

First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

REENGROSSED

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

LLS NO. 11-0383.01 Christy Chase

HOUSE BILL 11-1128

HOUSE SPONSORSHIP

Riesberg,

SENATE SPONSORSHIP

Williams S.,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE PROTECTION FROM DISCOVERY IN A CIVIL LAWSUIT**
102 **AGAINST A STATE-REGULATED PROFESSIONAL OF DOCUMENTS**
103 **RESULTING FROM A COMPLAINT ABOUT THE PROFESSIONAL**
104 **THAT ARE HELD BY THE BOARD THAT REGULATES THE**
105 **PROFESSIONAL.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill protects from subpoena or discovery in a civil lawsuit

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

HOUSE
3rd Reading Unam ended
February 8, 2011

HOUSE
2nd Reading Unam ended
February 7, 2011

against a state-regulated professional documents resulting from a complaint against the professional that are held by the director of the division of registrations, in the case of a complaint against an addiction counselor, or by the following regulatory boards:

- ! The state board of accountancy;
- ! The state board of pharmacy;
- ! The Colorado podiatry board;
- ! The state board of chiropractic examiners;
- ! The state board of dental examiners;
- ! The state board of nursing and the nurse aide advisory committee;
- ! The board of examiners of nursing home administrators;
- ! The state board of psychologist examiners;
- ! The state board of social work examiners;
- ! The state board of licensed professional counselor examiners;
- ! The state board of marriage and family therapist examiners; and
- ! The state grievance board.

The protected documents include the complaint, response, investigation report, notes, and memoranda.

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

2 **SECTION 1.** 12-2-126 (1), Colorado Revised Statutes, is
3 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

4 **12-2-126. Investigations, examinations, and cease-and-desist**
5 **orders against unlawful act - protection of complaint documents.**

6 (1) (d) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS
7 PARAGRAPH (d), ANY DOCUMENTS THAT THE BOARD HAS IN ITS
8 POSSESSION RESULTING FROM A DISMISSED COMPLAINT CONCERNING A
9 CERTIFIED PUBLIC ACCOUNTANT ARE NOT SUBJECT TO SUBPOENA OR
10 DISCOVERY IN ANY CIVIL ACTION AGAINST THE CERTIFIED PUBLIC
11 ACCOUNTANT WHO IS THE SUBJECT OF THE DOCUMENTS, AND THE
12 DOCUMENTS ARE NOT OPEN OR AVAILABLE FOR PUBLIC INSPECTION. THE
13 DOCUMENTS PROTECTED BY THIS SUBPARAGRAPH (I) INCLUDE:

1 (A) THE COMPLAINT, RESPONSE, INVESTIGATION REPORT, NOTES,
2 AND MEMORANDA; AND

3 (B) CONFIDENTIAL BOOKS OF ACCOUNT, FINANCIAL RECORDS,
4 ADVICE, REPORTS, OR WORKING PAPERS PROVIDED BY THE CLIENT,
5 CERTIFIED PUBLIC ACCOUNTANT, OR CERTIFIED PUBLIC ACCOUNTING FIRM.

6 (II) THE PROTECTIONS SPECIFIED IN SUBPARAGRAPH (I) OF THIS
7 PARAGRAPH (d) DO NOT APPLY TO A SEARCH WARRANT OR SUBPOENA
8 ISSUED BY AN AGENCY THAT ENFORCES CIVIL OR CRIMINAL LAWS THAT IS
9 SEEKING ACCESS TO OR RELEASE OF DOCUMENTS REGARDING A CERTIFIED
10 PUBLIC ACCOUNTANT. THE BOARD MAY RELEASE A DOCUMENT DESCRIBED
11 IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (d) IN ITS DISCRETION TO ANY
12 AGENCY THAT ENFORCES CIVIL OR CRIMINAL LAWS OR STATE REGULATORY
13 OR LICENSING BOARD IN THIS OR ANOTHER STATE IF THE BOARD
14 DETERMINES THAT RELEASE OF THE DOCUMENT IS NECESSARY TO CARRY
15 OUT THE BOARD'S LEGISLATIVE MANDATE. THE BOARD SHALL RELEASE
16 THE DOCUMENT IN A MANNER THAT COMPLIES WITH ALL FEDERAL AND
17 COLORADO LAWS REGARDING THE PROVISION OF PERSONAL IDENTIFYING
18 INFORMATION.

