITHIN TEN DAYS AFTER SERVICE OF THE ORDER TO CEASE AND
8 DESIST PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1), THE
9 RESPONDENT MAY REQUEST A HEARING ON THE QUESTION OF WHETHER
10 ACTS OR PRACTICES IN VIOLATION OF THIS ARTICLE HAVE OCCURRED.
11 SUCH HEARING SHALL BE CONDUCTED PURSUANT TO SECTIONS 24-4-104
12 AND 24-4-105, C.R.S.

13 (2) (a) IF IT APPEARS TO THE DIRECTOR, BASED UPON CREDIBLE
14 EVIDENCE AS PRESENTED IN A WRITTEN COMPLAINT BY ANY PERSON, THAT
15 A PERSON HAS VIOLATED ANY OTHER PROVISION OF THIS ARTICLE, THEN,
16 IN ADDITION TO ANY SPECIFIC POWERS GRANTED PURSUANT TO THIS
17 ARTICLE, THE DIRECTOR MAY ISSUE TO SUCH PERSON AN ORDER TO SHOW
18 CAUSE AS TO WHY THE DIRECTOR SHOULD NOT ISSUE A FINAL ORDER
19 DIRECTING SUCH PERSON TO CEASE AND DESIST FROM THE UNLAWFUL ACT.

20 (b) A PERSON AGAINST WHOM AN ORDER TO SHOW CAUSE HAS
21 BEEN ISSUED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2) SHALL
22 BE PROMPTLY NOTIFIED BY THE DIRECTOR OF THE ISSUANCE OF THE
23 ORDER, ALONG WITH A COPY OF THE ORDER, THE FACTUAL AND LEGAL
24 BASIS FOR THE ORDER, AND THE DATE SET BY THE DIRECTOR FOR A
25 HEARING ON THE ORDER. SUCH NOTICE MAY BE SERVED BY PERSONAL
26 SERVICE, BY FIRST-CLASS UNITED STATES MAIL, POSTAGE PREPAID, OR AS
27 MAY BE PRACTICABLE UPON ANY PERSON AGAINST WHOM SUCH ORDER IS

1 ISSUED. PERSONAL SERVICE OR MAILING OF AN ORDER OR DOCUMENT
2 PURSUANT TO THIS SUBSECTION (2) SHALL CONSTITUTE NOTICE THEREOF
3 TO THE PERSON.

4 (c) (I) THE HEARING ON AN ORDER TO SHOW CAUSE SHALL BE
5 COMMENCED NO SOONER THAN TEN AND NO LATER THAN FORTY-FIVE
6 CALENDAR DAYS AFTER THE DATE OF TRANSMISSION OR SERVICE OF THE
7 NOTIFICATION BY THE DIRECTOR AS PROVIDED IN PARAGRAPH (b) OF THIS
8 SUBSECTION (2). THE HEARING MAY BE CONTINUED BY AGREEMENT OF
9 ALL PARTIES BASED UPON THE COMPLEXITY OF THE MATTER, NUMBER OF
10 PARTIES TO THE MATTER, AND LEGAL ISSUES PRESENTED IN THE MATTER,
11 BUT IN NO EVENT SHALL THE HEARING COMMENCE LATER THAN SIXTY
12 CALENDAR DAYS AFTER THE DATE OF TRANSMISSION OR SERVICE OF THE
13 NOTIFICATION.

14 (II) IF A PERSON AGAINST WHOM AN ORDER TO SHOW CAUSE HAS
15 BEEN ISSUED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2) DOES
16 NOT APPEAR AT THE HEARING, THE DIRECTOR MAY PRESENT EVIDENCE
17 THAT NOTIFICATION WAS PROPERLY SENT OR SERVED UPON SUCH PERSON
18 PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (2) AND SUCH OTHER
19 EVIDENCE RELATED TO THE MATTER AS THE DIRECTOR DEEMS
20 APPROPRIATE. THE DIRECTOR SHALL ISSUE THE ORDER WITHIN TEN DAYS
21 AFTER THE DIRECTOR'S DETERMINATION RELATED TO REASONABLE
22 ATTEMPTS TO NOTIFY THE RESPONDENT, AND THE ORDER SHALL BECOME
23 FINAL AS TO THAT PERSON BY OPERATION OF LAW. SUCH HEARING SHALL
24 BE CONDUCTED PURSUANT TO SECTIONS 24-4-104 AND 24-4-105, C.R.S.

