

SENATE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

February 14, 2013

Date

Committee on Health & Human Services.

After consideration on the merits, the Committee recommends the following:

SB13-039 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

- 1 Amend printed bill, page 2, strike lines 6 and 7.
- 2 Page 3, line 10, strike "PART 1." and substitute "ARTICLE."
- 3 Page 4, strike line 7 and substitute:
 - 4 "(b) PRESCRIBING, SELECTING,".
- 5 Page 5, strike lines 7 through 9 and substitute:
 - 6 "(c) A STUDENT ENROLLED IN A COURSE OF STUDY LEADING TO A
 - 7 DEGREE IN AUDIOLOGY OR THE HEARING OR SPEECH SCIENCES AT AN
 - 8 INSTITUTION OF HIGHER EDUCATION OR POSTSECONDARY EDUCATION
 - 9 ACCREDITED BY A NATIONAL, REGIONAL, OR STATE AGENCY RECOGNIZED
 - 10 BY THE UNITED STATES DEPARTMENT OF EDUCATION WHO IS PRACTICING
 - 11 AUDIOLOGY, IF THE STUDENT IS SUPERVISED BY A LICENSED AUDIOLOGIST
 - 12 AND THE STUDENT'S DESIGNATED TITLE CLEARLY INDICATES HIS OR HER
 - 13 STATUS AS A STUDENT; OR"
- 14 Page 5, line 16, strike "PART 1:" and substitute "ARTICLE:".
- 15 Page 6, line 4, strike "RECEIPTS, AS REQUIRED" and substitute "RECEIPTS."
- 16 Page 6, strike line 5.

- 1 Page 6, line 7, strike "PART 1," and substitute "ARTICLE,".
- 2 Page 6, line 25, strike "PART 1" and substitute "ARTICLE".
- 3 Page 7, line 9, strike "PART" and substitute "ARTICLE:".
- 4 Page 7, strike line 10.
- 5 Page 7, line 18, strike "NATIONALHEALTHCARE" and substitute "FEDERAL
- 6 GOVERNMENT".
- 7 Page 8, line 2, strike "MALPRACTICE COVERAGE IN AN" and substitute
- 8 "PROFESSIONAL LIABILITY INSURANCE IN THE FORM AND".
- 9 Page 8, line 3, strike "DIRECTOR." and substitute "DIRECTOR PURSUANT TO
- 10 SECTION 12-29.9-112.".
- 11 Page 8, line 9, strike "NUMBER" and substitute "NUMBER, THE NAME OF
- 12 THE COURT,".
- 13 Page 8, line 12, strike "PART 1 AND SHALL" and substitute "ARTICLE.".
- 14 Page 8, strike lines 13 through 15.
- 15 Page 8, line 16, strike "PART 1" and substitute "ARTICLE".
- 16 Page 8, line 24, strike "PART 1" and substitute "ARTICLE".
- 17 Page 9, line 9, strike "PART 1;" and substitute "ARTICLE;".
- 18 Page 9, line 12, strike "SHALL" and substitute "MAY".
- 19 Page 9, line 17, strike "PART 1" and substitute "ARTICLE".
- 20 Page 9, line 19, strike "PART 1" and substitute "ARTICLE".
- 21 Page 9, strike lines 23 through 26 and substitute "(1) UPON PROOF THAT
- 22 AN APPLICANT OR LICENSEE HAS ENGAGED IN AN ACTIVITY THAT IS
- 23 GROUNDS FOR DISCIPLINE UNDER SUBSECTION (2) OF THIS SECTION, THE".

