

# **COLORADO SUPREME COURT STANDING COMMITTEE ON THE COLORADO RULES OF PROFESSIONAL CONDUCT**

## **AGENDA**

January 27, 2023, 9:00 a.m.  
The Supreme Court Conference Room and via Webex

Webex link:

<https://judicial.webex.com/judicial/j.php?MTID=m48afddd458b00e0497051b3770769f18>

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1. Call to Order [Judge Lipinsky].
2. Approval of minutes for October 28, 2022 meeting [attachment 1].
3. Old business:
  - a. Report from the Rule 1.4 subcommittee [Jessica Yates and Dave Stark] [attachment 2].
  - b. Report from the patent practitioner harmonization subcommittee [Rob Steinmetz and Alec Rothrock].
  - c. Report from the PALS II committee [Judge Espinosa].
  - d. Report from the reproductive health subcommittee [Nancy Cohen].
  - e. Report from the Rule 1.5(e) subcommittee [Alec Rothrock] [attachment 3].
4. New business:
  - a. Possible amendment to comment [14] to Rule 1.2 to address the voters' approval of Proposition 122 in November 2022 [Marcy Glenn] [attachment 4].

5. Adjournment.

Upcoming meeting dates: April 14 (new date), July 28, and October 27.

Judge Lino Lipinsky, Chair  
Colorado Court of Appeals  
lino.lipinsky@judicial.state.co.us

# Attachment 1

**COLORADO SUPREME COURT**

**STANDING COMMITTEE ON THE RULES OF PROFESSIONAL CONDUCT**

**Submitted Minutes of Meeting of the Full Committee**

**On**

**October 28, 2022**

**Sixty-Fifth Meeting of the Full Committee**

The sixty-fifth meeting of the Colorado Supreme Court Standing Committee on the Rules of Professional Conduct was convened at 9:00 AM on Friday, October 28, 2022, by Chair Judge Lino Lipinsky de Orlov.

Present at the meeting, in addition to Judge Lipinsky and liaison Justice Maria Berkenkotter, were Nancy Cohen, Cynthia Covell, Thomas E. Downey, Jr., Judge Adam Espinosa, Margaret Funk, Marcy Glenn, Erika Holmes, April Jones, Matthew Kirsch, Judge Byron M. Large, Marianne Luu-Chen, Cecil E. Morris, Jr., Noah Patterson, Judge Ruthanne Polidori, Troy Rackham, Henry Richard Reeve, Alexander R. Rothrock, Marcus L. Squarrell, David W. Stark, Robert W. Steinmetz, Jamie S. Sudler, III, Eli Wald, Jennifer J. Wallace, Judge John R. Webb, Jessica E. Yates, Fred Yarger, and E. Tuck Young. Liaison Justice Monica Márquez was excused from attendance. Tyrone Glover, Julia Martinez, and Lisa Wayne were absent. Special guests in attendance were Daniel Smith, National Association of Patent Practitioners Advocacy Committee Chair; Molly Kocialski, United States Patent and Trademark Office; and Natalie Landis.

**1. Call to Order.**

Judge Lipinsky called the meeting to order at 9:00 AM. He welcomed those attending in person, virtually via Webex, and by telephone. He reviewed the names of all attendees and noted those having excused absences. He also noted the attendance of guests Dan Smith, Molly Kocialski, and Natalie Landis.

**2. Approval of Minutes for July, 2022 Meeting.**

A motion was made and seconded to approve the minutes for the meeting of July 22, 2022. After correcting a misspelling of one member's name, the motion was approved unanimously.

**3. Report on the Patent Practitioner Harmonization Proposal.**

A report on the Patent Practitioner harmonization proposal was provided by members Rob Steinmetz and Alec Rothrock. Mr. Steinmetz reported that the subcommittee had met on August 31, 2022, with a group of patent practitioners and licensed patent attorneys to discuss the issues associated with the patent practitioner harmonization proposal. At the meeting, the subcommittee agreed to reach out to licensed patent

attorneys for additional input. Dan Smith reported that he had contacted attorneys Curtis Vock, a partner at Lathrop GMP, and Mike Drapkin, a partner at Holland & Hart, who have agreed to meet with the subcommittee to provide their perspective on the patent practitioner harmonization proposal and to describe steps they have taken to deal with issues relating to the harmonization proposal. Mr. Steinmetz advised that the subcommittee would provide a report to the standing committee at its meeting on January 27, 2023.

#### **4. Report of the Status of Proposed Amendment to Rule 1.8(e)**

Judge Lipinsky reported that the Colorado Supreme Court had adopted the proposed amendment to Rule 1.8(e), without opposition, on September 8, 2022. Judge Lipinsky thanked liaison Justice Maria Berkenkotter and all members of the Supreme Court for their action in adopting the proposed amendment. Judge Lipinsky also thanked John Asher for being the driving force in bringing the matter to the attention of the standing committee and its adoption by the Colorado Supreme Court.

#### **5. Update on the Proposed Amendments to Rule 1.4.**

Jessica Yates and Dave Stark provided an update on the status of the proposed amendments to Rule 1.4. The standing committee had forwarded its proposed amendments to Rule 1.4 to the Colorado Supreme Court for further consideration. Following its initial review, the Supreme Court requested a meeting with members Stark and Gates seeking clarification on several issues before posting the proposal for public comment and hearing. Member Yates reported there was some discussion about eliminating certain language from proposed Rule 1.4(a)(5)(c). Member Stark reported that the Court had good suggestions for eliminating “legalese” from the language of proposed Comment [10] to Rule 1.4 and eliminating the proposed Comment [19] to Rule 1.5. Member Yates noted that she expects the Court will return the proposal with comments to the standing committee for additional consideration at the January, 2023 meeting.

#### **6. Update From the PALS II Committee.**

Judge Lipinsky began the discussion by reminding members that the hearing before the Colorado Supreme Court on the proposed licensed legal paraprofessional program was scheduled for November 16, 2022. The Chair noted the November 10 deadline for filing comments and the deadline for signing up to request to speak at the public hearing.

Judge Espinoza began his update by referring members to the extensive materials contained in Attachment 2 of the meeting agenda. He urged committee members to file written comments in favor of the program. He noted that the materials in Attachment 2 contained twenty-six letters in favor of the proposal authored by individuals and a number of organizations. The materials also contain twelve letters providing negative comments. He commented briefly on the mix of reviews from the CBA Law Council. Overall, Judge Espinoza believed the comments were largely supportive of the program.

Comments or concerns centered on several issues: 1. Some questioned whether the estate limit of \$250,000 was too low given the current economic climate; 2. Some viewed the program as diluting or impairing the value of an attorney's license to practice law; 3. Concerns were raised regarding the necessity for malpractice insurance and the limits required; 4. Some expressed concern that work performed by licensed legal paraprofessionals may require subsequent corrective by attorneys, resulting in increased costs to the client; 5. Questions were raised regarding the dollar amount of the fees to be charged by licensed legal paraprofessionals; 6. Some expressed concern that the initial limited nature of the proposed program for licensed legal paraprofessionals would lead to efforts to expand the areas of practice for licensed legal paraprofessionals.

Judge Lipinsky commented that the Access to Justice Committee favored the proposal and briefly reviewed the analogous programs in Arizona and Utah. He noted that the programs in Arizona and Utah were successful and had not encountered serious adverse issues. He noted that, in Arizona, "legal paraprofessionals" are allowed to appear and speak in court.

Judge Espinoza noted that, if approved by the Colorado Supreme Court, the proposal would be referred to the standing committee to recommend necessary and appropriate amendments to the Rules of Professional Conduct. In addition, the Supreme Court would adopt a separate set of Rules of Professional Conduct for licensed legal paraprofessionals.

Member Stark expressed his hope that the Supreme Court will approve the program. He noted that the hard work of implementing the program will begin following such approval. He estimated it would take approximately one year to implement the program. During a brief discussion about education for licensed legal paraprofessionals, the Chair noted that the James E. Rogers College of Law at the University of Arizona offers courses for those desiring to become "legal paraprofessionals." Member Yates noted that three community colleges in Colorado were currently exploring the possibility of offering such courses.

#### **7. Possible Rule on Civility.**

Guest Natalie Landis reviewed her recent experience in seeking repairs to her apartment complex on behalf of herself and other residents. In light of her negative experience with counsel for the complex's property management company, she suggested that the standing committee consider a rule on civility. Ms. Landis provided copies of her correspondence to the property manager and the response from counsel for the management company, together with pictures documenting certain of the issues of concern to residents of the complex. Copies of the materials were included in Attachment 3 to the meeting packet.

Ms. Landis first reviewed her advocacy background in other matters before addressing her attention to the apartment complex issues. Residents of the apartment complex had long standing concerns about a number of maintenance, safety, and security issues.

Attachment 3, Document A, is the letter Ms. Landis sent to the management company. Attachment 3, Document B, is the response from counsel for the management company. In such letter, counsel for the management company advised that any claim against the management company would be considered “groundless and frivolous” and that the residents “should expect vigorous opposition, including but not limited to recoupment of attorney’s fees and other damages” to any claims they may file. The attorney also expressed that certain actions by the residents could potentially give rise to defamation claims and cautioned that any disorderly conduct or disturbing of the peace would result in “all available legal recourse” being taken against the residents. Ms. Landis told the standing committee that she felt the letter from counsel for the management company was threatening and sent with the intent to silence the residents. She said that the tone of and threats in the letter affected her advocacy on behalf of the residents of the apartment complex. She stated that a Rule of Professional Conduct directed towards increasing civility in the legal process would allow the “little people” to freely voice concerns without fear of receiving threatening letters from attorneys representing an adverse party.

Judge Lipinsky thanked Ms. Landis for bringing the matter to the attention of the standing committee. He then reviewed the history of the Civil Rules Committee’s consideration of a possible rule on civility in 2016. Copies of the historical materials that Judge Lipinsky referenced were included in Attachment 3 of the meeting agenda. He noted that, in September 2016, a working group of the Colorado Supreme Court Civil Rules Committee considered the addition of a Section 1-27 to C.R.C.P. 121 that would address attorney civility. After considerable deliberation and advocacy on both sides of the issue, the working group decided not to recommend the proposed rule to the full Civil Rules Committee.

Judge Lipinsky read from the provisions of paragraphs 2 and 8 of proposed Section 1-27. He noted that the CBA Executive Council had voted not to support the proposed rule. Others opposed the proposed rule, believing it was too subjective, that a rule could not legislate civility, and that it would only create additional litigation. The Chair noted that Judge Jonathan Shamis, who was a member of the working group, was a tireless advocate for the proposed rule, believing that it would promote professionalism in the courtroom and create a new conversation related to professionalism. The Chair noted that he had reached out to Judge Shamis on the issue but had not received a response.

Member Stark said that the CBA Committee on Professionalism in the Courts had also examined the issue for approximately a year. He noted that the Colorado group had invited Wyoming Attorney Regulation Counsel, Mark Gifford, to inform it on Wyoming’s experience with that state’s civility rule — Rule 801 of the Uniform Rules for District Courts of the State of Wyoming. Mr. Gifford noted that the Wyoming professionalism provisions had not been utilized much, recalling only two occasions where the Wyoming rule had been used. Member Stark noted that the CBA committee had drafted a definition of professionalism and principles of professionalism.

Member Cohen, while stressing the need for professionalism, expressed concerns that proposed rules on civility were very subjective, and that their enforcement by trial judges against attorneys could adversely impact client advocacy. She asserted that Rule 4.4 adequately addresses the issue and supported the determinations of other committees that had questioned the need for rules on civility and determined that such rules were neither needed nor warranted.

Judge Webb commented that Rule 4.1, which precludes attorneys from making misrepresentations of fact or law, provides some protection on the civility issue and that Rule 8.4 might apply in extreme cases.

