



Dora
Department of Regulatory Agencies

Division of Registrations
Lauren Larson
Division Director

**Office of Massage Therapy
Registration**
Lisa Hill
Interim Program Director

John W. Hickenlooper
Governor

Barbara J. Kelley
Executive
Director

Notice of Proposed Rulemaking and Rulemaking Hearing

Pursuant to section 24-4-103 of the Colorado Revised Statutes ("C.R.S."), you are hereby notified that the Office of Massage Therapy Registration ("Director") will be holding a public rulemaking hearing as follows:

Date: May 1, 2014

Time: 1:00 PM

Location: 1560 Broadway
Conference Room 1250A
Denver, Colorado 80202

The rulemaking concerns amendments to Rules 1 through 9, and the addition of Rules 10, 11, and 12. The basis and purpose of the rules is to implement the requirements of Senate Bill 13-151, as codified in Article 35.5 of Title 12, C.R.S. The statutory authority for the rules is found in section 12-33-117, C.R.S.

Please be advised that the proposed rules may be changed after public comment and formal hearing.

At the time and place stated in this notice, the Board will afford interested persons an opportunity to submit written data, views, or arguments, and to submit the same orally. The Director or a delegate of the Director may limit the time allotted for oral submissions in his or her discretion. Written submissions should be filed with the Board at least ten (10) days prior to the hearing. All submissions will be considered. Written submissions may be filed at the following address:

Office of Massage Therapy Registration
1560 Broadway
Suite 1350
Denver, CO 80202

Dated this 31st day of March, 2014.

BY ORDER OF THE OFFICE OF MASSAGE THERAPY REGISTRATION

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DEPARTMENT OF REGULATORY AGENCIES

Massage Therapy ~~Registration~~Licensure

MASSAGE THERAPY ~~REGISTRATION~~LICENSURE RULES AND REGULATIONS

3 CCR 722-1

Basis

These rules are promulgated and adopted by the Director of the Division of ~~Registrations~~Professions and Occupations ("Division") pursuant to- § 12-35.5-117, C.R.S.

Purpose

These rules are adopted to implement the Director's authority to ~~register~~license persons as massage therapists and to set forth the requirements for being so ~~registered~~licensed pursuant to the Massage Therapy Practice Act ("MTPA") §§ 12-35.5-101 through 12-35.5-120, C.R.S.

Rule 1 Application for ~~Registration~~Licensure

The purpose of this rule is to specify the form and manner of an application for massage therapy ~~registration~~licensure, as required by ~~§~~ § 12-35.5-107(1)(c), (d) and (e), and 12-35.5-107(2), C.R.S.

A. An applicant for ~~registration~~licensure must:

1. Submit a completed application for ~~registration~~licensure on forms provided by the Director;
2. Submit with the application all fees established by the Director pursuant to- § 12-35.5-107(1)(d), C.R.S.;
3. Sign the attestation that the information in the application is true and correct to the best of the applicant's knowledge and belief; failure to provide true and correct information may result in disciplinary proceedings pursuant to § 12-35.5-112, C.R.S., including but not limited to revocation, suspension, or denial of an application to practice massage in Colorado;
4. Sign the attestation that the applicant has obtained, and will maintain, professional liability insurance as required by ~~§~~ 12-35.5-116, C.R.S.;
5. Undergo a fingerprint-based criminal history record check as required by § 12-35.5-107(2), C.R.S., and in accordance with procedures set forth by the Director; and
6. Submit additional information as may be requested by the Director to fully and fairly evaluate the applicant's qualifications for ~~registration~~licensure and to protect the public health, safety, and welfare.

~~B. Foreign-trained applicants must submit their qualifications, credentials, and work experience to a credentialing agency for review.~~

~~1. The Director will designate one or more acceptable credentialing agencies.~~

~~2. All expenses associated with the review by the credentialing agency are the responsibility of the applicant.~~

~~3. Failure to have a review completed by the credentialing agency pursuant to the terms of this rule and the massage therapy application procedures will result in the Director denying the application.~~

~~4. The Director, in her discretion, may accept or refuse any recommendation made by the credentialing agency.~~

Rule 2 Education and Training Requirements

The purpose of this rule is to provide additional guidance regarding the educational and training requirements for licensure set forth in §§ 12-35.5-103(3), C.R.S., and 12-35.5-107(1)(a), C.R.S.