- 1 Page 10, line 6, after "APPROPRIATE;" add "OR".
- 2 Page 10, line 8, strike "LICENSEE; OR" and substitute "LICENSEE."
- 3 Page 10, strike line 9.
- 4 Page 10, line 15, strike "PART 1," and substitute "ARTICLE,".
- 5 Page 10, line 20, strike "PART 1;" and substitute "ARTICLE;".
- 6 Page 10, line 22, strike "PART 1" and substitute "ARTICLE".
- 7 Page 10, line 23, strike "PART 1" and substitute "ARTICLE".
- 8 Page 10, strike lines 24 and 25 and substitute:
- 9 (f) FAILING TO MAINTAIN PROFESSIONAL LIABILITY INSURANCE
10 AS REQUIRED BY SECTION 12-29.9-112;".
- 11 Page 11, line 14, after "WITH" insert "OR ORDER ISSUED BY".
- 12 Page 11, after line 14 insert:
- 13 (p) FALSIFYING INFORMATION IN ANY APPLICATION OR
14 ATTEMPTING TO OBTAIN OR OBTAINING A LICENSE BY FRAUD, DECEPTION,
15 OR MISREPRESENTATION;
- 16 (q) EXCESSIVELY OR HABITUALLY USING OR ABUSING ALCOHOL OR
17 HABIT-FORMING DRUGS OR HABITUALLY USING A CONTROLLED
18 SUBSTANCE, AS DEFINED IN SECTION 18-18-102, C.R.S., OR OTHER DRUGS
19 HAVING SIMILAR EFFECTS; EXCEPT THAT THE DIRECTOR HAS THE
20 DISCRETION NOT TO DISCIPLINE THE LICENSEE IF HE OR SHE IS
21 PARTICIPATING IN GOOD FAITH IN A PROGRAM APPROVED BY THE DIRECTOR
22 TO END THE USE OR ABUSE;
- 23 (r) (I) FAILING TO NOTIFY THE DIRECTOR, AS REQUIRED BY SECTION
24 12-29.9-113, OF A PHYSICAL OR MENTAL ILLNESS OR CONDITION THAT
25 IMPACTS THE LICENSEE'S ABILITY TO PERFORM AUDIOLOGY WITH
26 REASONABLE SKILL AND SAFETY TO PATIENTS;
- 27 (II) FAILING TO ACT WITHIN THE LIMITATIONS CREATED BY A
28 PHYSICAL OR MENTAL ILLNESS OR CONDITION THAT RENDERS THE
29 LICENSEE UNABLE TO PERFORM AUDIOLOGY WITH REASONABLE SKILL AND
30 SAFETY TO THE PATIENT; OR

1 (III) FAILING TO COMPLY WITH THE LIMITATIONS AGREED TO
2 UNDER A CONFIDENTIAL AGREEMENT ENTERED PURSUANT TO SECTION
3 12-29.9-113;

4 (s) REFUSING TO SUBMIT TO A PHYSICAL OR MENTAL EXAMINATION
5 WHEN SO ORDERED BY THE DIRECTOR PURSUANT TO SECTION 12-29.9-114;

6 Reletter succeeding paragraphs accordingly.

7 Page 11, after line 22 insert:

8 "(3) WHEN A COMPLAINT OR INVESTIGATION DISCLOSES AN
9 INSTANCE OF CONDUCT THAT DOES NOT WARRANT FORMAL ACTION BY THE
10 DIRECTOR AND, IN THE OPINION OF THE DIRECTOR, SHOULD BE DISMISSED,
11 BUT THE DIRECTOR HAS NOTICED INDICATIONS OF POSSIBLE ERRANT
12 CONDUCT BY THE LICENSEE THAT COULD LEAD TO SERIOUS CONSEQUENCES
13 IF NOT CORRECTED, THE DIRECTOR MAY SEND THE LICENSEE A
14 CONFIDENTIAL LETTER OF CONCERN."