Justice Berkenkotter thanked Ms. Landis for bringing the matter to the attention of the standing committee and for her advocacy on behalf of the members of her apartment complex. The Chair also thanked Ms. Landis for her presentation and advocacy and concluded the discussion by stating that the standing committee would not take further action on her proposal at the present time.

#### **8. Comment Concerning Advice Regarding Reproductive Health.**

Member Cohen led a discussion regarding the ethical implications for Colorado attorneys who provide reproductive health advice based on state laws enacted after the United Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*. The materials included with the agenda for the meeting included member Cohen's memorandum on the issue, together with related correspondence and statutory material.

After a brief review of the issue and the materials, member Cohen requested that the Chair form a subcommittee to investigate the issue and to draft a possible comment to Rule 1.2. A brief discussion followed, with some members favoring the formation of the subcommittee, some questioning whether any action was necessary, some questioning what, if any, protection the proposed comment to Rule 1.2 would provide, and some noting the similarity of the issue to the concerns that led to the adoption of comment [14] to Rule 1.2. (That comment allows Colorado lawyers to advise clients on Colorado's marijuana laws.)

The Chair, having considered the materials and multiple views expressed by members of the standing committee, formed the subcommittee to investigate the issue and to determine if a comment to Rule 1.2, or some additional rule, was warranted. The following members volunteered to serve on the subcommittee: Dave Stark, Matt Kirsch, Jessica Yates, Troy Rackham, Cindy Covell, Dick Reeve, Cecil Morris, Tom Downey, Jamie Sudler, Judge Webb, Margaret Funk, Alec Rothrock, and Marcy Glenn. Member Cohen will serve as chair.

#### **9. New Business.**

No new business was presented for the committee's consideration.

**10. Adjournment.**

The chair noted that the next meeting of the committee will be held on January 27, 2023. A motion to adjourn was made and seconded. The meeting adjourned at approximately 10:15 AM.

Respectfully submitted,

Thomas E. Downey, Jr., Secretary

# Attachment 2

**COLORADO SUPREME COURT  
ATTORNEY REGULATION COUNSEL**

Senior Assistant Regulation Counsel

Erin Robson Kristofco

Alan C. Obye

Lisa E. Pearce

Assistant Regulation Counsel

Jill Perry Fernandez

Michelle LeFlore

Jody McGuirk

Michele Melnick

Justin P. Moore

Matt Ratterman

Catherine S. Shea

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Jonathan P. White

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Jay Fernandez

Attorney Regulation Counsel  
Jessica E. Yates

Chief Deputy Regulation Counsel  
Margaret B. Funk

Deputy Regulation Counsel  
April M. McMurrey

Deputy Regulation Counsel  
Dawn M. McKnight

Deputy Regulation Counsel  
Gregory G. Sapakoff



Attorneys' Fund for Client Protection  
Unauthorized Practice of Law

January 20, 2023

Dear Members of the Supreme Court Standing Committee on the Rules of Professional Conduct:

Pursuant to the work of the subcommittee formed to address communications about professional liability insurance and the feedback received from the Colorado Supreme Court, the subcommittee hereby tenders a revised recommendation to the Standing Committee. The proposed rule and comments that would be added to Colo. RPC 1.4 are set forth in **Attachment A**.

Membership of the Subcommittee

The subcommittee continues to be comprised of the following members of the Standing Committee:

- Nancy Cohen
- The Hon. Adam Espinosa
- Margaret Funk
- Troy Rackham
- David Stark
- Robert Steinmetz
- Jamie Sudler
- Jessica Yates
- Tuck Young

Revisions Included in This Proposal

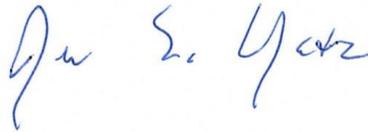
The Supreme Court provided feedback to subcommittee co-chairs Dave Stark and Jessica Yates that the proposed changes to Colo. RPC 1.4 could be further streamlined. Accordingly, these revisions include the following:

- Continuing to require disclosure to a client if a lawyer is not covered by a professional liability insurance policy, but eliminating the reference to any dollar thresholds of the policy. The subcommittee agreed that any reference to \$100,000/\$300,000 minimum coverage likely was unnecessary given that any commercially available policies have such minimum coverage.
- Making a conforming change to proposed Comment [9].
- Eliminating proposed Comment [10] that likewise had referred to policies of those dollar thresholds as being sufficient.

These changes come after other revisions based on feedback from the Standing Rules Committee.

**Attachment A** is a redline of the proposed revision, with the above-noted deletions of text that had been previously transmitted to the Committee for its September 2022 meeting. If the Standing Committee approves any changes to Colo. RPC 1.4, the subcommittee will prepare a redline against the current rule for transmittal to the Supreme Court.

Sincerely,

A handwritten signature in blue ink that reads "Jessica E. Yates". The signature is written in a cursive, flowing style.

Jessica E. Yates  
Attorney Regulation Counsel

## Rule 1.4. Communication

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

(c) A lawyer in private practice shall inform a new client in writing before or within a reasonable time after commencing the representation if the lawyer is not covered by a professional liability insurance policy of at least \$100,000 per claim and \$300,000 in the aggregate per year. A lawyer shall maintain a record of these disclosures for seven years after the termination of the representation of a client.

### COMMENT

[1] Reasonable communication between the lawyer and the client is necessary for the client effectively to participate in the representation.

### Communicating with Client

[2] If these Rules require that a particular decision about the representation be made by the client, paragraph (a)(1) requires that the lawyer promptly consult with and secure the client's consent prior to taking action unless prior discussions with the client have resolved what action the client wants the lawyer to take. For

example, a lawyer who receives from opposing counsel an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case must promptly inform the client of its substance unless the client has previously indicated that the proposal will be acceptable or unacceptable or has authorized the lawyer to accept or to reject the offer. See Rule 1.2(a).

[3] Paragraph (a)(2) requires the lawyer to reasonably consult with the client about the means to be used to accomplish the client's objectives. In some situations--depending on both the importance of the action under consideration and the feasibility of consulting with the client--this duty will require consultation prior to taking action. In other circumstances, such as during a trial when an immediate decision must be made, the exigency of the situation may require the lawyer to act without prior consultation. In such cases the lawyer must nonetheless act reasonably to inform the client of actions the lawyer has taken on the client's behalf. Additionally, paragraph (a)(3) requires that the lawyer keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the substance of the representation.

[4] A lawyer's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, paragraph (a)(4) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer, or a member of the lawyer's staff, acknowledge receipt of the request and advise the client when a response may be expected. A lawyer should promptly respond to or acknowledge client communications.

### Explaining Matters

[5] The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. Adequacy of communication depends in part on the kind of advice or assistance that is involved. For example, when there is time to explain a proposal made in a

negotiation, the lawyer should review all important provisions with the client before proceeding to an agreement. In litigation a lawyer should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that are likely to result in significant expense or to injure or coerce others. On the other hand, a lawyer ordinarily will not be expected to describe trial or negotiation strategy in detail. The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation. In certain circumstances, such as when a lawyer asks a client to consent to a representation affected by a conflict of interest, the client must give informed consent, as defined in Rule 1.0(e).

[6] Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or suffers from diminished capacity. See Rule 1.14. When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the lawyer should address communications to the appropriate officials of the organization. See Rule 1.13. Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client.

### Withholding Information

[6A] Regarding communications with clients when a lawyer retains or contracts with other lawyers outside the lawyer's own firm to provide or assist in the providing of legal services to the client, see Comment [6] to Rule 1.1.

[6B] Regarding communications with clients and with lawyers outside of the lawyer's firm when lawyers from more than one firm are providing legal services to the client on a particular matter, see Comment [7] to Rule 1.1.

[7] In some circumstances, a lawyer may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. Thus, a lawyer might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. A lawyer may not withhold information to serve the lawyer's own interest or convenience or the interests or convenience of another person. Rules or court

orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client. Rule 3.4(c) directs compliance with such rules or orders.

## Explanation of Fees and Expenses

[7A] Information provided to the client under Rule 1.4(a) should include information concerning fees charged, costs, expenses, and disbursements with regard to the client's matter. Additionally, the lawyer should promptly respond to the client's reasonable requests concerning such matters. It is strongly recommended that all these communications be in writing. As to the basis or rate of the fee, see Rule 1.5(b).

## Disclosures Regarding Insurance

[8] “Private practice” in paragraph (c) does not include lawyers exclusively in government practice or exclusively employed as in-house counsel.

[9] Lawyers may use the following language in making the disclosures required by this rule:

Colorado Rule of Professional Conduct 1.4(c) requires that you, as the client, be informed in writing if a lawyer is not covered by a professional liability insurance policy of at least \$100,000 per claim and \$300,000 in the aggregate per year. You are therefore advised that (name of attorney or firm) is not covered by a professional liability insurance policy.

[10] ~~A professional liability insurance policy with coverage of at least \$100,000 per claim and \$300,000 in the aggregate is sufficient even if limits of that coverage erode with defense costs.~~

# Attachment 3



Alexander R. Rothrock  
Attorney at Law  
arothrock@bflaw.com

## MEMORANDUM

TO: Honorable Lino S. Lipinsky de Orlov  
FROM: Alec Rothrock, Chair, Rule 1.5(e) Subcommittee  
DATE: November 4, 2022  
SUBJECT: Rule 1.5(e) Subcommittee

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1. Colo. RPC 1.5(e)<sup>1</sup> prohibits lawyers from paying or receiving referral fees. Although it was adopted in 1993 when Colorado adopted the ABA Model Rules, it is not based on an ABA Model Rule and no other jurisdiction has a rule like it.

2. Colo. RPC 7.2(b)<sup>2</sup> also regulates referral fees, but only the payment of them, not their receipt. Colo. RPC 7.2(b) is identical to ABA Model Rule 7.2(b).

3. To some degree, Colo. RPC 1.5(e) and Colo. RPC 7.2(b) overlap and conflict. For example, Colo. RPC 1.5(e) prohibits lawyers from paying any referral fees, whereas Colo.

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<sup>1</sup> “Referral fees are prohibited.” Colo. RPC 1.5(e).

<sup>2</sup> Colo. RPC 7.2(b) states as follows:

A lawyer shall not compensate, give or promise anything of value to a person for recommending the lawyer's services except that a lawyer may:

- (1) pay the reasonable costs of advertisements or communications permitted by this Rule;
- (2) pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service;
- (3) pay for a law practice in accordance with Rule 1.17;
- (4) refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if:
  - (i) the reciprocal referral agreement is not exclusive; and
  - (ii) the client is informed of the existence and nature of the agreement; and
- (5) give nominal gifts as an expression of appreciation that are neither intended nor reasonably expected to be a form of compensation for recommending a lawyer's services.

RPC 7.2(b)(2) permits lawyers to pay fees to referral services that are not-for-profit or “qualified.”

4. In other respects, Colo. RPC 1.5(e) and Colo. RPC 7.2(b) regulate in different areas. Colo. RPC 1.5(e) prohibits a lawyer’s receipt of referral fees but Colo. RPC 7.2(b) does not. For example, in an informal opinion, the CBA Ethics Committee interpreted Colo. RPC 1.5(e) to prohibit a lawyer from accepting a fee for having referred a client to a nonlawyer investment advisor.<sup>3</sup> The opinion does not mention Colo. RPC 7.2(b) because that rule prohibits only a lawyer’s payment of a referral fee.

5. In prior Committee meetings in which this issue has been discussed, the consensus was not to eliminate Colo. RPC 1.5(e) but rather to narrow it to prohibit the receipt of referral fees in certain situations. The principle underlying the proposed rule is that the financial incentive for the referral tempts the referring lawyer to compromise her judgment and refer the client to a third party regardless of whether the third party is the best and most economical source for the products or nonlegal services offered by the third party. The Committee has also alerted the subcommittee to the importance of avoiding inconsistency between the proposed rule and Colo. RPC 1.5(d), which governs the division of legal fees between lawyers in different law firms.