25 (III) IF THE DIRECTOR REASONABLY FINDS THAT THE PERSON
26 AGAINST WHOM THE ORDER TO SHOW CAUSE WAS ISSUED IS ACTING OR
27 HAS ACTED WITHOUT THE REQUIRED LICENSE, OR HAS OR IS ABOUT TO

1 ENGAGE IN ACTS OR PRACTICES CONSTITUTING VIOLATIONS OF THIS
2 ARTICLE, A FINAL CEASE-AND-DESIST ORDER MAY BE ISSUED, DIRECTING
3 SUCH PERSON TO CEASE AND DESIST FROM FURTHER UNLAWFUL ACTS OR
4 UNLICENSED PRACTICES.

5 (IV) THE DIRECTOR SHALL PROVIDE NOTICE, IN THE MANNER SET
6 FORTH IN PARAGRAPH (b) OF THIS SUBSECTION (2), OF THE FINAL
7 CEASE-AND-DESIST ORDER WITHIN TEN CALENDAR DAYS AFTER THE
8 HEARING CONDUCTED PURSUANT TO THIS PARAGRAPH (c) TO EACH PERSON
9 AGAINST WHOM THE FINAL ORDER HAS BEEN ISSUED. THE FINAL ORDER
10 ISSUED PURSUANT TO SUBPARAGRAPH (III) OF THIS PARAGRAPH (c) SHALL
11 BE EFFECTIVE WHEN ISSUED AND SHALL BE A FINAL ORDER FOR PURPOSES
12 OF JUDICIAL REVIEW.

13 (3) IF IT APPEARS TO THE DIRECTOR, BASED UPON CREDIBLE
14 EVIDENCE PRESENTED TO THE DIRECTOR, THAT A PERSON HAS ENGAGED IN
15 OR IS ABOUT TO ENGAGE IN ANY UNLICENSED ACT OR PRACTICE, ANY ACT
16 OR PRACTICE CONSTITUTING A VIOLATION OF THIS ARTICLE, ANY RULE
17 PROMULGATED PURSUANT TO THIS ARTICLE, ANY ORDER ISSUED PURSUANT
18 TO THIS ARTICLE, OR ANY ACT OR PRACTICE CONSTITUTING GROUNDS FOR
19 ADMINISTRATIVE SANCTION PURSUANT TO THIS ARTICLE, THE DIRECTOR
20 MAY ENTER INTO A STIPULATION WITH SUCH PERSON.

21 (4) IF ANY PERSON FAILS TO COMPLY WITH A FINAL
22 CEASE-AND-DESIST ORDER OR A STIPULATION, THE DIRECTOR MAY
23 REQUEST THE ATTORNEY GENERAL OR THE DISTRICT ATTORNEY FOR THE
24 JUDICIAL DISTRICT IN WHICH THE ALLEGED VIOLATION EXISTS TO BRING,
25 AND IF SO REQUESTED SUCH ATTORNEY SHALL BRING, SUIT FOR A
26 TEMPORARY RESTRAINING ORDER AND FOR INJUNCTIVE RELIEF TO
27 PREVENT ANY FURTHER OR CONTINUED VIOLATION OF THE FINAL ORDER.

1 (5) A PERSON AGGRIEVED BY THE FINAL CEASE-AND-DESIST ORDER
2 MAY SEEK JUDICIAL REVIEW OF THE DIRECTOR'S DETERMINATION OR OF
3 THE DIRECTOR'S FINAL ORDER AS PROVIDED IN SUBSECTION (2) OF THIS
4 SECTION.

5 **12-35.5-114. Mental and physical examination of licensees.**

6 (1) IF THE DIRECTOR HAS REASONABLE CAUSE TO BELIEVE THAT A
7 LICENSEE IS UNABLE TO PRACTICE WITH REASONABLE SKILL AND SAFETY,
8 THE DIRECTOR MAY REQUIRE THE PERSON TO TAKE A MENTAL OR PHYSICAL
9 EXAMINATION BY A PHYSICIAN DESIGNATED BY THE DIRECTOR. IF THE
10 LICENSEE REFUSES TO UNDERGO THE MENTAL OR PHYSICAL EXAMINATION,
11 UNLESS DUE TO CIRCUMSTANCES BEYOND THE LICENSEE'S CONTROL, THE
12 DIRECTOR MAY SUSPEND THE LICENSEE'S LICENSE UNTIL THE RESULTS OF
13 THE EXAMINATION ARE KNOWN, AND THE DIRECTOR HAS MADE A
14 DETERMINATION OF THE LICENSEE'S FITNESS TO PRACTICE. THE DIRECTOR
15 SHALL PROCEED WITH ANY SUCH ORDER FOR EXAMINATION AND
16 DETERMINATION IN A TIMELY MANNER.