15 Renumber succeeding subsections accordingly.

16 Page 12, line 1, strike "PART 1" and substitute "ARTICLE".

17 Page 12, line 3, strike "PART 1" and substitute "ARTICLE".

18 Page 12, line 8, strike "PART" and substitute "ARTICLE;"

19 Page 12, line 9, strike "1;" and strike "(5)" and substitute "(6)".

20 Page 12, line 11, strike "PART 1." and substitute "ARTICLE."

21 Page 12, line 16, strike "LICENSEE, BY CERTIFIED MAIL," and substitute
22 "LICENSEE".

23 Page 12, line 18, strike "(6)," and substitute "(7)".

24 Page 13, line 7, strike "PART 1" and substitute "ARTICLE".

25 Page 13, line 8, strike "PART 1." and substitute "ARTICLE."

26 Page 13, line 11, strike "PART 1." and substitute "ARTICLE."

- 1 Page 13, line 23, strike "PART 1." and substitute "ARTICLE."
- 2 Page 14, line 15, strike "OCTOBER 1, 2013" and substitute "DECEMBER 31,
- 3 2013, AND AS NECESSARY THEREAFTER".
- 4 Page 14, line 16, strike "ALL".
- 5 Page 14, line 17, strike "PART 1," and substitute "ARTICLE,".
- 6 Page 15, line 10, strike "PART 1" and substitute "ARTICLE".
- 7 Page 15, line 15, strike "PART 1," and substitute "ARTICLE,".
- 8 Page 15, line 16, strike "PART 1," and substitute "ARTICLE,".
- 9 Page 17, line 1, strike "PART" and substitute "ARTICLE,".
- 10 Page 17, line 2, strike "1,".
- 11 Page 17, line 18, strike "PART" and substitute "ARTICLE,"
- 12 Page 17, line 19, strike "1," and strike "PART 1," and substitute
- 13 "ARTICLE,".
- 14 Page 17, line 20, strike "PART 1;" and substitute "ARTICLE;".
- 15 Page 17, line 22, strike "PART 1." and substitute "ARTICLE.".
- 16 Page 18, line 8, strike "PART 1" and substitute "ARTICLE".
- 17 Page 18, line 15, strike "PART" and substitute "ARTICLE,".
- 18 Page 18, line 16, strike "1," and strike "PART" and substitute "ARTICLE".
- 19 Page 18, line 17, strike "1".
- 20 Page 18, line 26, strike "PART 1" and substitute "ARTICLE".
- 21 Page 19, after line 1 insert:
- 22 **"12-29.9-112. Professional liability insurance required - rules.**

1 (1) (a) EXCEPT AS PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (1),
2 AN AUDIOLOGIST SHALL NOT PRACTICE AUDIOLOGY UNLESS THE
3 AUDIOLOGIST PURCHASES AND MAINTAINS OR IS COVERED BY
4 PROFESSIONAL LIABILITY INSURANCE IN THE FORM AND AMOUNT
5 DETERMINED BY THE DIRECTOR BY RULE.

6 (b) THE DIRECTOR, BY RULE, MAY EXEMPT OR ESTABLISH LESSER
7 LIABILITY INSURANCE REQUIREMENTS FOR A CLASS OF AUDIOLOGISTS
8 WHOSE PRACTICE DOES NOT REQUIRE THE LEVEL OF PUBLIC PROTECTION
9 THE DIRECTOR ESTABLISHES PURSUANT TO THIS PARAGRAPH (b) FOR ALL
10 OTHER AUDIOLOGISTS.

11 (2) THE PROFESSIONAL LIABILITY INSURANCE REQUIRED BY THIS
12 SECTION MUST COVER ALL ACTS WITH THE SCOPE OF PRACTICE OF AN
13 AUDIOLOGIST AS DEFINED IN THIS ARTICLE.

14 **12-29.9-113. Confidential agreements to limit practice -**
15 **violation grounds for discipline.** (1) IF AN AUDIOLOGIST SUFFERS FROM
16 A PHYSICAL OR MENTAL ILLNESS OR CONDITION THAT RENDERS THE
17 LICENSEE UNABLE TO PRACTICE AUDIOLOGY WITH REASONABLE SKILL AND
18 SAFETY TO PATIENTS, THE AUDIOLOGIST SHALL NOTIFY THE DIRECTOR OF
19 THE ILLNESS OR CONDITION IN A MANNER AND WITHIN A PERIOD OF TIME
20 DETERMINED BY THE DIRECTOR. THE DIRECTOR MAY REQUIRE THE
21 LICENSEE TO SUBMIT TO AN EXAMINATION TO EVALUATE THE EXTENT OF
22 THE ILLNESS OR CONDITION AND ITS IMPACT ON THE LICENSEE'S ABILITY TO
23 PRACTICE AUDIOLOGY WITH REASONABLE SKILL AND SAFETY TO PATIENTS.