19 **SECTION 2.** 12-22-113.5 (3), Colorado Revised Statutes, is
20 amended to read:

21 **12-22-113.5. Reporting - malpractice claims - protection of**
22 **records.** (3) (a) Information relating to each malpractice claim provided
23 by insurance companies or self-insured pharmacists or pharmacies ~~shall~~
24 ~~be~~ ARE exempt from ~~the provisions of~~ any law requiring that the
25 proceedings of the board be conducted publicly or that the minutes or
26 records of the board be open to public inspection unless there is final
27 disciplinary action taken. The board may use ~~such~~ THE information in any

1 formal hearing involving a licensee.

2 (b) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS
3 PARAGRAPH (b), ANY DOCUMENTS THAT THE BOARD HAS IN ITS
4 POSSESSION RESULTING FROM A MALPRACTICE CLAIM AGAINST A LICENSED
5 PHARMACIST OR REGISTERED PHARMACY WHERE NO FINAL DISCIPLINARY
6 ACTION WAS TAKEN BY THE BOARD, INCLUDING THE COMPLAINT,
7 RESPONSE, INVESTIGATION REPORT, NOTES, AND MEMORANDA, ARE NOT
8 SUBJECT TO SUBPOENA OR DISCOVERY IN ANY CIVIL ACTION AGAINST THE
9 LICENSED PHARMACIST OR REGISTERED PHARMACY THAT IS THE SUBJECT
10 OF THE DOCUMENTS, AND THE DOCUMENTS ARE NOT OPEN OR AVAILABLE
11 FOR PUBLIC INSPECTION.

12 (II) THE PROTECTIONS SPECIFIED IN SUBPARAGRAPH (I) OF THIS
13 PARAGRAPH (b) DO NOT APPLY TO A SEARCH WARRANT OR SUBPOENA
14 ISSUED BY AN AGENCY THAT ENFORCES CIVIL OR CRIMINAL LAWS THAT IS
15 SEEKING ACCESS TO OR RELEASE OF DOCUMENTS REGARDING A LICENSED
16 PHARMACIST OR REGISTERED PHARMACY. THE BOARD MAY RELEASE A
17 DOCUMENT DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) IN
18 ITS DISCRETION TO ANY AGENCY THAT ENFORCES CIVIL OR CRIMINAL LAWS
19 OR STATE REGULATORY OR LICENSING BOARD IN THIS OR ANOTHER STATE
20 IF THE BOARD DETERMINES THAT RELEASE OF THE DOCUMENT IS
21 NECESSARY TO CARRY OUT THE BOARD'S LEGISLATIVE MANDATE. THE
22 BOARD SHALL RELEASE THE DOCUMENT IN A MANNER THAT COMPLIES
23 WITH ALL FEDERAL AND COLORADO LAWS REGARDING THE PROVISION OF
24 PERSONAL IDENTIFYING INFORMATION.

25 **SECTION 3.** 12-32-108.3 (12), Colorado Revised Statutes, is
26 amended to read:

27 **12-32-108.3. Disciplinary action by board - protection of**

1 **complaint documents.** (12) (a) Investigations and examinations of the
2 Colorado podiatry board conducted pursuant to ~~the provisions of this~~
3 section ~~shall be~~ ARE exempt from ~~the provisions of~~ any law requiring that
4 proceedings of the board be conducted publicly or that the minutes or
5 records of the board with respect to action of the board taken pursuant to
6 ~~the provisions of~~ this subsection (12) be open to public inspection. Any
7 proceedings with regard to a licensee who is in violation of section
8 12-32-107 (3) (f) and who is participating in good faith in a rehabilitation
9 program designed to alleviate the conditions specified in section
10 12-32-107 (3) (f) which has been approved by the board are also exempt
11 from any such requirements of law.