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

26 (3) THE LICENSEE MAY SUBMIT TO THE DIRECTOR TESTIMONY OR
27 EXAMINATION REPORTS FROM A PHYSICIAN CHOSEN BY THE LICENSEE AND

1 PERTAINING TO ANY CONDITION THAT THE DIRECTOR HAS ALLEGED MAY
2 PRECLUDE THE LICENSEE FROM PRACTICING WITH REASONABLE SKILL AND
3 SAFETY. THESE MAY BE CONSIDERED BY THE DIRECTOR IN CONJUNCTION
4 WITH, BUT NOT IN LIEU OF, TESTIMONY AND EXAMINATION REPORTS OF THE
5 PHYSICIAN DESIGNATED BY THE DIRECTOR.

6 (4) THE RESULTS OF A MENTAL OR PHYSICAL EXAMINATION
7 ORDERED BY THE DIRECTOR SHALL NOT BE USED AS EVIDENCE IN ANY
8 PROCEEDING OTHER THAN ONE BEFORE THE DIRECTOR AND SHALL NOT BE
9 DEEMED PUBLIC RECORDS NOR MADE AVAILABLE TO THE PUBLIC.

10 **12-35.5-115. Unauthorized practice - criminal penalties.** A
11 PERSON WHO PRACTICES OR OFFERS OR ATTEMPTS TO PRACTICE MASSAGE
12 THERAPY WITHOUT AN ACTIVE LICENSE ISSUED UNDER THIS ARTICLE
13 COMMITS A CLASS 2 MISDEMEANOR AND SHALL BE PUNISHED AS PROVIDED
14 IN SECTION 18-1.3-501, C.R.S., FOR THE FIRST OFFENSE, AND FOR THE
15 SECOND OR ANY SUBSEQUENT OFFENSE, THE PERSON COMMITS A CLASS 6
16 FELONY AND SHALL BE PUNISHED AS PROVIDED IN SECTION 18-1.3-401,
17 C.R.S.

18 **12-35.5-116. Rule-making authority.** THE DIRECTOR SHALL, IN
19 CONSULTATION WITH THE ADVISORY COMMITTEE, PROMULGATE RULES
20 FOR THE ADMINISTRATION OF THIS ARTICLE.

21 **12-35.5-117. Massage therapist advisory committee - creation**
22 **- repeal.** (1) THE DIRECTOR SHALL APPOINT A MASSAGE THERAPIST
23 ADVISORY COMMITTEE OF AT LEAST FIVE MEMBERS TO ASSIST IN THE
24 PERFORMANCE OF THE DIRECTOR'S DUTIES. THREE MEMBERS SHALL BE
25 LICENSEES, AND THE DIRECTOR SHALL MAKE A GOOD FAITH EFFORT TO
26 APPOINT THE MEMBERS FROM DIVERSE MASSAGE THERAPY PRACTICE
27 SETTINGS. THE FOURTH MEMBER SHALL BE AN EMPLOYEE OR OWNER OF

1 AN APPROVED MASSAGE THERAPY SCHOOL. THE FIFTH MEMBER SHALL
2 REPRESENT THE PUBLIC AND SHALL HAVE NO FINANCIAL INTEREST IN, OR
3 OTHER RELATIONSHIP TO, MASSAGE THERAPY. OF THE MEMBERS FIRST
4 APPOINTED TO THE COMMITTEE, THREE SHALL SERVE FOR A TERM OF TWO
5 YEARS AND THE REMAINING MEMBERS SHALL SERVE A TERM OF THREE
6 YEARS. THEREAFTER, EACH COMMITTEE APPOINTMENT SHALL BE FOR A
7 TERM OF THREE YEARS, AND NO PERSON SHALL SERVE ON THE COMMITTEE
8 FOR MORE THAN TWO TERMS.