24 (2) (a) UPON DETERMINING THAT AN AUDIOLOGIST WITH A
25 PHYSICAL OR MENTAL ILLNESS OR CONDITION IS ABLE TO RENDER LIMITED
26 AUDIOLOGY SERVICES WITH REASONABLE SKILL AND SAFETY TO PATIENTS,
27 THE DIRECTOR MAY ENTER INTO A CONFIDENTIAL AGREEMENT WITH THE
28 AUDIOLOGIST IN WHICH THE AUDIOLOGIST AGREES TO LIMIT HIS OR HER
29 PRACTICE BASED ON THE RESTRICTIONS IMPOSED BY THE ILLNESS OR
30 CONDITION, AS DETERMINED BY THE DIRECTOR.

31 (b) AS PART OF THE AGREEMENT, THE AUDIOLOGIST IS SUBJECT TO
32 PERIODIC REEVALUATIONS OR MONITORING AS DETERMINED APPROPRIATE
33 BY THE DIRECTOR.

34 (c) THE PARTIES MAY MODIFY OR DISSOLVE THE AGREEMENT AS
35 NECESSARY BASED ON THE RESULTS OF A REEVALUATION OR MONITORING.

36 (d) BY ENTERING INTO AN AGREEMENT WITH THE DIRECTOR UNDER
37 THIS SUBSECTION (2) TO LIMIT HIS OR HER PRACTICE, AN AUDIOLOGIST IS
38 NOT ENGAGING IN CONDUCT THAT IS GROUNDS FOR DISCIPLINE UNDER
39 SECTION 12-29.9-108 (2). THE AGREEMENT DOES NOT CONSTITUTE A
40 RESTRICTION OR DISCIPLINE BY THE DIRECTOR. HOWEVER, IF THE
41 AUDIOLOGIST FAILS TO COMPLY WITH THE TERMS OF AN AGREEMENT

1 ENTERED INTO PURSUANT TO THIS SUBSECTION (2), THE FAILURE
2 CONSTITUTES GROUNDS FOR DISCIPLINARY ACTION UNDER SECTION
3 12-29.9-108 (2) (r), AND THE LICENSEE IS SUBJECT TO DISCIPLINE IN
4 ACCORDANCE WITH SECTION 12-29.9-108.

5 (3) THIS SECTION DOES NOT APPLY TO AN AUDIOLOGIST SUBJECT
6 TO DISCIPLINE UNDER SECTION 12-29.9-108 (2) (q).

7 **12-29.9-114. Mental and physical examination of licensees.**

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

19 (2) THE DIRECTOR SHALL INCLUDE IN AN ORDER ISSUED TO A
20 LICENSEE UNDER SUBSECTION (1) OF THIS SECTION THE BASIS OF THE
21 DIRECTOR'S REASONABLE CAUSE TO BELIEVE THAT THE LICENSEE IS
22 UNABLE TO PRACTICE WITH REASONABLE SKILL AND SAFETY. FOR THE
23 PURPOSES OF A DISCIPLINARY PROCEEDING AUTHORIZED BY THIS ARTICLE,
24 THE LICENSEE IS DEEMED TO HAVE WAIVED ALL OBJECTIONS TO THE
25 ADMISSIBILITY OF THE EXAMINING HEALTH CARE PROVIDER'S TESTIMONY
26 OR EXAMINATION REPORTS ON THE GROUND THAT THEY ARE PRIVILEGED
27 COMMUNICATIONS.