6. The subcommittee recommends that the proposed rule state as follows:

Except as permitted by Rule 1.5(d) or Rule 7.2(b), a lawyer shall not receive compensation or anything of value for referring a client [*or former client*] to a third party for products or nonlegal services related to the lawyer’s representation of a client [*or former client*]. A lawyer may receive nominal gifts as an expression of appreciation that are neither intended nor reasonably expected to be a form of compensation for recommending the third party’s products or nonlegal services.

7. The following are comments on the derivation or purpose of some of the phrases and language used in the proposed rule:

a. The subcommittee borrowed the structure of the first sentence of the proposed rule from Colo. RPC 7.2(b).

b. The subcommittee borrowed the second sentence of the proposed rule from Comment [4] to Colo. RPC 7.2.

c. The purpose of the phrase, “Except as permitted by Rule 1.5(d) or Rule 7.2(b),” is to subordinate the proposed rule to these other rules in the event of any

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<sup>3</sup> <https://www.cobar.org/For-Members/Committees/Ethics-Committee/Abstracts-of-Responses-to-Letter-Inquiries/1996-1997-Archive-Letter-Abstracts#13>.

overlap. Similarly, the purpose of the phrase, “products and nonlegal services” is to differentiate the proposed rule from the rule governing the division of fees between lawyers in different firms, Colo. RPC 1.5(d). In the typical situation in which a lawyer refers a client to another lawyer, the proposed rule would not apply to their compensation arrangement because the purpose of the referral would be to secure the *legal* services of the second lawyer. Only Colo. RPC 1.5(d) would apply to their compensation arrangement. However, Colo. RPC 1.5(d) also authorizes a lawyer to divide a legal fee with a lawyer in another firm solely for assuming joint responsibility for the representation. Colo. RPC 1.5(d)(1). The referral may be considered a “nonlegal service.” Without subordinating the proposed rule to Colo. RPC 1.5(d), the proposed rule may prohibit what Colo. RPC 1.5(d) permits.

d. The purpose of the phrase, “related to the lawyer’s representation of a client,” which modifies the phrase “products or nonlegal services,” is designed to permit lawyers to receive compensation for referrals that are not related to the lawyer’s representation of the client and therefore outside the scope of regulation of the ethics rules. For example, if the proposed rule did not include this modifying language, it would prohibit a financial adviser who holds but does not use a law license from receiving a fee for referring a financial client to another financial adviser even though the fee may be customary in that profession. It also would prohibit a lawyer from accepting a free month of membership in a health club for referring a client to the health club.

8. The Subcommittee has mixed views on two issues, about which it seeks the Committee’s opinion:

a. Whether the proposed rule should apply to a lawyer’s receipt of compensation for recommending a third party to a *former client* as well as a client. The italicized language in the proposed rule and comment alerts the Committee to this issue. If the proposed rule does not include compensation for the referral of former clients, a lawyer would be permitted to receive compensation from a third party for referring a former client to the third party. In that instance, whether the referred person is a current or former client would be determined by existing legal principles. *See People v. Bennett*, 810 P.2d 661, 664 (Colo. 1991) (attorney-client relationship is ongoing unless client clearly understands, or reasonably should understand, that relationship is no longer to be depended on).

b. Whether to locate the proposed rule in one of the following rules:

- (i) in Colo. RPC 1.5(e), where it is now, which addresses fees and expenses charged by a lawyer, including subsection (d), which governs the division of legal fees between lawyers in different law firms,

- (ii) in Colo. RPC 1.8, which houses an assortment of specific conflicts of interest rules, including subsection (f), which prohibits a lawyer from accepting “compensation for representing a client from one other than the client” unless the lawyer meets certain conditions,
- (iii) in Colo. RPC 7.2, to be near Colo. RPC 7.2(b), which governs a lawyer’s *payment* of compensation to a third party for recommending the lawyer’s services.

9. Finally, wherever the proposed rule is located, the Committee may wish to include a Comment describing the purpose and intended reach of the proposed rule. For example, a Comment might state as follows:

[ ] Paragraph \_ reflects the principle that a lawyer’s receipt of a referral fee from a third party tempts the referring lawyer to compromise his or her judgment by referring the client to a third party regardless of whether the third party is the best and most economical source for the third party’s products or nonlegal services. The financial incentive for the referral causes potential harm to the client because it compromises the referring lawyer’s professional independence and materially limits the lawyer’s ability to represent the best interests of his or her clients. The financial incentive for the referral also creates a financial conflict of interest for the referring lawyer that undermines the referring lawyer’s duty of loyalty to his or her client. *Although former clients are still likely to value their lawyer’s judgment and opinions about the substance of the referral, the referring lawyer’s obligation to provide competent representation to a client ends once the representation is terminated.* Similarly, referrals that are not related to the lawyer’s representation of the client are outside of the scope of the lawyer-client relationship and outside the scope of regulation of the ethics rules. Paragraph \_ is not intended to regulate the division of a legal fees between lawyers not in the same firm or the payment of compensation for recommending a lawyer’s services. It is therefore expressly subordinate to Rule 1.5(d), and Rule 7.2(b), in the event of any inconsistency between them.

## Colo. RPC 1.5(e) Subcommittee: Proposed Rule and Comment

Except as permitted by Rule 1.5(d) or Rule 7.2(b), a lawyer shall not receive compensation or anything of value for referring a client *[or former client]* to a third party for products or nonlegal services related to the lawyer's representation of a client *[or former client]*. A lawyer may receive nominal gifts as an expression of appreciation that are neither intended nor reasonably expected to be a form of compensation for recommending the third party's products or nonlegal services.

[ ] Paragraph \_ reflects the principle that a lawyer's receipt of a referral fee from a third party tempts the referring lawyer to compromise his or her judgment by referring the client to a third party regardless of whether the third party is the best and most economical source for the third party's products or nonlegal services. The financial incentive for the referral causes potential harm to the client because it compromises the referring lawyer's professional independence and materially limits the lawyer's ability to represent the best interests of his or her clients. The financial incentive for the referral also creates a financial conflict of interest for the referring lawyer that undermines the referring lawyer's duty of loyalty to his or her client. *Although former clients are still likely to value their lawyer's judgment and opinions about the substance of the referral, the referring lawyer's obligation to provide competent representation to a client ends once the representation is terminated.* Similarly, referrals that are not related to the lawyer's representation of the client are outside of the scope of the lawyer-client relationship and outside the scope of regulation of the ethics rules. Paragraph \_ is not intended to regulate the division of a legal fees between lawyers not in the same firm or the payment of compensation for recommending a lawyer's services. It is therefore expressly subordinate to Rule 1.5(d), and Rule 7.2(b), in the event of any inconsistency between them.

# Attachment 4

[14] A lawyer may counsel a client regarding the validity, scope, and meaning of Colorado constitution article XVIII, secs. 14 & 16, and the Colorado Natural Medicine Act of 2022, sections 12-170-101 to -115, C.R.S. 2022, and may assist a client in conduct that the lawyer reasonably believes is permitted by these constitutional provisions and statutes, and the statutes, regulations, orders, and other state or local provisions implementing them. In these circumstances, the lawyer shall also advise the client regarding related federal law and policy.

*Be it Enacted by the People of the State of Colorado:*

**SECTION 1.** In Colorado Revised Statutes, **add** Article 170 to Title 12 as follows:

ARTICLE 170

NATURAL MEDICINE HEALTH ACT of 2022

**12-170-101. Short title.** THE SHORT TITLE OF THIS ARTICLE 170 IS THE “NATURAL MEDICINE HEALTH ACT OF 2022.”

**12-170-102. Legislative declaration.** (1) THE VOTERS OF THE STATE OF COLORADO FIND AND DECLARE THAT:

(a) COLORADO’S CURRENT APPROACH TO MENTAL HEALTH HAS FAILED TO FULFILL ITS PROMISE. COLORADANS DESERVE MORE TOOLS TO ADDRESS MENTAL HEALTH ISSUES, INCLUDING APPROACHES SUCH AS NATURAL MEDICINES THAT ARE GROUNDED IN TREATMENT, RECOVERY, HEALTH, AND WELLNESS RATHER THAN CRIMINALIZATION, STIGMA, SUFFERING, AND PUNISHMENT.

(b) COLORADANS ARE EXPERIENCING PROBLEMATIC MENTAL HEALTH ISSUES, INCLUDING BUT NOT LIMITED TO SUICIDALITY, ADDICTION, DEPRESSION, AND ANXIETY.

(c) AN EXTENSIVE AND GROWING BODY OF RESEARCH IS ADVANCING TO SUPPORT THE EFFICACY OF NATURAL MEDICINES COMBINED WITH PSYCHOTHERAPY AS TREATMENT FOR DEPRESSION, ANXIETY, SUBSTANCE USE DISORDERS, END-OF-LIFE DISTRESS, AND OTHER CONDITIONS.

(d) THE FEDERAL GOVERNMENT WILL TAKE YEARS TO ACT AND COLORADANS DESERVE THE RIGHT TO ACCESS NATURAL MEDICINES NOW.

(e) NATURAL MEDICINES HAVE BEEN USED SAFELY FOR MILLENNIA BY CULTURES FOR HEALING.

(f) COLORADO CAN BETTER PROMOTE HEALTH AND HEALING BY REDUCING ITS FOCUS ON CRIMINAL PUNISHMENTS FOR PERSONS WHO SUFFER MENTAL HEALTH ISSUES AND BY ESTABLISHING REGULATED ACCESS TO NATURAL MEDICINES THROUGH A HUMANE, COST-EFFECTIVE, AND RESPONSIBLE APPROACH.

(g) THE CITY AND COUNTY OF DENVER VOTERS ENACTED ORDINANCE 301 IN MAY 2019 TO MAKE THE ADULT PERSONAL POSSESSION AND USE OF THE NATURAL MEDICINE PSILOCYBIN THE LOWEST LAW ENFORCEMENT PRIORITY IN THE CITY AND COUNTY OF DENVER AND TO PROHIBIT THE CITY AND COUNTY FROM SPENDING RESOURCES ON ENFORCING RELATED PENALTIES.

(h) OREGON VOTERS ENACTED MEASURE 109 IN OREGON IN NOVEMBER 2020 TO ESTABLISH A REGULATED SYSTEM OF DELIVERING A NATURAL MEDICINE, IN PART TO PROVIDE PEOPLE ACCESS TO PSILOCYBIN FOR THERAPEUTIC PURPOSES.

(i) CRIMINALIZING NATURAL MEDICINES HAS DENIED PEOPLE FROM ACCESSING ACCURATE EDUCATION AND HARM REDUCTION INFORMATION RELATED TO THE USE OF NATURAL MEDICINES, AND LIMITED THE DEVELOPMENT OF APPROPRIATE TRAINING FOR FIRST-AND MULTI-RESPONDERS INCLUDING LAW ENFORCEMENT, EMERGENCY MEDICAL SERVICES, SOCIAL SERVICES, AND FIRE SERVICES.

(j) THE PURPOSE OF THIS NATURAL MEDICINE HEALTH ACT OF 2022 IS TO ESTABLISH A NEW, COMPASSIONATE, AND EFFECTIVE APPROACH TO NATURAL MEDICINES BY:

(I) ADOPTING A PUBLIC HEALTH AND HARM REDUCTION APPROACH TO NATURAL MEDICINES BY REMOVING CRIMINAL PENALTIES FOR PERSONAL USE FOR ADULTS TWENTY-ONE YEARS OF AGE AND OLDER;

(II) DEVELOPING AND PROMOTING PUBLIC EDUCATION RELATED TO THE USE OF NATURAL MEDICINES AND APPROPRIATE TRAINING FOR FIRST RESPONDERS; AND

(III) ESTABLISHING REGULATED ACCESS BY ADULTS TWENTY-ONE YEARS OF AGE AND OLDER TO NATURAL MEDICINES THAT SHOW PROMISE IN IMPROVING WELL-BEING, LIFE SATISFACTION, AND OVERALL HEALTH.