A. An applicant for ~~registration~~ licensure must ~~attain have a degree, diploma, or otherwise~~ successfully completed a massage therapy program from an approved massage school.

B. An applicant for licensure must have successfully completed ~~that consists of~~ at least five hundred (500) total hours of course work and clinical work from an approved massage school.

C.B. "Approved massage school" means:

1. 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 Title 12, C.R.S.; ~~or~~

2. A massage therapy educational program certified by the Colorado Community College System; ~~or~~

3. A massage therapy educational ~~entity or~~ program that is accredited by a nationally recognized accrediting agency including but not limited to a Massage therapy educational program that is accredited by an accrediting agency published by the U.S. Department of Education

4. A massage therapy program at a school located in another state or territory of the United States if the school was approved by that state or territory's community college system or educational regulatory body at the time the applicant completed the program; or

5. A massage therapy program at a school located in a foreign country provided that:

a. The foreign-trained applicant submits his/her qualifications, credentials, and work experience to one of the following credentialing agencies for review:

i. International Education Research Foundation (IERF).

ii. International Consultants of Delaware, Inc. (ICD).

iii. A credentialing agency approved by the Director.

b. Failure to have a review completed by the credentialing agency pursuant to the terms of this subsection and the massage therapy application procedures identified by the Director may result in the Director denying the application.

c. The Director, in her discretion, may accept or refuse any recommendation made by the credentialing agency.

~~CD.~~ An applicant who has ~~been certified~~completed a massage therapy program that is approved by the National Certification Board for Therapeutic Massage & Bodywork (NCBTMB) at the time the applicant completed the program shall be deemed to have met the education and training requirements for registration licensure set forth in Rule 2 (A) and (B), above.

Rule 3 Examination Requirement

The purpose of this rule is to delineate the examination requirement for registration licensure set forth in- § 12-35.5-107(1)(b), C.R.S.

An applicant for registration licensure must pass one of the following examinations:

~~A.(a)~~ The massage and bodywork licensing examination offered by the Federation of State Massage Therapy Boards; ~~or~~

~~B.(b)~~ The National Certification Examination for Therapeutic Massage (NCETM) or the National Certification Examination for Therapeutic Massage & Bodywork (NCETMB)~~A national certification offered by NCBTMBthe National Certification Board for Therapeutic Massage & Bodywork..~~

C. An examination approved by the Director.

Rule 4 Registration Licensure by Endorsement

The purpose of this rule is to delineate the requirements for registration licensure by endorsement set forth in- §§ 12-35.5-107(5)~~(a) and (b)~~, C.R.S., and 24-34-102(8)(e),C.R.S.

An applicant who currently possesses an unrestricted license or registration, in good standing, to practice massage therapy under the laws of another state, territory or foreign country ~~may be eligible for~~ can apply for registration licensure by endorsement, provided that:

A. The applicant 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 county;

~~B.~~ The applicant has provided the application and all the application requirements~~has submitted the application materials and a fee~~ set forth in Rule 1, above; ~~and,~~

~~BC.~~ The qualifications for massage therapy licensure or registration in the other state, territory, or foreign country are substantially equivalent to those required in Colorado, as determined by the Director; ~~:-~~

1. An applicant who has been certified by the National Certification Board for Therapeutic Massage & Bodywork (NCBTMB) is be deemed to have qualifications that are substantially equivalent to those required in Colorado.

