
Colorado Revised Statutes

Title 12 Professions and Occupations

Article 35.5 Massage Therapy Practice Act

Effective July 1, 2008

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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 registration of massage therapists. 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 registered 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 registered 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 massage therapy registration.

(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; or

(c) A massage therapy educational entity or program that is accredited by a nationally recognized accrediting agency.

(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 registrations in the department of regulatory agencies.

(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. "Massage" or "massage therapy" does not include therapeutic exercise, intentional joint mobilization or manipulation, or any of the methods described in section 12-35.5-110 (1) (e).

(8) "Massage therapist" means an individual registered by this state to engage in the practice of massage therapy. The terms "masseuse" and "masseur" are synonymous with the term "massage therapist".

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

(10) "Registrant" means a massage therapist registered pursuant to this article.

12-35.5-104. Use of massage titles restricted.

Only a person registered under this article as a massage therapist may use the titles "massage therapist", "registered massage therapist", "massage practitioner", "masseuse", "masseur", the letters "M.T." or "R.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. Registration required.

On or after April 1, 2009, except as otherwise provided in this article, a person in this state who practices massage therapy or who represents oneself as being able to practice massage therapy must possess a valid registration issued by the director pursuant to this article and rules promulgated pursuant to this article.

12-35.5-107. Registration - reciprocity - denial of registration application.

(1) Every applicant for a registration 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; and

(e) Submit to a criminal history record check in the form and manner as described in subsection (2) of this section.

(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 registration to the applicant.

(4) For a period of one year after the date that applications for registration are made available, the director may issue a registration to a person who submits the application, fee, and criminal history record check pursuant to paragraphs (c), (d), and (e) of subsection (1) of this section and who:

(a) Has at least five years of professional experience practicing massage therapy and has completed at least three hundred hours of massage training; or

(b) Meets one of the following qualifications:

(I) The applicant has attained a degree, diploma, or otherwise successfully completed a massage therapy program that consists of at least five hundred total hours of course work and clinical work from an approved massage school; or

(II) The applicant has passed an examination described in paragraph (b) of subsection (1) of this section.

(5) The director shall issue a registration 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 shall deny a registration 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 or plead guilty to a charge of unlawful sexual behavior as defined in section 16-22-102, C.R.S., or any prostitution-related offense, whether or not the act was committed in Colorado.

12-35.5-108. Registration expiration - effect - renewal - reinstatement - penalty.

(1) Registrations issued pursuant to this article shall be valid for the period of time established by the director. Registrations shall be renewed in accordance with the schedule set forth by the director.

(2) A registration not renewed within the time period specified in the schedule established by the director shall be deemed expired. A person in possession of an expired registration shall not practice massage therapy until he or she reinstates such registration.

(3) The director shall establish application forms and fee amounts for renewal of registrations and reinstatement of expired registrations. A person renewing or reinstating a registration shall submit an application in the form and manner set forth by the director and shall pay a fee in an amount set forth by the director.

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 shall be construed to prohibit or require a massage therapy registration 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 shall be identified as "student massage therapists" and shall not hold themselves out as registered massage therapists. Student massage therapists shall practice massage therapy only under the immediate supervision of a massage therapist holding a valid and current registration. Faculty members teaching nonclinical aspects of massage therapy shall not be required to be registered massage therapists.

(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 in which only the soft tissue of a person's hands, feet, or ears are manipulated;

(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 to affect the human energy systems, such as reiki, shiatsu, and Asian or polarity bodywork therapy;

(IV) Structural integration practices such as Rolfing and Hellerwork; and

(V) The process of muscle activation techniques.

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 registered massage therapist after the expiration, suspension, or revocation of his or her registration;

(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 registration by fraud, deception, or misrepresentation;

(e) Fraudulently obtained or furnished a massage therapy registration; a renewal or reinstatement of a registration, diploma, certificate, or record; or aided and abetted any such 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 registrant's participation in a rehabilitation program when considering disciplinary action;

(g) A physical or mental condition or disability that renders the registrant unable to provide massage therapy with reasonable skill and safety or that may endanger the health or safety of clients receiving massage services;

(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 a felony or pled guilty or nolo contendere to a felony or committed any act specified in this section. A certified copy of the judgment of a court of competent jurisdiction of a conviction or plea shall be 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 registered or exempt pursuant to this article; or

(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.