(k) THE PROVISIONS OF THIS ARTICLE 170 SHALL BE INTERPRETED CONSISTENTLY WITH THE FINDINGS AND PURPOSES STATED IN THIS SECTION AND SHALL NOT BE LIMITED BY ANY COLORADO LAW THAT COULD CONFLICT WITH OR BE INTERPRETED TO CONFLICT WITH THE PURPOSES AND POLICY OBJECTIVES STATED IN THIS SECTION.

(l) THE PEOPLE OF THE STATE OF COLORADO FURTHER FIND AND DECLARE THAT IT IS NECESSARY TO ENSURE CONSISTENCY AND FAIRNESS IN THE APPLICATION OF THIS ARTICLE 170 THROUGHOUT THE STATE AND THAT, THEREFORE, THE MATTERS ADDRESSED BY THIS ARTICLE 170 ARE, EXCEPT AS SPECIFIED HEREIN, MATTERS OF STATEWIDE CONCERN.

**12-170-103. Definitions.** (1) AS USED IN THIS ARTICLE 170, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) “ADMINISTRATION SESSION” MEANS A SESSION HELD AT A HEALING CENTER OR ANOTHER LOCATION AS PERMITTED BY RULES ADOPTED BY THE DEPARTMENT AT WHICH A PARTICIPANT PURCHASES, CONSUMES, AND EXPERIENCES THE EFFECTS OF A NATURAL MEDICINE UNDER THE SUPERVISION OF A FACILITATOR.

(b) “DEPARTMENT” MEANS THE DEPARTMENT OF REGULATORY AGENCIES.

(c) “FACILITATOR” MEANS A PERSON LICENSED BY THE DEPARTMENT WHO:

(I) IS TWENTY-ONE YEARS OF AGE OR OLDER.

(II) HAS AGREED TO PROVIDE NATURAL MEDICINE SERVICES TO A PARTICIPANT.

(III) HAS MET THE REQUIREMENTS ESTABLISHED BY THE DEPARTMENT.

(d) “HEALING CENTER” MEANS AN ENTITY LICENSED BY THE DEPARTMENT THAT IS ORGANIZED AND OPERATED AS A PERMITTED ORGANIZATION:

(I) THAT ACQUIRES, POSSESSES, CULTIVATES, MANUFACTURES, DELIVERS, TRANSFERS, TRANSPORTS, SUPPLIES, SELLS, OR DISPENSES NATURAL MEDICINE AND RELATED SUPPLIES; OR PROVIDES NATURAL MEDICINE FOR NATURAL MEDICINE SERVICES AT LOCATIONS PERMITTED BY THE DEPARTMENT; OR ENGAGES IN TWO OR MORE OF THESE ACTIVITIES;

(II) WHERE ADMINISTRATION SESSIONS ARE HELD; OR

(III) WHERE NATURAL MEDICINE SERVICES ARE PROVIDED BY A FACILITATOR.

(e) “HEALTH-CARE FACILITY” MEANS A HOSPITAL, HOSPICE, COMMUNITY MENTAL HEALTH CENTER, FEDERALLY QUALIFIED HEALTH CENTER, RURAL HEALTH CLINIC, PACE ORGANIZATION, LONG-TERM CARE FACILITY, A CONTINUING CARE RETIREMENT COMMUNITY, OR OTHER TYPE OF FACILITY WHERE HEALTH-CARE IS PROVIDED.

(f) “INTEGRATION SESSION” MEANS A MEETING BETWEEN A PARTICIPANT AND FACILITATOR THAT OCCURS AFTER THE PARTICIPANT HAS COMPLETED AN ADMINISTRATION SESSION.

(g) “LOCALITY” MEANS A COUNTY, MUNICIPALITY, OR CITY AND COUNTY.

(h) “NATURAL MEDICINE” MEANS THE FOLLOWING SUBSTANCES IN ANY FORM THAT WOULD CAUSE SUCH PLANT OR FUNGUS TO BE DESCRIBED IN THE “UNIFORM CONTROLLED SUBSTANCES ACT OF 2013”, ARTICLE 18 OF TITLE 18: DIMETHYLTRYPTAMINE; IBOGAIN; MESCALINE (EXCLUDING LOPHOPHORA WILLIAMSII (“PEYOTE”)); PSILOCYBIN; OR PSILOCYN.

(i) “NATURAL MEDICINE SERVICES” MEANS SERVICES PROVIDED BY A FACILITATOR OR OTHER AUTHORIZED PERSON TO A PARTICIPANT BEFORE, DURING, AND AFTER THE PARTICIPANT’S CONSUMPTION OF NATURAL MEDICINE, INCLUDING, AT A MINIMUM AT:

(I) A PREPARATION SESSION;

(II) AN ADMINISTRATION SESSION; AND

(III) AN INTEGRATION SESSION.

(j) “PARTICIPANT” MEANS A PERSON TWENTY-ONE YEARS OF AGE OR OLDER WHO RECEIVES NATURAL MEDICINE SERVICES.

(k) “PERMITTED ORGANIZATION” MEANS ANY LEGAL ENTITY REGISTERED AND QUALIFIED TO DO BUSINESS IN THE STATE OF COLORADO THAT MEETS THE STANDARDS SET BY THE DEPARTMENT UNDER SECTION 12-170-104.

(1) “PREPARATION SESSION” MEANS A MEETING BETWEEN A PARTICIPANT AND A FACILITATOR THAT OCCURS BEFORE THE PARTICIPANT PARTICIPATES IN THE ADMINISTRATION SESSION.

**12-170-104. Regulated natural medicine access program.** (1) THE REGULATED NATURAL MEDICINE ACCESS PROGRAM IS ESTABLISHED AND THE DEPARTMENT SHALL REGULATE THE MANUFACTURE, CULTIVATION, TESTING, STORAGE, TRANSFER, TRANSPORT, DELIVERY, SALE, AND PURCHASE OF NATURAL MEDICINES BY AND BETWEEN HEALING CENTERS AND OTHER PERMITTED ENTITIES AND THE PROVISION OF NATURAL MEDICINE SERVICES TO PARTICIPANTS.

(2) NOT LATER THAN JANUARY 1, 2024, THE DEPARTMENT SHALL ADOPT RULES TO ESTABLISH THE QUALIFICATIONS, EDUCATION, AND TRAINING REQUIREMENTS THAT FACILITATORS MUST MEET PRIOR TO PROVIDING NATURAL MEDICINE SERVICES, AND TO APPROVE ANY REQUIRED TRAINING PROGRAMS.

(3) NOT LATER THAN SEPTEMBER 30, 2024, THE DEPARTMENT SHALL ADOPT RULES NECESSARY TO IMPLEMENT THE REGULATED NATURAL MEDICINE ACCESS PROGRAM AND SHALL BEGIN ACCEPTING APPLICATIONS FOR LICENSURE BY THAT DATE WITH DECISIONS MADE ON ALL LICENSING APPLICATIONS WITHIN 60 DAYS OF RECEIVING THE APPLICATION.

(4) FOR PURPOSES OF THE REGULATED NATURAL MEDICINE ACCESS PROGRAM SET FORTH IN THIS SECTION:

(a) UNTIL JUNE 1, 2026, THE TERM NATURAL MEDICINE SHALL ONLY INCLUDE PSILOCYBIN AND PSILOCYN.

(b) AFTER JUNE 1, 2026, IF RECOMMENDED BY THE NATURAL MEDICINE ADVISORY BOARD, THE DEPARTMENT MAY ADD ONE OR MORE OF THE FOLLOWING TO THE TERM NATURAL MEDICINE: DIMETHYLTRYPTAMINE; IBOGAIN; AND MESCALINE (EXCLUDING LOPHOPHORA WILLIAMSII (“PEYOTE”)).

(c) THE DEPARTMENT MAY PREPARE PROPOSED RULES FOR THE ADDITION OF DIMETHYLTRYPTAMINE; IBOGAIN; AND MESCALINE (EXCLUDING LOPHOPHORA WILLIAMSII (“PEYOTE”)) TO THE TERM NATURAL MEDICINE PRIOR TO JUNE 1, 2026, IN THE EVENT THAT DIMETHYLTRYPTAMINE; IBOGAIN; OR MESCALINE (EXCLUDING LOPHOPHORA WILLIAMSII (“PEYOTE”)) IS ADDED TO THE TERM NATURAL MEDICINE UNDER SUBSECTION (4)(b) OF THIS SECTION.

(5) IN CARRYING OUT ITS DUTIES UNDER THIS ARTICLE 170, THE DEPARTMENT SHALL CONSULT WITH THE NATURAL MEDICINE ADVISORY BOARD AND MAY ALSO CONSULT WITH OTHER STATE AGENCIES OR ANY OTHER INDIVIDUAL OR ENTITY THE DEPARTMENT FINDS NECESSARY.

(6) THE RULES ADOPTED BY THE DEPARTMENT SHALL INCLUDE, BUT ARE NOT LIMITED TO, RULES TO:

(a) ESTABLISH THE REQUIREMENTS GOVERNING THE SAFE PROVISION OF NATURAL MEDICINE SERVICES TO PARTICIPANTS THAT INCLUDE:

(I) HOLDING AND VERIFYING COMPLETION OF A PREPARATION SESSION, AN ADMINISTRATION SESSION, AND AN INTEGRATION SESSION.

(II) HEALTH AND SAFETY WARNINGS THAT MUST BE PROVIDED TO PARTICIPANTS BEFORE NATURAL MEDICINE SERVICES BEGIN.

(III) EDUCATIONAL MATERIALS THAT MUST BE PROVIDED TO PARTICIPANTS BEFORE NATURAL MEDICINE SERVICES BEGIN.

(IV) THE FORM THAT EACH FACILITATOR, PARTICIPANT, AND AUTHORIZED REPRESENTATIVE OF A HEALING CENTER MUST SIGN BEFORE PROVIDING OR RECEIVING NATURAL MEDICINE SERVICES VERIFYING THAT THE PARTICIPANT WAS PROVIDED ACCURATE AND COMPLETE HEALTH INFORMATION AND INFORMED OF IDENTIFIED RISK FACTORS AND CONTRAINDICATIONS.

(V) PROPER SUPERVISION DURING THE ADMINISTRATION SESSION AND SAFE TRANSPORTATION FOR THE PARTICIPANT WHEN THE SESSION IS COMPLETE.

(VI) PROVISIONS FOR GROUP ADMINISTRATION SESSIONS WHERE ONE OR MORE FACILITATORS PROVIDE NATURAL MEDICINE SERVICES TO MORE THAN ONE PARTICIPANT AS PART OF THE SAME ADMINISTRATION SESSION.

(VII) PROVISIONS TO ALLOW A FACILITATOR OR A HEALING CENTER TO REFUSE TO PROVIDE NATURAL MEDICINE SERVICES TO A PARTICIPANT.

(VIII) THE REQUIREMENTS AND STANDARDS FOR INDEPENDENT TESTING OF NATURAL MEDICINE FOR CONCENTRATION AND CONTAMINANTS, TO THE EXTENT AVAILABLE TECHNOLOGY REASONABLY PERMITS.

(IX) THE LICENSURE OF ENTITIES PERMITTED TO ENGAGE IN THE TESTING OF NATURAL MEDICINE FOR USE IN NATURAL MEDICINE SERVICES OR OTHERWISE.

(X) THE STANDARDS FOR ADVERTISING AND MARKETING NATURAL MEDICINE AND NATURAL MEDICINE SERVICES.

(XI) THE STANDARDS FOR QUALIFICATION AS A PERMITTED ORGANIZATION ADDRESSING, WITHOUT LIMITATION, ENVIRONMENTAL, SOCIAL, AND GOVERNANCE CRITERIA DIRECTED TO THE FINDINGS AND DECLARATIONS SET FORTH IN SECTION 12-170-102.