2. A foreign trained applicant's education and/or training must meet the requirements of Rule 2(C)(5) above.

EC. The applicant has submitted proof of experience and competency in massage therapy. For purposes of this rule, an applicant may demonstrate proof of experience and competency either through:

1. Verification of active massage therapy practice in that state for a minimum of 400 hours over or in a 12-month period during the two years immediately preceding the date of application for registration licensure in Colorado. The work experience shall be attested to in a manner prescribed by the Director, or:-

Or

2. Proof of Completion of twenty-four hours of continuing education related to the practice of massage therapy during the two years immediately preceding the date of application for registration in Colorado. The continuing education must meet the approval of and shall be attested to in a manner prescribed by the Director.

a. Courses must be directly related to the practice of massage as defined in § 12-35.5-103(7) C.R.S.

b. Up to two hours may be related to the promotion of practice building or office management.

c. Up to two hours may be related to ethics.

d. Courses in practices which are outside the massage therapy scope of practice do not meet the requirements of this rule.

FD. The applicant must report any disciplinary actions taken against them in any other jurisdiction, the Director will review any disciplinary actions taken against the applicant pursuant to § 12-35.5-107(5)(d), failure to report disciplinary actions may result in disciplinary proceedings pursuant to § 12-35.5-112, C.R.S., including but not limited to revocation, suspension, or denial of an application to practice massage in Colorado.

Rule 5 Reinstatement of Expired Registration License

The purpose of this rule is to establish the qualifications and procedures for reinstatement of an expired registration pursuant to § 12-35.5-108, C.R.S., 24-34-102(8)(d), C.R.S., and § 24-34-105, C.R.S.

- A. An applicant seeking reinstatement of an expired registration shall complete a reinstatement application and pay a reinstatement fee.
- B. If the registration has been expired for more than two (2) years, but less than five (5) years, an applicant must demonstrate competency to practice as follows:
 1. Verification of licensure or registration as a massage therapist in good standing from another state, along with proof of active massage therapy practice in that state for a minimum of 400 hours over or in a 12-month period during the two years immediately preceding the date of application for reinstatement. The work experience shall meet the approval of and be attested to in a manner prescribed by the Director: or

Or

2. Proof of Completion of twenty-four hours of continuing education related to the practice of massage therapy during the two (2) years immediately preceding the date of application for reinstatement. The continuing education must meet the approval of and shall be attested to in a manner prescribed by the Director.

a. Courses must be directly related to the practice of massage as defined in § 12-35.5-103(7) C.R.S.

b. Up to two hours may be related to the promotion of practice building or office management.

c. Up to two hours may be related to ethics.

d. Courses in practices which are outside the massage therapy scope of practice do not meet the requirements of this rule.

C. If the ~~registration~~license has been expired for more than five (5) years, an applicant must demonstrate competency to practice as follows:

1. Pass an examination approved under Rule 2 within two (2) years immediately preceding submission of an application for reinstatement;~~:-~~

~~Or~~

2. Supervised practice for a period of no less than six (6) months, subject to terms established by the Director;~~:-~~

~~Or~~

3. Verification of licensure or registration as a massage therapist in good standing from another state, along with proof of active massage therapy practice in that state for a minimum of 400 hours over or in a 12-month period during the two years immediately preceding the date of application for reinstatement. The work experience shall meet the approval of and be attested to in a manner prescribed by the Director;~~:-~~ or

4. By any other means approved by the Director.

D. An applicant for reinstatement who has actively practiced in Colorado with an expired ~~registration~~license in violation of § 12-35.5-108, C.R.S., is subject to denial of application, disciplinary action, and/or other penalties as authorized in the ~~MTPA~~Massage Therapy Practice Act ~~at § 12-35.5-101 et seq., C.R.S.~~, and in accordance with § 24-34-102 et seq., C.R.S.

Rule 6 Supervision of Student Massage Therapists

The purpose of this rule is to clarify the supervision requirements for students enrolled in a massage therapy program at an approved massage therapy school, as authorized by § 12-35.5-110(1)(a), and § 12-35.5-103(3), C.R.S.

A. Students enrolled in such programs must be identified as "student massage therapists" -and shall not hold themselves out as ~~registered~~licensed massage therapists.

B. Student massage therapists may practice massage therapy only under the immediate supervision of a massage therapist holding a valid and current ~~registration~~license.

C. For purposes of this rule, "immediate supervision" -means the supervising massage therapist (a) is present on the premises where the services are being performed; and (b) is available for immediate consultation and to assist the person being supervised in the services being performed.