12-35.5-112. Disciplinary proceedings - injunctions - investigations - hearings - judicial review.

(1) The director may revoke, suspend, deny, or refuse to renew a registration of or place on probation a registrant 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 committing an act prohibited by this article. When seeking an injunction under this subsection (2), the attorney general shall not be required to allege or prove the inadequacy of any remedy at law or that substantial or irreparable damage is likely to result from a continued violation of this article.

(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 registrant resides or conducts

business, upon application by the director with notice to the subpoenaed person or registrant, may issue to the person or registrant an order requiring that person or registrant to appear before the director; to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(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 registrant 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 complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution. Rather, the director shall initiate disciplinary proceedings pursuant to subsection (7) of this section.

(7) (a) A disciplinary proceeding shall be commenced when the director has reasonable grounds to believe that a registrant 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 such discipline. The director may revoke, suspend, deny, or refuse to renew a registration, or place a registrant on probation.

(d) If the director finds the charges against the registrant proved and orders that discipline be imposed, the director may require, as a condition of reinstatement, that the registrant 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.

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 registrant is acting in a manner that is an imminent threat to the health and safety of the public, or a person is acting or has acted without the required registration, the director may issue an order to cease and desist such activity. The order shall set forth the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or unregistered practices immediately cease.

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

(2) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other 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 registration, or has or is about to engage in acts or practices constituting violations of this article, a final cease-and-desist order may be issued, directing such person to cease and desist from further unlawful acts or unregistered practices.

(IV) The director shall provide notice, in the manner set forth in paragraph (b) of this subsection (2), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom 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 registrants.

(1) If the director has reasonable cause to believe that a registrant is unable to practice with reasonable skill and safety, the director may order the registrant to take a mental or physical examination administered by a physician or other licensed health care professional designated by the director. Refusal by a registrant to submit to a mental or physical examination that has been properly ordered by the director pursuant to subsection (2) of this section, unless due to circumstances beyond the registrant's control, constitutes grounds for discipline pursuant to section 12-35.5-111, and the director may suspend the registrant's registration in accordance with section 12-35.5-112 until the

results of the examination are known, and the director has made a determination of the registrant's fitness to practice. The director shall proceed with any such order for examination and determination in a timely manner.

(2) An order to a registrant pursuant to subsection (1) of this section to undergo a mental or physical examination shall contain the basis of the director's reasonable cause to believe that the registrant is unable to practice with reasonable skill and safety. For the purposes of any disciplinary proceeding authorized under this article, the registrant shall be deemed to have waived all objections to the admissibility of the examining physician's testimony or examination reports on the ground that they are privileged communications.

(3) The registrant may submit to the director testimony or examination reports from a physician or other licensed health care professional chosen by the registrant and pertaining to any condition that the director has alleged may preclude the registrant from practicing with reasonable skill and safety. These may be considered by the director 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.

A person who practices or offers or attempts to practice massage therapy without an active registration issued under this article commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first offense, and for the second or any subsequent offense, the person commits a class 1 misdemeanor 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.

12-35.5-117. Rule-making authority.

The director shall promulgate rules for the administration of this article.

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 registrations and the business premises where massage therapy is practiced for compliance with applicable laws. Nothing in this section shall be construed to preclude criminal prosecution for a violation of any criminal law. If such inspection reveals the practice of massage therapy by a person without a valid registration, the person shall be charged with a misdemeanor pursuant to section 12-35.5-115.

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 is repealed, effective September 1, 2013.

(2) (a) The registration functions of the director as set forth in this article are repealed, effective September 1, 2013.

(b) Prior to such repeal, the registration functions shall be reviewed pursuant to section 24-34-104, C.R.S.