(b) ESTABLISH THE REQUIREMENTS GOVERNING THE LICENSING AND PRACTICE OF FACILITATORS THAT INCLUDE:

(I) THE FORM AND CONTENT OF LICENSE AND RENEWAL APPLICATIONS FOR FACILITATORS SUBMITTED UNDER THIS ARTICLE 170.

(II) THE QUALIFICATIONS, EDUCATION, AND TRAINING REQUIREMENTS THAT FACILITATORS MUST MEET PRIOR TO PROVIDING NATURAL MEDICINE SERVICES. THE REQUIREMENTS SHALL:

(A) BE TIERED SO AS TO REQUIRE VARYING LEVELS OF EDUCATION AND TRAINING DEPENDING ON THE PARTICIPANTS THE FACILITATOR WILL BE WORKING WITH AND THE SERVICES THE FACILITATOR WILL BE PROVIDING.

(B) INCLUDE EDUCATION AND TRAINING ON CLIENT SAFETY; CONTRAINDICATIONS; MENTAL HEALTH; MENTAL STATE; PHYSICAL HEALTH; PHYSICAL STATE; SOCIAL AND CULTURAL CONSIDERATIONS; PHYSICAL ENVIRONMENT; PREPARATION; INTEGRATION; AND ETHICS.

(C) ALLOW FOR LIMITED WAIVERS OF EDUCATION AND TRAINING REQUIREMENTS BASED ON AN APPLICANT'S PRIOR EXPERIENCE, TRAINING, OR SKILL, INCLUDING, BUT NOT LIMITED TO, WITH NATURAL MEDICINES.

(D) NOT IMPOSE UNREASONABLE FINANCIAL OR LOGISTICAL BARRIERS THAT MAKE OBTAINING A FACILITATOR LICENSE COMMERCIALY UNREASONABLE FOR LOW INCOME PEOPLE OR OTHER APPLICANTS.

(E) NOT REQUIRE A PROFESSIONAL LICENSE OR PROFESSIONAL DEGREE OTHER THAN A FACILITATOR LICENSE GRANTED PURSUANT TO THIS SECTION.

(F) ALLOW FOR PAID COMPENSATION FOR NATURAL MEDICINE SERVICES.

(G) ALLOW FOR THE PROVISION OF NATURAL MEDICINE SERVICES TO MORE THAN ONE PARTICIPANT AT A TIME IN GROUP ADMINISTRATION SESSIONS.

(III) OVERSIGHT AND SUPERVISION REQUIREMENTS FOR FACILITATORS, INCLUDING PROFESSIONAL RESPONSIBILITY STANDARDS AND CONTINUING EDUCATION REQUIREMENTS.

(IV) A COMPLAINT, REVIEW, AND DISCIPLINARY PROCESS FOR FACILITATORS WHO ENGAGE IN MISCONDUCT.

(V) RECORDKEEPING, PRIVACY, AND CONFIDENTIALITY REQUIREMENTS FOR FACILITATORS, PROVIDED SUCH RECORD KEEPING DOES NOT RESULT IN THE DISCLOSURE TO THE PUBLIC OR ANY GOVERNMENT AGENCY OF PERSONALLY IDENTIFIABLE INFORMATION OF PARTICIPANTS.

(VI) PROCEDURES FOR SUSPENDING OR REVOKING THE LICENSES OF FACILITATORS WHO VIOLATE THE PROVISIONS OF THIS ARTICLE 170 OR THE RULES ADOPTED BY THE DEPARTMENT.

(c) ESTABLISH THE REQUIREMENTS GOVERNING THE LICENSING AND OPERATION OF HEALING CENTERS THAT INCLUDE:

(I) QUALIFICATIONS FOR LICENSURE AND RENEWAL.

(II) OVERSIGHT REQUIREMENTS FOR HEALING CENTERS.

(III) RECORDKEEPING, PRIVACY, AND CONFIDENTIALITY REQUIREMENTS FOR HEALING CENTERS, PROVIDED SUCH RECORD KEEPING DOES NOT RESULT IN THE DISCLOSURE TO THE PUBLIC OR ANY GOVERNMENT AGENCY OF PERSONALLY IDENTIFIABLE INFORMATION OF PARTICIPANTS.

(IV) SECURITY REQUIREMENTS FOR HEALING CENTERS, INCLUDING REQUIREMENTS FOR PROTECTION OF EACH LICENSED HEALING CENTER LOCATION BY A FULLY OPERATIONAL SECURITY ALARM SYSTEM.

(V) PROCEDURES FOR SUSPENDING OR REVOKING THE LICENSES OF HEALING CENTERS THAT VIOLATE THE PROVISIONS OF THIS ARTICLE 170 OR THE RULES ADOPTED BY THE DEPARTMENT.

(VI) PERMISSIBLE FINANCIAL RELATIONSHIPS BETWEEN LICENSED HEALING CENTERS, FACILITATORS, AND OTHER ENTITIES.

(VII) PROCEDURES AND POLICIES THAT ALLOW FOR HEALING CENTERS TO RECEIVE PAYMENT FOR SERVICES AND NATURAL MEDICINES PROVIDED.

(VIII) PROCEDURES AND POLICIES TO ENSURE STATEWIDE ACCESS TO HEALING CENTERS AND NATURAL MEDICINE SERVICES.

(IX) RULES THAT PROHIBIT AN INDIVIDUAL FROM HAVING A FINANCIAL INTEREST IN MORE THAN FIVE HEALING CENTERS.

(X) RULES THAT ALLOW FOR HEALING CENTERS TO SHARE THE SAME PREMISES WITH OTHER HEALING CENTERS OR TO SHARE THE SAME PREMISES WITH HEALTH-CARE FACILITIES.

(XI) RULES THAT ALLOW FOR LOCATIONS NOT OWNED BY A HEALING CENTER WHERE NATURAL MEDICINE SERVICES MAY BE PROVIDED BY LICENSED FACILITATORS, INCLUDING BUT NOT LIMITED TO, HEALTH-CARE FACILITIES AND PRIVATE RESIDENCES.

(d) ESTABLISH PROCEDURES, POLICIES, AND PROGRAMS TO ENSURE THE REGULATORY ACCESS PROGRAM IS EQUITABLE AND INCLUSIVE AND TO PROMOTE THE LICENSING OF AND THE PROVISION OF NATURAL MEDICINE SERVICES TO PERSONS FROM COMMUNITIES THAT HAVE BEEN DISPROPORTIONATELY HARMED BY HIGH RATES OF CONTROLLED SUBSTANCES ARRESTS; TO PERSONS WHO FACE BARRIERS TO ACCESS TO HEALTH CARE; TO PERSONS WHO HAVE A TRADITIONAL OR INDIGENOUS HISTORY WITH NATURAL MEDICINES; OR TO PERSONS WHO ARE VETERANS THAT INCLUDE, BUT ARE NOT LIMITED TO:

(I) REDUCED FEES FOR LICENSURE AND FACILITATOR TRAINING.

(II) INCENTIVIZING THE PROVISION OF NATURAL MEDICINE SERVICES AT A REDUCED COST TO LOW INCOME INDIVIDUALS.

(III) INCENTIVIZING GEOGRAPHIC AND CULTURAL DIVERSITY IN LICENSING AND THE PROVISION AND AVAILABILITY OF NATURAL MEDICINE SERVICES.

(VI) A PROCESS FOR ANNUALLY REVIEWING THE EFFECTIVENESS OF SUCH POLICIES AND PROGRAMS PROMULGATED UNDER THIS SUBSECTION (6)(d).

(e) ESTABLISH APPLICATION, LICENSING, AND RENEWAL FEES FOR HEALING CENTER AND FACILITATOR LICENSES. THE FEES SHALL BE:

(I) SUFFICIENT, BUT SHALL NOT EXCEED THE AMOUNT NECESSARY, TO COVER THE COST OF ADMINISTERING THE REGULATED NATURAL MEDICINE ACCESS PROGRAM, INCLUDING THE REGULATED NATURAL MEDICINE ACCESS PROGRAM FUND IN 12-170-106.

(II) FOR LICENSING AND RENEWAL FEES, SCALED BASED ON EITHER THE VOLUME OF BUSINESS OF THE LICENSEE OR THE GROSS ANNUAL REVENUE OF THE LICENSEE.

(f) DEVELOP AND PROMOTE ACCURATE PUBLIC EDUCATION CAMPAIGNS RELATED TO THE USE OF NATURAL MEDICINE, INCLUDING BUT NOT LIMITED TO PUBLIC SERVICE ANNOUNCEMENTS, EDUCATIONAL CURRICULA, AND APPROPRIATE CRISIS RESPONSE, AND APPROPRIATE TRAINING FOR FIRST-AND MULTI-RESPONDERS INCLUDING LAW ENFORCEMENT, EMERGENCY MEDICAL SERVICES, SOCIAL SERVICES, AND FIRE SERVICES.

(g) STUDY AND DELIVER RECOMMENDATIONS TO THE LEGISLATURE REGARDING THE REGULATION OF DOSAGE FOR OFF-SITE USE OF NATURAL MEDICINES.

(h) COLLECT AND ANNUALLY PUBLISH DATA ON THE IMPLEMENTATION AND OUTCOMES OF THE REGULATED NATURAL MEDICINE ACCESS PROGRAM IN ACCORDANCE WITH GOOD DATA AND PRIVACY PRACTICES AND THAT DOES NOT DISCLOSE ANY IDENTIFYING INFORMATION ABOUT INDIVIDUAL LICENSEES OR PARTICIPANTS.

(i) ADOPT, AMEND, AND REPEAL RULES AS NECESSARY TO IMPLEMENT THE REGULATED NATURAL MEDICINE ACCESS PROGRAM AND TO PROTECT THE PUBLIC HEALTH AND SAFETY.

(7) PARTICIPANT RECORDS COLLECTED AND MAINTAINED BY HEALING CENTERS, FACILITATORS, REGISTERED ENTITIES, OR THE DEPARTMENT SHALL CONSTITUTE MEDICAL DATA AS DEFINED BY SECTION 24-72-204 (3)(a)(I) AND ARE NOT PUBLIC RECORDS SUBJECT TO DISCLOSURE.

(8) THE DEPARTMENT SHALL HAVE THE AUTHORITY TO CREATE AND ISSUE ANY ADDITIONAL TYPES OF LICENSES AND REGISTRATIONS IT DEEMS NECESSARY TO CARRY OUT THE INTENTS AND PURPOSES OF THE REGULATED NATURAL MEDICINE ACCESS PROGRAM, INCLUDING ALLOWING NATURAL MEDICINE SERVICES TO BE PROVIDED AT OTHER TYPES OF LICENSED HEALTH FACILITIES OR BY INDIVIDUALS IN ORDER TO INCREASE ACCESS TO AND THE AVAILABILITY OF NATURAL MEDICINE SERVICES.

(9) THE DEPARTMENT SHALL HAVE THE AUTHORITY TO ADOPT RULES THAT DIFFERENTIATE BETWEEN NATURAL MEDICINES AND THAT REGULATE EACH NATURAL MEDICINE DIFFERENTLY BASED ON ITS SPECIFIC QUALITIES, TRADITIONAL USES, AND SAFETY PROFILE.

(10) THE DEPARTMENT SHALL ADOPT, AMEND, AND REPEAL ALL RULES IN ACCORDANCE WITH THE STATE ADMINISTRATIVE PROCEDURE ACT, ARTICLE 4 OF TITLE 24, C.R.S., AS AMENDED, AND THE RULES PROMULGATED THEREUNDER.

**12-170-105. Natural Medicine Advisory Board** (1) THE NATURAL MEDICINE ADVISORY BOARD SHALL BE ESTABLISHED WITHIN THE DEPARTMENT FOR THE PURPOSE OF ADVISING THE DEPARTMENT AS TO THE IMPLEMENTATION OF THE REGULATED NATURAL MEDICINE ACCESS PROGRAM.

(2) THE BOARD SHALL CONSIST OF FIFTEEN MEMBERS. MEMBERS SHALL BE APPOINTED BY THE GOVERNOR, WITH THE CONSENT OF THE SENATE.