D. For purposes of this rule, "premises" means within the same building, massage therapy facility, or massage therapy training area and within close enough proximity to respond in a timely manner to an emergency or the need for assistance.

E. Faculty members teaching nonclinical aspects of massage therapy are not required to be ~~registered~~licensed massage therapists.

Rule 7 The Authorized Practice of Massage Therapy by A Person Not ~~Registered-Licensed~~ in Colorado

The purpose of this rule is to outline the conditions under which a person not ~~registered-licensed~~ in Colorado may practice massage therapy for a limited period of time under -§ 12-35.5-110(1)(c)(IV), C.R.S.

A resident of another state, territory, or foreign country who does not hold a massage therapy ~~registration~~license in Colorado may engage in massage therapy for a limited period of time in this state if:

- A. The person is participating as a student or instructor of an educational program; and,
- B. The program does not exceed sixteen days in duration during any twelve month period; or
- C. The program exceeds sixteen days in duration and the person obtains a grant of an extension from the Director five (5) working days prior to the seventeenth day; and
- D. A person requesting an extension does so at least five (5) working days prior to the seventeenth day, in accordance with procedures prescribed by the Director.

Rule 8 Declaratory Orders

The purpose of this rule is to establish procedures for the handling of requests for declaratory orders filed pursuant to the Colorado Administrative Procedure Act at § 24-4-105(11), C.R.S.

- A. Any person or entity may petition the Director for a declaratory order to terminate controversies or remove uncertainties as to the applicability of any statutory provision or of any rule or order of the Director.
- B. The Director will determine, at her discretion and without notice to petitioner, whether to rule upon such petition. If the Director determines that she will not rule upon such a petition, the Director shall promptly notify the petitioner of her action and state the reasons for such decision.
- C. In determining whether to rule upon a petition filed pursuant to this rule, the Director will consider the following matters, among others:
 - 1. Whether a ruling on the petition will terminate a controversy or remove uncertainties as to the applicability to petitioner of any statutory provisions or rule or order of the Director.
 - 2. Whether the petition involves any subject, question or issue that is the subject of a formal or informal matter or investigation currently pending before the Director or a court involving one or more petitioners.
 - 3. Whether the petition involves any subject, question or issue that is the subject of a formal or informal matter or investigation currently pending before the Director or a court but not involving any petitioner.
 - 4. Whether the petition seeks a ruling on a moot or hypothetical question or will result in an advisory ruling or opinion.
 - 5. Whether the petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to ~~Colorado Rules of Civil Procedure~~RCP 57, which will terminate the controversy or remove any uncertainty as to the applicability to the petitioner of the statute, rule, or order in question.

D. Any petition filed pursuant to this rule shall set forth the following:

1. The name and address of the petitioner and whether the petitioner is ~~registered~~-licensed pursuant to Title 12, Article 35.5.
2. The statute, rule, or order to which the petition relates.
3. A concise statement of all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule, or order in question applies or potentially applies to the petitioner.

E. If the Director determines that she will rule on the petition, the following procedures shall apply:

1. The Director may rule upon the petition based solely upon the facts presented in the petition. In such a case:
 - a. Any ruling of the Director will apply only to the extent of the facts presented in the petition and any amendment to the petition.
 - b. The Director may order the petitioner to file a written brief, memorandum, or statement of position.
 - c. The Director may set the petition, upon due notice to petitioner, for a non-evidentiary hearing.
 - d. The Director may dispose of the petition on the sole basis of the matters set forth in the petition.
 - e. The Director may request the petitioner to submit additional facts in writing. In such event, such additional facts will be considered as an amendment to the petition.
 - f. The Director may take administrative notice of facts pursuant to the Colorado Administrative Procedure Act at § 24-4-105(8), C.R.S., and may utilize her experience, technical competence, and specialized knowledge in the disposition of the petition.
2. If the Director rules upon the petition without a hearing, she shall promptly notify the petitioner of her decision.
3. The Director may, at her discretion, set the petition for hearing, upon due notice to petitioner, for the purpose of obtaining additional facts or information or to determine the truth of any facts set forth in the petition or to hear oral argument on the petition. The hearing notice to the petitioner shall set forth, to the extent known, the factual or other matters that the Director intends to inquire.