9 (2) THE ADVISORY COMMITTEE SHALL MEET AT LEAST THREE
10 TIMES DURING ITS FIRST YEAR OF EXISTENCE AND AT LEAST ANNUALLY
11 THEREAFTER.

12 (3) MEMBERS OF THE ADVISORY COMMITTEE SHALL RECEIVE
13 COMPENSATION FOR THEIR SERVICE PURSUANT TO SECTION 24-34-102
14 (13), C.R.S., AND SHALL BE REIMBURSED FOR ACTUAL AND NECESSARY
15 EXPENSES THAT THEY INCUR IN THE PERFORMANCE OF THEIR DUTIES.
16 SUCH REIMBURSEMENT SHALL BE CASH FUNDED AND SHALL NOT EXCEED
17 THE AMOUNT ANTICIPATED TO BE RAISED FROM FEES COLLECTED
18 PURSUANT TO THIS ARTICLE.

19 (4) THIS SECTION IS REPEALED, EFFECTIVE SEPTEMBER 1, 2018.
20 PRIOR TO SUCH REPEAL, THE ADVISORY COMMITTEE SHALL BE REVIEWED
21 PURSUANT TO SECTION 2-3-1203, C.R.S.

22 **12-35.5-118. Local government - regulations - enforcement.**

23 (1) NO CITY, COUNTY, CITY AND COUNTY, OR OTHER POLITICAL
24 SUBDIVISION OF THIS STATE SHALL ENACT OR ENFORCE ANY LOCAL
25 ORDINANCE THAT REGULATES THE PRACTICE OR THE PROFESSION OF
26 MASSAGE THERAPY.

27 (2) LOCAL GOVERNMENT LAW ENFORCEMENT AGENCIES MAY

1 INSPECT MASSAGE THERAPY LICENSES AND THE BUSINESS PREMISES WHERE
2 MASSAGE THERAPY IS PRACTICED FOR COMPLIANCE WITH APPLICABLE
3 LAWS. IF SUCH INSPECTION REVEALS THE PRACTICE OF MASSAGE THERAPY
4 BY A PERSON WITHOUT A VALID LICENSE, THE PERSON SHALL BE CHARGED
5 WITH A MISDEMEANOR PURSUANT TO SECTION 12-35.5-115.

6 **12-35.5-119. Severability.** IF ANY PROVISION OF THIS ARTICLE IS
7 HELD TO BE INVALID, SUCH INVALIDITY SHALL NOT AFFECT OTHER
8 PROVISIONS OF THIS ARTICLE THAT CAN BE GIVEN EFFECT WITHOUT SUCH
9 INVALID PROVISION, AND TO THIS END THE PROVISIONS OF THIS ARTICLE
10 ARE DECLARED TO BE SEVERABLE.

11 **12-35.5-120. Repeal of article - review of functions.** (1) THIS
12 ARTICLE IS REPEALED, EFFECTIVE SEPTEMBER 1, 2018.

13 (2) (a) THE LICENSURE FUNCTIONS OF THE DIRECTOR AS SET FORTH
14 IN THIS ARTICLE ARE REPEALED, EFFECTIVE SEPTEMBER 1, 2018.

15 (b) PRIOR TO SUCH REPEAL, THE LICENSING FUNCTIONS SHALL BE
16 REVIEWED PURSUANT TO SECTION 24-34-104, C.R.S.

17 **SECTION 3.** 2-3-1203 (3), Colorado Revised Statutes, is
18 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

19 **2-3-1203. Sunset review of advisory committees.** (3) The
20 following dates are the dates for which the statutory authorization for the
21 designated advisory committees is scheduled for repeal:

22 (ee) SEPTEMBER 1, 2018: THE MASSAGE THERAPIST ADVISORY
23 COMMITTEE, CREATED PURSUANT TO SECTION 12-35.5-117, C.R.S.

24 **SECTION 4. Repeal.** 24-34-104 (46) (a), Colorado Revised
25 Statutes, is repealed as follows:

26 **24-34-104. General assembly review of regulatory agencies**
27 **and functions for termination, continuation, or reestablishment.**

1 (46) The following agencies, functions, or both, shall terminate on July
2 1, 2015:

3 (a) ~~The licensing of massage parlors in accordance with article~~
4 ~~48.5 of title 12, C.R.S.;~~

5 **SECTION 5.** 24-34-104 (49), Colorado Revised Statutes, is
6 amended to read:

7 **24-34-104. General assembly review of regulatory agencies**
8 **and functions for termination, continuation, or reestablishment.**

9 (49) (a) The following agencies, functions, or both, shall terminate on
10 July 1, 2018: The environmental management system permit program,
11 created in article 6.6 of title 25, C.R.S.