(3) MEMBERS OF THE INITIAL BOARD SHALL BE APPOINTED BY JANUARY 31, 2023. IN MAKING THE APPOINTMENTS, THE GOVERNOR SHALL APPOINT:

(a) AT LEAST SEVEN MEMBERS WITH SIGNIFICANT EXPERTISE AND EXPERIENCE IN ONE OR MORE OF THE FOLLOWING AREAS: NATURAL MEDICINE THERAPY, MEDICINE, AND RESEARCH; MYCOLOGY AND NATURAL MEDICINE CULTIVATION; PERMITTED ORGANIZATION CRITERIA; EMERGENCY MEDICAL SERVICES AND SERVICES PROVIDED BY FIRST RESPONDERS; MENTAL AND BEHAVIORAL HEALTH PROVIDERS; HEALTH CARE INSURANCE AND HEALTH CARE POLICY; AND PUBLIC HEALTH, DRUG POLICY, AND HARM REDUCTION.

(b) AT LEAST EIGHT MEMBERS WITH SIGNIFICANT EXPERTISE AND EXPERIENCE IN ONE OR MORE OF THE FOLLOWING AREAS: RELIGIOUS USE OF NATURAL MEDICINES; ISSUES CONFRONTING VETERANS; TRADITIONAL INDIGENOUS USE OF NATURAL MEDICINES; LEVELS AND DISPARITIES IN ACCESS TO HEALTH CARE SERVICES AMONG DIFFERENT COMMUNITIES; AND PAST CRIMINAL JUSTICE REFORM EFFORTS IN COLORADO. AT LEAST ONE OF THE EIGHT MEMBERS SHALL HAVE EXPERTISE OR EXPERIENCE IN TRADITIONAL INDIGENOUS USE OF NATURAL MEDICINES.

(4) FOR THE INITIAL BOARD, SEVEN OF THE MEMBERS SHALL BE APPOINTED TO A TERM OF TWO YEARS AND EIGHT MEMBERS SHALL BE APPOINTED TO A TERM OF FOUR YEARS. EACH MEMBER APPOINTED THEREAFTER SHALL BE APPOINTED TO A TERM OF FOUR YEARS. MEMBERS OF THE BOARD MAY SERVE UP TO TWO CONSECUTIVE TERMS. MEMBERS ARE SUBJECT TO REMOVAL AS PROVIDED IN ARTICLE IV, SECTION 6 OF THE COLORADO CONSTITUTION.

(5) NOT LATER THAN SEPTEMBER 30, 2023, AND ANNUALLY THEREAFTER, THE BOARD SHALL MAKE RECOMMENDATIONS TO THE DEPARTMENT RELATED TO, BUT NOT LIMITED TO, ALL OF THE FOLLOWING AREAS:

(a) ACCURATE PUBLIC HEALTH APPROACHES REGARDING USE, EFFECT, AND RISK REDUCTION FOR NATURAL MEDICINE AND THE CONTENT AND SCOPE OF EDUCATIONAL CAMPAIGNS RELATED TO NATURAL MEDICINE;

(b) RESEARCH RELATED TO THE EFFICACY AND REGULATION OF NATURAL MEDICINE, INCLUDING RECOMMENDATIONS RELATED TO PRODUCT SAFETY, HARM REDUCTION, AND CULTURAL RESPONSIBILITY;

(c) THE PROPER CONTENT OF TRAINING PROGRAMS, EDUCATIONAL AND EXPERIENTIAL REQUIREMENTS, AND QUALIFICATIONS FOR FACILITATORS;

(d) AFFORDABLE, EQUITABLE, ETHICAL, AND CULTURALLY RESPONSIBLE ACCESS TO NATURAL MEDICINE AND REQUIREMENTS TO ENSURE THE REGULATED NATURAL MEDICINE ACCESS PROGRAM IS EQUITABLE AND INCLUSIVE;

(e) APPROPRIATE REGULATORY CONSIDERATIONS FOR EACH NATURAL MEDICINE;

(f) THE ADDITION OF NATURAL MEDICINES TO THE REGULATED NATURAL MEDICINE ACCESS PROGRAM UNDER SECTION 12-170-104(4)(b) BASED ON AVAILABLE MEDICAL, PSYCHOLOGICAL, AND SCIENTIFIC STUDIES, RESEARCH, AND OTHER INFORMATION RELATED TO THE SAFETY AND EFFICACY OF EACH NATURAL MEDICINE;

(g) ALL RULES TO BE PROMULGATED BY THE DEPARTMENT UNDER 12-170-104; AND

(h) REQUIREMENTS FOR ACCURATE AND COMPLETE DATA COLLECTION, REPORTING, AND PUBLICATION OF INFORMATION RELATED TO THE IMPLEMENTATION OF THIS ARTICLE 170.

(6) THE BOARD SHALL, ON AN ONGOING BASIS, REVIEW AND EVALUATE EXISTING RESEARCH, STUDIES, AND REAL-WORLD DATA RELATED TO NATURAL MEDICINE AND MAKE RECOMMENDATIONS TO THE LEGISLATURE AND OTHER RELEVANT STATE AGENCIES AS TO WHETHER NATURAL MEDICINE AND ASSOCIATED SERVICES SHOULD BE COVERED UNDER HEALTH FIRST COLORADO OR OTHER INSURANCE PROGRAMS AS A COST EFFECTIVE INTERVENTION FOR VARIOUS MENTAL HEALTH CONDITIONS, INCLUDING BUT NOT LIMITED TO END OF LIFE ANXIETY, SUBSTANCE USE DISORDER, ALCOHOLISM, DEPRESSIVE DISORDERS, NEUROLOGICAL DISORDERS, CLUSTER HEADACHES, AND POST TRAUMATIC STRESS DISORDER.

(7) THE BOARD SHALL, ON AN ONGOING BASIS, REVIEW AND EVALUATE SUSTAINABILITY ISSUES RELATED TO NATURAL MEDICINE AND IMPACT ON INDIGENOUS CULTURES AND DOCUMENT EXISTING RECIPROCITY EFFORTS AND CONTINUING SUPPORT MEASURES THAT ARE NEEDED AS PART OF ITS ANNUAL REPORT.

(8) THE BOARD SHALL PUBLISH AN ANNUAL REPORT DESCRIBING ITS ACTIVITIES INCLUDING THE RECOMMENDATIONS AND ADVICE PROVIDED TO THE DEPARTMENT AND THE LEGISLATURE.

(9) THE DEPARTMENT SHALL PROVIDE REQUESTED TECHNICAL, LOGISTICAL AND OTHER SUPPORT TO THE BOARD TO ASSIST THE BOARD WITH ITS DUTIES AND OBLIGATIONS.

(10) THIS SECTION IS REPEALED EFFECTIVE DECEMBER 31, 2033.

**12-170-106. Regulated natural medicine access program fund.** (1) THE REGULATED NATURAL MEDICINE ACCESS PROGRAM FUND IS HEREBY CREATED IN THE STATE TREASURY. THE FUND IS ADMINISTERED BY THE DEPARTMENT AND CONSISTS OF ALL MONEY FROM FEES COLLECTED AND MONEY TRANSFERRED FROM THE GENERAL FUND UNDER THIS ARTICLE 170. ALL INTEREST AND INCOME EARNED ON THE DEPOSIT AND INVESTMENT OF MONEY IN THE FUND SHALL BE CREDITED TO THE FUND AND SHALL NOT BE TRANSFERRED TO THE GENERAL FUND OR ANY OTHER STATE FUND AT THE END OF ANY STATE FISCAL YEAR.

(2) THE DEPARTMENT MAY SEEK, ACCEPT, AND EXPEND ANY GIFTS, GRANTS, DONATIONS, LOAN OF FUNDS, PROPERTY, OR ANY OTHER REVENUE OR AID IN ANY FORM FROM THE STATE, ANY STATE AGENCY, ANY OTHER PUBLIC SOURCE, ANY PRIVATE SOURCE, OR ANY COMBINATION THEREOF, AND ANY SUCH MONETARY RECEIPTS SHALL BE CREDITED TO THE FUND AND ANY SUCH IN-KIND RECEIPTS SHALL BE APPLIED FOR THE BENEFIT OF THE FUND.

(3) THE MONEY IN THE FUND IS CONTINUALLY APPROPRIATED TO THE DEPARTMENT FOR THE DIRECT AND INDIRECT COSTS OF CARRYING OUT THE PROVISIONS OF THIS ARTICLE 170.

(4) FUNDS FOR THE INITIAL ESTABLISHMENT AND SUPPORT OF THE REGULATORY ACTIVITIES BY THE DEPARTMENT UNDER THIS ARTICLE 170, INCLUDING THE NATURAL MEDICINE ADVISORY BOARD, THE DEVELOPMENT AND PROMOTION OF PUBLIC EDUCATION CAMPAIGNS RELATED TO THE USE OF NATURAL MEDICINE, AND THE DEVELOPMENT OF THE POLICIES, PROCEDURES, AND PROGRAMS REQUIRED BY 12-170-104(6)(d) SHALL BE ADVANCED FROM THE GENERAL FUND TO THE REGULATED NATURAL MEDICINE ACCESS PROGRAM FUND AND SHALL BE REPAYED TO THE GENERAL FUND BY THE INITIAL PROCEEDS FROM FEES COLLECTED PURSUANT TO THIS ARTICLE 170.

(5) THE OFFICE OF STATE PLANNING AND BUDGETING SHALL DETERMINE THE AMOUNT OF THE INITIAL ADVANCE FROM THE GENERAL FUND TO THE REGULATED NATURAL MEDICINE ACCESS PROGRAM FUND BASED ON THE ESTIMATED COSTS OF ESTABLISHING THE PROGRAM.

**12-170-107. Localities.** (1) A LOCALITY MAY REGULATE THE TIME, PLACE, AND MANNER OF THE OPERATION OF HEALING CENTERS LICENSED PURSUANT TO THIS ARTICLE 170 WITHIN ITS BOUNDARIES.

(2) A LOCALITY MAY NOT BAN OR COMPLETELY PROHIBIT THE ESTABLISHMENT OR OPERATION OF HEALING CENTERS LICENSED PURSUANT TO THIS ARTICLE 170 WITHIN ITS BOUNDARIES.

(3) A LOCALITY MAY NOT BAN OR COMPLETELY PROHIBIT A LICENSED HEALTH-CARE FACILITY OR INDIVIDUAL WITHIN ITS BOUNDARIES FROM PROVIDING NATURAL MEDICINE SERVICES IF THE LICENSED HEALTH-CARE FACILITY OR INDIVIDUAL IS PERMITTED TO PROVIDE NATURAL MEDICINE SERVICES BY THE DEPARTMENT PURSUANT TO THIS ARTICLE 170.

(4) A LOCALITY MAY NOT PROHIBIT THE TRANSPORTATION OF NATURAL MEDICINE THROUGH ITS JURISDICTION ON PUBLIC ROADS BY A LICENSEE OR AS OTHERWISE ALLOWED BY THIS ARTICLE 170.

(5) A LOCALITY MAY NOT ADOPT ORDINANCES OR REGULATIONS THAT ARE UNREASONABLE OR IN CONFLICT WITH THIS ARTICLE 170, BUT MAY ENACT LAWS IMPOSING LESSER CRIMINAL OR CIVIL PENALTIES THAN PROVIDED BY THIS ARTICLE 170

**12-170-108. Protections.** (1) SUBJECT TO THE LIMITATIONS IN THIS ARTICLE 170, BUT NOTWITHSTANDING ANY OTHER PROVISION OF LAW:

(a) ACTIONS AND CONDUCT PERMITTED PURSUANT TO A LICENSE OR REGISTRATION ISSUED BY THE DEPARTMENT OR BY DEPARTMENT RULE, OR BY THOSE WHO ALLOW PROPERTY TO BE USED PURSUANT TO A LICENSE OR REGISTRATION ISSUED BY THE DEPARTMENT OR BY DEPARTMENT RULE, ARE NOT UNLAWFUL AND SHALL NOT BE AN OFFENSE UNDER STATE LAW, OR THE LAWS OF ANY LOCALITY WITHIN THE STATE, OR BE SUBJECT TO A CIVIL FINE, PENALTY, OR SANCTION, OR BE A BASIS FOR DETENTION, SEARCH, OR ARREST, OR TO DENY ANY RIGHT OR PRIVILEGE, OR TO SEIZE OR FORFEIT ASSETS UNDER STATE LAW OR THE LAWS OF ANY LOCALITY WITHIN THE STATE.