For the purpose of such a hearing, to the extent necessary, the petitioner shall have the burden of proving all the facts stated in the petition; all of the facts necessary to show the nature of the controversy or uncertainty; and the manner in which the statute, rule, or order in question applies or potentially applies to the petitioner and any other facts the petitioner desires the Director to consider.

F. The parties to any proceeding pursuant to this rule shall be the Director and the petitioner. Any other person may seek leave of the Director to intervene in such a proceeding, and leave to intervene will be granted at the sole discretion of the Director. A petition to intervene shall set forth the

same matters as are required by Section D of this Rule. Any reference to a "petitioner" in this rule also refers to any person who has been granted leave to intervene by the Director.

- G. Any declaratory order or other order disposing of a petition pursuant to this rule shall constitute agency action subject to judicial review pursuant to the Colorado Administrative Procedure Act at § 24-4-106, C.R.S.

Rule 9 Reporting Convictions, Judgments and Administrative Proceedings

The purpose of this rule is to clarify the procedures for reporting convictions, judgments and administrative proceedings pursuant to -§ 12-35.5-111 (1)(i), ~~and (j)~~, (m), and (n), C.R.S.

A registrant licensee as defined in -§ 12-35.5-103 (6.540), C.R.S., shall inform the Director, in a manner set forth by the Director, within ninety (90) days of any of the following events:

- A. The conviction of the registrant licensee of a felony under the laws of any state or of the United States, which would be a violation of § 12-35.5-111 (1) C.R.S. A guilty verdict, a plea of guilty or a plea of nolo contendere (no contest) accepted by the court is considered a conviction;
- B. A disciplinary action imposed upon the registrant licensee by another jurisdiction that registers or licenses massage therapists, which would be a violation of § 12-35.5-111 (1), C.R.S., including, but not limited to, a citation, sanction, probation, civil penalty, or a denial, suspension, revocation, or modification of a license or registration whether it is imposed by consent decree, order, or other decision, for any cause other than failure to pay a license or registration fee by the due date or failure to meet continuing professional education requirements;
- C. Revocation or suspension by another state board, municipality, federal or state agency of any health services related license or registration, other than a license or registration for massage therapy as described in § 12-35.5-111, C.R.S.; and or
- D. Any judgment, award or settlement of a civil action or arbitration in which there was a final judgment or settlement against the registrant licensee for malpractice of massage therapy.
- E. The notice to the Director shall include the following information:
 - 1. If the event is an action by a governmental agency (as described above), the name of the agency, its jurisdiction, the case name, and the docket, proceeding or case number by which the event is designated, and a copy of the consent decree, order or decision;
 - 2. If the event is a felony conviction, the court, its jurisdiction, the case name, the case number, a description of the matter or a copy of the indictment or charges, and any plea or verdict entered by the court. The registrant licensee shall also provide to the Director a copy of the imposition of sentence related to the felony conviction and the completion of all terms of the sentence with ninety (90) days of such action; and or
 - 3. If the event concerns a civil action or arbitration proceeding, the court or arbiter, the jurisdiction, the case name, the case number, a description of the matter or a copy of the complaint, and a copy of the verdict, the court or arbitration decision, or, if settled, the settlement agreement and court's order of dismissal; ~~;~~
- F. The registrant licensee notifying the Director may submit a written statement with the notice to be included with the registrant licensee records.

G. Failure to report any convictions, judgments or administrative actions to the Directory within ninety (90) days of such action may result in disciplinary proceedings pursuant to § 12-35.5-112, C.R.S.,

including but not limited to revocation, suspension, or denial of an application to practice massage in Colorado.

Rule 10 Licensure Requirements: Credit for Military Experience

The purpose of this rule is to outline the conditions and procedures governing the evaluation of an applicant's military training and experience under § 24-34-102(8.5), C.R.S.