28 (3) THE LICENSEE MAY SUBMIT TO THE DIRECTOR TESTIMONY OR
29 EXAMINATION REPORTS FROM A HEALTH CARE PROVIDER CHOSEN BY THE
30 LICENSEE PERTAINING TO THE CONDITION THAT THE DIRECTOR ALLEGES
31 MAY PRECLUDE THE LICENSEE FROM PRACTICING WITH REASONABLE SKILL
32 AND SAFETY. THE DIRECTOR MAY CONSIDER TESTIMONY AND REPORTS
33 SUBMITTED BY THE LICENSEE IN CONJUNCTION WITH, BUT NOT IN LIEU OF,
34 TESTIMONY AND EXAMINATION REPORTS OF THE HEALTH CARE PROVIDER
35 DESIGNATED BY THE DIRECTOR.

36 (4) A PERSON SHALL NOT USE THE RESULTS OF ANY MENTAL OR
37 PHYSICAL EXAMINATION ORDERED BY THE DIRECTOR AS EVIDENCE IN ANY
38 PROCEEDING OTHER THAN ONE BEFORE THE DIRECTOR. THE EXAMINATION
39 RESULTS ARE NOT PUBLIC RECORDS AND ARE NOT AVAILABLE TO THE
40 PUBLIC.

41 **12-29.9-115. Protection of medical records - licensee's**

1 **obligations - verification of compliance - noncompliance grounds for**
2 **discipline - rules.** (1) EACH LICENSEE SHALL DEVELOP A WRITTEN PLAN
3 TO ENSURE THE SECURITY OF PATIENT MEDICAL RECORDS. THE PLAN MUST
4 ADDRESS AT LEAST THE FOLLOWING:
5 (a) THE STORAGE AND PROPER DISPOSAL OF PATIENT MEDICAL
6 RECORDS;
7 (b) THE DISPOSITION OF PATIENT MEDICAL RECORDS IN THE EVENT
8 THE LICENSEE DIES, RETIRES, OR OTHERWISE CEASES TO PRACTICE OR
9 PROVIDE AUDIOLOGY SERVICES TO PATIENTS; AND
10 (c) THE METHOD BY WHICH PATIENTS MAY ACCESS OR OBTAIN
11 THEIR MEDICAL RECORDS PROMPTLY IF ANY OF THE EVENTS DESCRIBED IN
12 PARAGRAPH (b) OF THIS SUBSECTION (1) OCCURS.
13 (2) UPON INITIAL LICENSURE UNDER THIS ARTICLE, THE LICENSEE
14 SHALL ATTEST TO THE DIRECTOR THAT HE OR SHE HAS DEVELOPED A PLAN
15 IN COMPLIANCE WITH THIS SECTION.
16 (3) A LICENSEE SHALL INFORM EACH PATIENT, IN WRITING, OF THE
17 METHOD BY WHICH THE PATIENT MAY ACCESS OR OBTAIN HIS OR HER
18 MEDICAL RECORDS IF AN EVENT DESCRIBED IN PARAGRAPH (b) OF
19 SUBSECTION (1) OF THIS SECTION OCCURS.
20 (4) A LICENSEE WHO FAILS TO COMPLY WITH THIS SECTION IS
21 SUBJECT TO DISCIPLINE IN ACCORDANCE WITH SECTION 12-29.9-108.
22 (5) THE DIRECTOR MAY ADOPT RULES AS NECESSARY TO
23 IMPLEMENT THIS SECTION."

24 Renumber succeeding C.R.S. section accordingly.

25 Page 19, line 2, strike "PART 1" and substitute "ARTICLE".

26 Page 19, strike lines 6 through 27.

27 Strike pages 20 through 24.

28 Page 25, strike lines 1 through 26.

29 Page 26, line 7, strike "PART 1 OF".

30 Page 26, strike lines 9 through 25.

31 Renumber succeeding sections accordingly.

32 Page 27, line 24, strike "PART 1 OF".

1 Page 28, line 10, strike "part 1 of" and substitute "~~part 1 of~~".

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