(b) A CONTRACT IS NOT UNENFORCEABLE ON THE BASIS THAT NATURAL MEDICINES, AS ALLOWED UNDER THIS ARTICLE 170, ARE PROHIBITED BY FEDERAL LAW.

(c) A HOLDER OF A PROFESSIONAL OR OCCUPATIONAL LICENSE, CERTIFICATION, OR REGISTRATION IS NOT SUBJECT TO PROFESSIONAL DISCIPLINE OR LOSS OF A PROFESSIONAL LICENSE OR CERTIFICATION FOR PROVIDING ADVICE OR SERVICES ARISING OUT OF OR RELATED TO NATURAL MEDICINE LICENSES, APPLICATIONS FOR LICENSES ON THE BASIS THAT NATURAL MEDICINES ARE PROHIBITED BY FEDERAL LAW, OR FOR PERSONAL USE OF NATURAL MEDICINES AS ALLOWED UNDER THIS ARTICLE 170. THIS SECTION DOES NOT PERMIT A PERSON TO ENGAGE IN MALPRACTICE.

(d) MENTAL HEALTH, SUBSTANCE USE DISORDER, OR BEHAVIORAL HEALTH SERVICES OTHERWISE COVERED UNDER THE COLORADO MEDICAL ASSISTANCE ACT, ARTICLES 4 TO 6 OF TITLE 25.5, C.R.S., SHALL NOT BE DENIED ON THE BASIS THAT THEY ARE COVERED IN CONJUNCTION WITH NATURAL MEDICINE SERVICES OR THAT NATURAL MEDICINES ARE PROHIBITED BY FEDERAL LAW. NO INSURANCE OR INSURANCE PROVIDER IS REQUIRED TO COVER THE COST OF THE NATURAL MEDICINE ITSELF.

(e) NOTHING IN THIS SECTION SHALL BE CONSTRUED OR INTERPRETED TO PREVENT THE DEPARTMENT FROM ENFORCING ITS RULES AGAINST A LICENSEE OR TO LIMIT A STATE OR LOCAL LAW ENFORCEMENT AGENCY'S ABILITY TO INVESTIGATE UNLAWFUL ACTIVITY IN RELATION TO A LICENSEE.

**12-170-109. Personal Use.** (1) SUBJECT TO THE LIMITATIONS IN THIS ARTICLE 170, BUT NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE FOLLOWING ACTS ARE NOT AN OFFENSE UNDER STATE LAW OR THE LAWS OF ANY LOCALITY WITHIN THE STATE OR SUBJECT TO A CIVIL FINE, PENALTY, OR SANCTION, OR THE BASIS FOR DETENTION, SEARCH, OR ARREST, OR TO DENY ANY RIGHT OR PRIVILEGE, OR TO SEIZE OR FORFEIT ASSETS UNDER STATE LAW OR THE LAWS OF ANY LOCALITY, IF THE PERSON IS TWENTY-ONE YEARS OF AGE OR OLDER:

(a) POSSESSING, STORING, USING, PROCESSING, TRANSPORTING, PURCHASING, OBTAINING, OR INGESTING NATURAL MEDICINE FOR PERSONAL USE, OR GIVING AWAY NATURAL MEDICINE FOR PERSONAL USE WITHOUT REMUNERATION TO A PERSON OR PERSONS TWENTY-ONE YEARS OF AGE OR OLDER.

(b) GROWING, CULTIVATING, OR PROCESSING PLANTS OR FUNGI CAPABLE OF PRODUCING NATURAL MEDICINE FOR PERSONAL USE IF:

(I) THE PLANTS AND FUNGI ARE KEPT IN OR ON THE GROUNDS OF A PRIVATE HOME OR RESIDENCE; AND

(II) THE PLANTS AND FUNGI ARE SECURED FROM ACCESS BY PERSONS UNDER TWENTY-ONE YEARS OF AGE.

(c) ASSISTING ANOTHER PERSON OR PERSONS WHO ARE TWENTY-ONE YEARS OF AGE OR OLDER, OR ALLOWING PROPERTY TO BE USED, IN ANY OF THE ACTIONS OR CONDUCT PERMITTED UNDER SUBSECTION (1).

(2) FOR THE PURPOSE OF THIS ARTICLE 170, "PERSONAL USE" MEANS THE PERSONAL INGESTION OR USE OF A NATURAL MEDICINE AND INCLUDES THE AMOUNT A PERSON MAY CULTIVATE OR POSSESS OF NATURAL MEDICINE NECESSARY TO SHARE NATURAL MEDICINES WITH OTHER PERSONS TWENTY-ONE YEARS OF AGE OR OLDER WITHIN THE CONTEXT OF COUNSELING, SPIRITUAL GUIDANCE, BENEFICIAL COMMUNITY-BASED USE AND HEALING, SUPPORTED USE, OR RELATED SERVICES. "PERSONAL USE" DOES NOT INCLUDE THE SALE OF NATURAL MEDICINES FOR REMUNERATION.

(3) CONDUCT PERMITTED BY THIS ARTICLE 170 SHALL NOT, BY ITSELF:

(a) CONSTITUTE CHILD ABUSE OR NEGLECT WITHOUT A FINDING OF ACTUAL THREAT TO THE HEALTH OR WELFARE OF A CHILD BASED ON ALL RELEVANT FACTORS.

(b) BE THE BASIS TO RESTRICT PARENTING TIME WITH A CHILD WITHOUT A FINDING THAT THE PARENTING TIME WOULD ENDANGER THE CHILD'S PHYSICAL HEALTH OR SIGNIFICANTLY IMPAIR THE CHILD'S EMOTIONAL DEVELOPMENT.

(4) CONDUCT PERMITTED BY THIS ARTICLE 170 SHALL NOT, BY ITSELF, BE THE BASIS FOR PUNISHING OR OTHERWISE PENALIZING A PERSON CURRENTLY UNDER PAROLE, PROBATION, OR OTHER STATE SUPERVISION, OR RELEASED AWAITING TRIAL OR OTHER HEARING.

(5) CONDUCT PERMITTED BY THIS ARTICLE 170 SHALL NOT, BY ITSELF, BE THE BASIS FOR DETENTION, SEARCH, OR ARREST; AND THE POSSESSION OR SUSPICION OF POSSESSION OF NATURAL MEDICINE, OR THE POSSESSION OF MULTIPLE CONTAINERS OF NATURAL MEDICINE, SHALL NOT INDIVIDUALLY OR IN COMBINATION WITH EACH OTHER CONSTITUTE REASONABLY ARTICULABLE SUSPICION OF A CRIME. NATURAL MEDICINES AS PERMITTED BY THIS ARTICLE 170 ARE NOT CONTRABAND NOR SUBJECT TO SEIZURE AND SHALL NOT BE HARMED OR DESTROYED.

(6) CONDUCT PERMITTED BY THIS ARTICLE 170 SHALL NOT, BY ITSELF, BE THE BASIS TO DENY ELIGIBILITY FOR ANY PUBLIC ASSISTANCE PROGRAM, UNLESS REQUIRED BY FEDERAL LAW.

(7) FOR THE PURPOSES OF MEDICAL CARE, INCLUDING ORGAN TRANSPLANTS, CONDUCT PERMITTED BY THIS ARTICLE 170 DOES NOT CONSTITUTE THE USE OF AN ILLICIT SUBSTANCE OR OTHERWISE DISQUALIFY A PERSON FROM MEDICAL CARE OR MEDICAL INSURANCE.

(8) NOTHING IN THIS SECTION SHALL BE CONSTRUED OR INTERPRETED TO PERMIT A PERSON TO GIVE AWAY ANY AMOUNT OF NATURAL MEDICINE AS PART OF A BUSINESS PROMOTION OR OTHER COMMERCIAL ACTIVITY OR TO PERMIT PAID ADVERTISING RELATED TO NATURAL MEDICINE, SHARING OF NATURAL MEDICINE, OR SERVICES INTENDED TO BE USED CONCURRENTLY WITH A PERSON'S CONSUMPTION OF NATURAL MEDICINE. SUCH ADVERTISING MAY BE CONSIDERED EVIDENCE OF COMMERCIAL ACTIVITY THAT IS PROHIBITED UNDER THIS SECTION. THIS PROVISION DOES NOT PRECLUDE THE DONATION OF NATURAL MEDICINE BY A PERSON TWENTY-ONE YEARS OF AGE OR OLDER, PAYMENT FOR BONA FIDE HARM REDUCTION SERVICES, BONA FIDE THERAPY SERVICES, OR OTHER BONA FIDE SUPPORT SERVICES, MAINTAINING PERSONAL OR PROFESSIONAL WEBSITES RELATED TO NATURAL MEDICINE SERVICES, DISSEMINATION OF EDUCATIONAL MATERIALS RELATED TO NATURAL MEDICINE, OR LIMIT THE ABILITY OF A HEALING CENTER TO DONATE NATURAL MEDICINE OR PROVIDE NATURAL MEDICINE AT REDUCED COST CONSISTENT WITH DEPARTMENT RULES.

(9) A PERSON WHO HAS COMPLETED A SENTENCE FOR A CONVICTION, WHETHER BY TRIAL OR PLEA OF GUILTY OR *NOLO CONTENDERE*, WHO WOULD NOT HAVE BEEN GUILTY OF AN OFFENSE UNDER THIS ACT HAD IT BEEN IN EFFECT AT THE TIME OF THE OFFENSE, MAY FILE A PETITION BEFORE THE TRIAL COURT THAT ENTERED THE JUDGMENT OF CONVICTION IN THE PERSON'S CASE TO SEAL THE RECORD OF THE CONVICTION AT NO COST. IF THERE IS NO OBJECTION FROM THE DISTRICT ATTORNEY, THE COURT SHALL AUTOMATICALLY SEAL SUCH RECORD. IF THERE IS AN OBJECTION BY THE DISTRICT ATTORNEY, A HEARING SHALL BE HELD AND THE COURT SHALL DETERMINE IF THE PRIOR CONVICTION DOES NOT QUALIFY TO BE SEALED UNDER THIS ACT. IF THE RECORD DOES NOT QUALIFY TO BE SEALED, THE COURT SHALL DENY THE SEALING OF THE RECORD. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO DIMINISH OR ABROGATE ANY RIGHTS OR REMEDIES OTHERWISE AVAILABLE TO THE PETITIONER OR APPLICANT.

**12-170-110. Personal use penalties.** (1) UNLESS OTHERWISE PROVIDED BY SUBSECTION (2) OF THIS SECTION, A PERSON WHO IS UNDER TWENTY-ONE YEARS OF AGE IS SUBJECT TO A DRUG PETTY OFFENSE, AND UPON CONVICTION THEREOF, SHALL BE SUBJECT ONLY TO A PENALTY OF NO MORE THAN FOUR (4) HOURS OF DRUG EDUCATION OR COUNSELING PROVIDED AT NO COST TO THE PERSON, IF THE PERSON:

(a) POSSESSES, USES, INGESTS, INHALES, OR TRANSPORTS NATURAL MEDICINE FOR PERSONAL USE;

(b) GIVES AWAY WITHOUT REMUNERATION NATURAL MEDICINE FOR PERSONAL USE; OR

(c) POSSESSES, USES, OR GIVES AWAY WITHOUT REMUNERATION NATURAL MEDICINE PARAPHERNALIA.