- A. An applicant for licensure as a massage therapist may submit information about the applicant's education, training, or experience acquired during military service. It is the applicant's responsibility to provide timely and complete information for the Director's review.
- B. In order to meet the requirements for licensure, such education, training, or experience must be substantially equivalent to the required qualifications that are otherwise applicable at the time the application is received by the Director.
- C. The Director will determine, on a case-by-case basis, whether the applicant's military education, training, or experience meet the requirements for licensure.

Rule 11 – Duty to Report Change of Contact Information to the Director's Office

The purpose of this rule is to clarify the requirement for licensees to notify the Director of a change in submitted information pursuant to § 24-34-107, C.R.S.

Any applicant or licensed massage therapist shall report to the Office of Massage Therapy Licensure any name, address, telephone, or email change within thirty (30) days of the change. Office of Massage Therapy Licensure will not change licensed massage therapist's information of record without explicit written notification from the licensed massage therapist. Notification in any written manner approved by the Division is acceptable. Failure to report a change in contact information to the Director's office within thirty (30) days of the change may result in disciplinary proceedings pursuant to § 12-35.5-112, C.R.S., including but not limited to revocation, suspension, or denial of an application to practice massage in Colorado.

Rule 12 – Duty to Self-Report Certain Medical Conditions

A licensed massage therapist is only subject to disciplinary action for a physical or mental illness if the licensed massage therapist fails to: comply with the limitations of a Confidential Agreement entered into pursuant to Section C.R.S. § 12-35.5-116.5, C.R.S.; fails to act within the limitations created by the physical or mental illness or condition; or fails to notify the Director of a physical or mental illness or condition that impacts a licensed massage therapist's ability to practice massage with reasonable skill and safety to clients.

- A. Notice to Director. No later than thirty (30) days from the date a physical or mental illness or condition impacts a licensee's ability to perform massage therapy with reasonable skill and safety, the licensee shall provide the Director, in writing, the following information:

(1) the diagnosis and a description of the illness or condition;

(2) the date that the illness or condition was first diagnosed;

(3) the name of the current treatment provider and documentation from the current treatment provider confirming the diagnosis, date of onset, and treatment plan;

(4) a description of the licensee's practice and any modifications, limitations or restrictions to that practice that have been made as a result of the illness or condition;

(5) whether the licensee has been evaluated by, or is currently receiving services from the Director's authorized peer health assistance program related to the illness or condition and, if so, the date of initial contact and whether services are ongoing.

B. Change of Circumstances; Further Notice. The licensee shall further notify the Director of any significant change in the illness or condition ("change of condition") that impacts the licensee's ability to perform massage therapy with reasonable skill and safety. The licensee must notify the Director of a positive or negative change of condition. Such notification shall occur within thirty (30) days of the change of condition. The licensee shall provide the Director, in writing, the following information:

(1) The date of the change of condition;

(2) the name of the current treatment provider and documentation from the current treatment provider confirming the change of condition, the date that the condition changed, the nature of the change of condition, and the current treatment plan;

(3) a description of the licensee's practice and any modifications, limitations or restrictions to that practice that have been made as a result of the change of condition;

(4) whether the licensee has been evaluated by, or is currently receiving services from, the peer health assistance program related to the change of condition and, if so, the date of initial contact and whether services are ongoing.

C. Confidential Agreement; Director Discretion. Compliance with this rule is a prerequisite for eligibility to enter into a Confidential Agreement with the Director pursuant to C.R.S. § 12-35.5-116.5, C.R.S. However, mere compliance with this rule does not require the Director to negotiate regarding, or enter into, a Confidential Agreement. Rather, the Director will evaluate all facts and circumstances to determine if a Confidential Agreement is appropriate.

D. Failure to Notify. If the Director discovers that a licensee has a mental or physical illness or condition that impacts the licensee's ability to perform a Professional Service with reasonable skill and safety and the licensee has not timely notified the Director of such illness or condition as required under these rules, the licensee shall not be eligible for a Confidential Agreement and may be subject to disciplinary action for failure to notify under C.R.S. § 12-35.5-116.5(1), C.R.S., and other related violations contemplated under C.R.S. § 12-35.5-111(1)(g), C.R.S..