12 (b) THE FOLLOWING AGENCIES, FUNCTIONS, OR BOTH, SHALL
13 TERMINATE ON SEPTEMBER 1, 2018: THE LICENSING OF MASSAGE
14 THERAPISTS BY THE DIRECTOR OF THE DIVISION OF REGISTRATIONS IN
15 ACCORDANCE WITH ARTICLE 35.5 OF TITLE 12, C.R.S.

16 **SECTION 6. Appropriation.** (1) In addition to any other
17 appropriation, there is hereby appropriated, out of any moneys in the
18 division of registrations cash fund created in section 24-34-105 (2) (b) (I),
19 Colorado Revised Statutes, not otherwise appropriated, to the department
20 of regulatory agencies, for allocation to the executive director's office, for
21 legal services, for the fiscal year beginning July 1, 2008, the sum of
22 eighteen thousand eight dollars (\$18,008), or so much thereof as may be
23 necessary, for the implementation of this act.

24 (2) In addition to any other appropriation, there is hereby
25 appropriated, out of any moneys in the division of registrations cash fund
26 created in section 24-34-105 (2) (b) (I), Colorado Revised Statutes, not
27 otherwise appropriated, to the department of regulatory agencies, for

1 allocation to the division of registrations, for regulation of massage
2 therapists, for the fiscal year beginning July 1, 2008, the sum of two
3 hundred twenty-eight thousand eighty dollars (\$228,080) and 3.3 FTE, or
4 so much thereof as may be necessary, for the implementation of this act.

5 (3) In addition to any other appropriation, there is hereby
6 appropriated to the department of regulatory agencies, for allocation to
7 the division of registrations, for the fiscal year beginning July 1, 2008, the
8 sum of two hundred twenty-three thousand six hundred dollars
9 (\$223,600), or so much thereof as may be necessary, for pass through to
10 the department of public safety, to perform criminal history background
11 checks for massage therapists related to the implementation of this act.
12 Said sum shall be from application processing fees collected by the
13 division of registrations.

14 (4) In addition to any other appropriation, there is hereby
15 appropriated to the department of law, for the fiscal year beginning July
16 1, 2008, the sum of eighteen thousand eight dollars (\$18,008) and 0.2
17 FTE, or so much thereof as may be necessary, for the provision of legal
18 services to the department of regulatory agencies related to the
19 implementation of this act. Said sum shall be from reappropriated funds
20 received from the executive director's office out of the appropriation
21 made in subsection (1) of this section.

22 (5) In addition to any other appropriation, there is hereby
23 appropriated, to the department of public safety, for allocation to the
24 Colorado bureau of investigation, for processing of fingerprint-based
25 criminal history background checks for massage therapists, for the fiscal
26 year beginning July 1, 2008, the sum of one hundred twenty thousand one
27 hundred dollars (\$120,100) and 1.1 FTE, or so much thereof as may be

1 necessary, for the implementation of this act. Said sum shall be from
2 reappropriated funds received from the department of regulatory
3 agencies, division of registrations, out of the appropriation made in
4 subsection (3) of this section.

5 (6) In addition to any other appropriation, there is hereby
6 appropriated to the department of public safety, for the fiscal year
7 beginning July 1, 2008, the sum of one hundred three thousand five
8 hundred dollars (\$103,500), or so much thereof as may be necessary, for
9 pass through to the federal bureau of investigation for fingerprint-based
10 national criminal history background checks for massage therapists
11 related to the implementation of this act. Said sum shall be from
12 reappropriated funds received from the department of regulatory
13 agencies, division of registrations, out of the appropriation made in
14 subsection (3) of this section.

15 **SECTION 7. Effective date - applicability.** (1) This act shall
16 take effect July 1, 2008.

17 _____
18 (2) The provisions of this act shall apply to the practice of
19 massage therapy on or after the applicable effective date of this act.

20 **SECTION 8. Safety clause.** The general assembly hereby finds,
21 determines, and declares that this act is necessary for the immediate
22 preservation of the public peace, health, and safety.