(2) TO THE EXTENT SUBSECTION (1) ESTABLISHES A PENALTY FOR CONDUCT NOT OTHERWISE PROHIBITED BY LAW OR ESTABLISHES A PENALTY THAT IS GREATER THAN EXISTS ELSEWHERE IN LAW FOR THE CONDUCT SET FORTH IN SUBSECTION (1), THE PENALTIES IN SUBSECTION (1) SHALL NOT APPLY.

(3) A PERSON WHO CULTIVATES NATURAL MEDICINES THAT ARE NOT SECURE FROM ACCESS BY A PERSON UNDER TWENTY-ONE YEARS OF AGE IN VIOLATION OF 12-170-109(1)(b) IS SUBJECT TO A CIVIL FINE NOT EXCEEDING TWO-HUNDRED AND FIFTY DOLLARS, IN ADDITION TO ANY OTHER APPLICABLE PENALTIES.

(4) A PERSON SHALL NOT BE SUBJECT TO ANY ADDITIONAL FEES, FINES, OR OTHER PENALTIES FOR THE VIOLATIONS ADDRESSED IN THIS SECTION OTHER THAN THOSE SET FORTH IN THIS SECTION. FURTHER, A PERSON SHALL NOT BE SUBJECT TO INCREASED PUNISHMENT FOR ANY OTHER CRIME ON THE BASIS OF THAT PERSON HAVING UNDERTAKEN CONDUCT PERMITTED BY THIS ARTICLE 170.

**12-170-111. Limitations.** (1) THIS ARTICLE 170 SHALL NOT BE CONSTRUED:

(a) TO PERMIT A PERSON TO DRIVE OR OPERATE A MOTOR VEHICLE, BOAT, VESSEL, AIRCRAFT, OR OTHER DEVICE THAT IS CAPABLE OF MOVING ITSELF, OR OF BEING MOVED, FROM PLACE TO PLACE UPON WHEELS OR ENDLESS TRACKS UNDER THE INFLUENCE OF NATURAL MEDICINE;

(b) TO PERMIT A PERSON TO USE OR POSSESS NATURAL MEDICINE IN A SCHOOL, DETENTION FACILITY, OR PUBLIC BUILDING;

(c) TO PERMIT A PERSON TO INGEST NATURAL MEDICINES IN A PUBLIC PLACE, OTHER THAN A PLACE LICENSED OR OTHERWISE PERMITTED BY THE DEPARTMENT FOR SUCH USE;

(d) TO PERMIT THE TRANSFER OF NATURAL MEDICINE, WITH OR WITHOUT REMUNERATION, TO A PERSON UNDER TWENTY-ONE YEARS OF AGE OR TO ALLOW A PERSON UNDER TWENTY-ONE YEARS OF AGE TO USE OR POSSESS NATURAL MEDICINE;

(e) TO PERMIT A PERSON TO ENGAGE IN CONDUCT THAT ENDANGERS OR HARMS OTHERS;

(f) TO REQUIRE A GOVERNMENT MEDICAL ASSISTANCE PROGRAM OR PRIVATE HEALTH INSURER TO REIMBURSE A PERSON FOR COSTS OF PURCHASING NATURAL MEDICINE;

(g) TO REQUIRE AN EMPLOYER TO PERMIT OR ACCOMMODATE THE USE, CONSUMPTION, POSSESSION, TRANSFER, DISPLAY, TRANSPORTATION, OR GROWING OF NATURAL MEDICINES IN THE WORKPLACE;

(h) TO PROHIBIT A RECIPIENT OF A FEDERAL GRANT OR AN APPLICANT FOR A FEDERAL GRANT FROM PROHIBITING THE USE, CONSUMPTION, POSSESSION, TRANSFER, DISPLAY, TRANSPORTATION, OR GROWING OF NATURAL MEDICINES TO THE EXTENT NECESSARY TO SATISFY FEDERAL REQUIREMENTS FOR THE GRANT;

(i) TO PROHIBIT A PARTY TO A FEDERAL CONTRACT OR A PERSON APPLYING TO BE A PARTY TO A FEDERAL CONTRACT FROM PROHIBITING ANY ACT PERMITTED IN THIS ARTICLE 170 TO THE EXTENT NECESSARY TO COMPLY WITH THE TERMS AND CONDITIONS OF THE CONTRACT OR TO SATISFY FEDERAL REQUIREMENTS FOR THE CONTRACT;

(j) TO REQUIRE A PERSON TO VIOLATE A FEDERAL LAW; OR

(k) TO EXEMPT A PERSON FROM A FEDERAL LAW OR OBSTRUCT THE ENFORCEMENT OF A FEDERAL LAW.

**12-170-112. Liberal construction.** THIS ACT SHALL BE LIBERALLY CONSTRUED TO EFFECTUATE ITS PURPOSE.

**12-170-113. Preemption.** NO LOCALITY SHALL ADOPT, ENACT, OR ENFORCE ANY ORDINANCE, RULE, OR RESOLUTION IMPOSING ANY GREATER CRIMINAL OR CIVIL PENALTY THAN PROVIDED BY THIS ACT OR THAT IS OTHERWISE IN CONFLICT WITH THE PROVISIONS OF THIS ACT. A LOCALITY MAY ENACT LAWS IMPOSING LESSER CRIMINAL OR CIVIL PENALTIES THAN PROVIDED BY THIS ACT.

**12-170-114. Self-executing, severability, conflicting provisions.** ALL PROVISIONS OF THIS ARTICLE 170 ARE SELF-EXECUTING EXCEPT AS SPECIFIED HEREIN, ARE SEVERABLE, AND, EXCEPT WHERE OTHERWISE INDICATED IN THE TEXT, SHALL SUPERSEDE CONFLICTING STATE STATUTORY, LOCAL CHARTER, ORDINANCE, OR RESOLUTION, AND OTHER STATE AND LOCAL PROVISIONS. IF ANY PROVISION OF THIS ACT OR ITS APPLICATION TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID, THE INVALIDITY DOES NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF THIS ACT THAT CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS ACT ARE SEVERABLE.

**12-170-115. Effective date.** UNLESS OTHERWISE PROVIDED BY THIS ACT, ALL PROVISIONS OF THIS ACT SHALL BECOME EFFECTIVE UPON THE EARLIER OF THE OFFICIAL DECLARATION OF THE VOTE HEREON BY PROCLAMATION OF THE GOVERNOR OR THIRTY DAYS AFTER THE VOTE HAS BEEN CANVASSED, PURSUANT TO SECTION 1(4) OF ARTICLE V OF THE COLORADO CONSTITUTION. THE REMOVAL AND REDUCTION OF CRIMINAL PENALTIES BY THIS ACT IS INTENDED TO HAVE RETROACTIVE EFFECT.

**SECTION 2.** In Colorado Revised Statutes, 18-18-403.5, **amend** (1) as follows:

**18-18-403.5. Unlawful possession of a controlled substance.** (1) Except as authorized by part 1 or 3 of article 280 of title 12, part 2 of article 80 of title 27, section 18-1-711, section 18-18-428(1)(b), ~~or~~ part 2 or 3 of this article 18, OR THE “NATURAL MEDICINE HEALTH ACT OF

2022”, ARTICLE 170 OF TITLE 12 it is unlawful for a person knowingly to possess a controlled substance.

**SECTION 3.** In Colorado Revised Statutes, 18-18-404 **amend** (1)(a) as follows:

**18-18-404. Unlawful use of a controlled substance.** (1)(a) Except as is otherwise provided for offenses concerning marijuana and marijuana concentrate in sections 18-18-406 and 18-18-406.5 OR BY THE “NATURAL MEDICINE HEALTH ACT OF 2022”, ARTICLE 170 OF TITLE 12 any person who uses any controlled substance, except when it is dispensed by or under the direction of a person licensed or authorized by law to prescribe, administer, or dispense the controlled substance for bona fide medical needs, commits a level 2 drug misdemeanor.

**SECTION 4.** In Colorado Revised Statutes, 18-18-405, **amend** (1)(a) as follows:

**18-18-405. Unlawful distribution, manufacturing, dispensing, or sale.** (1)(a) Except as authorized by part 1 of article 280 of title 12, part 2 of article 80 of title 27, ~~or~~ part 2 or 3 of this article 18, OR BY “THE NATURAL MEDICINE HEALTH ACT OF 2022”, ARTICLE 170 OF TITLE 12 it is unlawful for any person knowingly to manufacture, dispense, sell, or distribute, or to possess with intent to manufacture, dispense, sell, or distribute, a controlled substance; or induce, attempt to induce, or conspire with one or more other persons, to manufacture, dispense, sell, distribute, or possess with intent to manufacture, dispense, sell, or distribute, a controlled substance; or possess one or more chemicals or supplies or equipment with intent to manufacture a controlled substance.

**SECTION 5.** In Colorado Revised Statutes, **amend** 18-18-410 as follows:

**18-18-410. Declaration of class 1 public nuisance.** EXCEPT AS PERMITTED BY THE “NATURAL MEDICINE HEALTH ACT OF 2022”, ARTICLE 170 OF TITLE 12 any store, shop, warehouse, dwelling house, building, vehicle, boat, or aircraft or any place whatsoever which is frequented by controlled substance addicts for the unlawful use of controlled substances or which is used for the unlawful storage, manufacture, sale, or distribution of controlled substances is declared to be a class 1 public nuisance and subject to the provisions of section 16-13-303, C.R.S. Any real or personal property which is seized or confiscated as a result of an action to abate a public nuisance shall be disposed of pursuant to part 7 of article 13 of title 16, C.R.S.

**SECTION 6.** In Colorado Revised Statutes, 18-18-411, **add** (5) as follows:

**18-18-411. keeping, maintaining, controlling, renting, or making available property for unlawful distribution or manufacture of controlled substances.**

(5) A PERSON ACTING IN COMPLIANCE WITH THE “NATURAL MEDICINE HEALTH ACT OF 2022”, ARTICLE 170 OF TITLE 12 DOES NOT VIOLATE THIS SECTION.

**SECTION 7.** In Colorado Revised Statutes, 18-18-412.7, **add** (3) as follows:

**18-18-412.7. Sale or distribution of materials to manufacture controlled substances.**

(3) A PERSON ACTING IN COMPLIANCE WITH THE “NATURAL MEDICINE HEALTH ACT OF 2022”, ARTICLE 170 OF TITLE 12 DOES NOT VIOLATE THIS SECTION.

**SECTION 8.** In Colorado Revised Statutes, 18-18-430.5, **add** (1)(c) as follows:

**18-18-430.5. Drug paraphernalia—exemption.** (1) A person is exempt from sections 18-18-425 to 18-18-430 if the person is:

(c) USING EQUIPMENT, PRODUCTS OR MATERIALS IN COMPLIANCE WITH THE “NATURAL MEDICINE HEALTH ACT OF 2022”, ARTICLE 170 OF TITLE 12. THE MANUFACTURE, POSSESSION, AND DISTRIBUTION OF SUCH EQUIPMENT, PRODUCTS, OR MATERIALS SHALL BE AUTHORIZED WITHIN THE MEANING OF 21 USC 863 SEC. (f).

**SECTION 9.** In Colorado Revised Statutes, 16-13-303, **add** (9) as follows:

**16-13-303. Class 1 public nuisance.**

(9) A PERSON ACTING IN COMPLIANCE WITH THE “NATURAL MEDICINE HEALTH ACT OF 2022”, ARTICLE 170 OF TITLE 12 DOES NOT VIOLATE THIS SECTION.

**SECTION 10.** In Colorado Revised Statutes, 16-13-304, **add** (2) as follows:

**16-13-304. Class 2 public nuisance.**

(2) A PERSON ACTING IN COMPLIANCE WITH THE “NATURAL MEDICINE HEALTH ACT OF 2022”, ARTICLE 170 OF TITLE 12 DOES NOT VIOLATE THIS SECTION.