12 (b) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS
13 PARAGRAPH (b), ANY DOCUMENTS THAT THE BOARD HAS IN ITS
14 POSSESSION RESULTING FROM A COMPLAINT CONCERNING A LICENSED
15 PODIATRIST, INCLUDING THE COMPLAINT, RESPONSE, INVESTIGATION
16 REPORT, NOTES, AND MEMORANDA, ARE NOT SUBJECT TO SUBPOENA OR
17 DISCOVERY IN ANY CIVIL ACTION AGAINST THE LICENSED PODIATRIST WHO
18 IS THE SUBJECT OF THE DOCUMENTS, AND THE DOCUMENTS ARE NOT OPEN
19 OR AVAILABLE FOR PUBLIC INSPECTION.

20 (II) THE PROTECTIONS SPECIFIED IN SUBPARAGRAPH (I) OF THIS
21 PARAGRAPH (b) DO NOT APPLY TO A SEARCH WARRANT OR SUBPOENA
22 ISSUED BY AN AGENCY THAT ENFORCES CIVIL OR CRIMINAL LAWS THAT IS
23 SEEKING ACCESS TO OR RELEASE OF DOCUMENTS REGARDING A LICENSED
24 PODIATRIST. THE BOARD MAY RELEASE A DOCUMENT DESCRIBED IN
25 SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) IN ITS DISCRETION TO ANY
26 AGENCY THAT ENFORCES CIVIL OR CRIMINAL LAWS OR STATE REGULATORY
27 OR LICENSING BOARD IN THIS OR ANOTHER STATE IF THE BOARD

1 DETERMINES THAT RELEASE OF THE DOCUMENT IS NECESSARY TO CARRY
2 OUT THE BOARD'S LEGISLATIVE MANDATE. THE BOARD SHALL RELEASE
3 THE DOCUMENT IN A MANNER THAT COMPLIES WITH ALL FEDERAL AND
4 COLORADO LAWS REGARDING THE PROVISION OF PERSONAL IDENTIFYING
5 INFORMATION.

6 **SECTION 4.** 12-33-119 (10), Colorado Revised Statutes, is
7 amended to read:

8 **12-33-119. Disciplinary proceedings - protection of complaint**
9 **documents.** (10) (a) Notwithstanding other laws to the contrary,
10 investigations, examinations, meetings, and other proceedings of the
11 board conducted pursuant to this section are not required to be conducted
12 publicly, and minutes of the board need not be open to public inspection;
13 except that final action of the board taken pursuant to this section ~~shall be~~
14 is open to the public.

15 (b) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS
16 PARAGRAPH (b), ANY DOCUMENTS THAT THE BOARD HAS IN ITS
17 POSSESSION RESULTING FROM A COMPLAINT CONCERNING A LICENSED
18 CHIROPRACTOR, INCLUDING THE COMPLAINT, RESPONSE, INVESTIGATION
19 REPORT, NOTES, AND MEMORANDA, ARE NOT SUBJECT TO SUBPOENA OR
20 DISCOVERY IN ANY CIVIL ACTION AGAINST THE LICENSED CHIROPRACTOR
21 WHO IS THE SUBJECT OF THE DOCUMENTS, AND THE DOCUMENTS ARE NOT
22 OPEN OR AVAILABLE FOR PUBLIC INSPECTION.

23 (II) THE PROTECTIONS SPECIFIED IN SUBPARAGRAPH (I) OF THIS
24 PARAGRAPH (b) DO NOT APPLY TO A SEARCH WARRANT OR SUBPOENA
25 ISSUED BY AN AGENCY THAT ENFORCES CIVIL OR CRIMINAL LAWS THAT IS
26 SEEKING ACCESS TO OR RELEASE OF DOCUMENTS REGARDING A LICENSED
27 CHIROPRACTOR. THE BOARD MAY RELEASE A DOCUMENT DESCRIBED IN

1 SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) IN ITS DISCRETION TO ANY
2 AGENCY THAT ENFORCES CIVIL OR CRIMINAL LAWS OR STATE REGULATORY
3 OR LICENSING BOARD IN THIS OR ANOTHER STATE IF THE BOARD
4 DETERMINES THAT RELEASE OF THE DOCUMENT IS NECESSARY TO CARRY
5 OUT THE BOARD'S LEGISLATIVE MANDATE. THE BOARD SHALL RELEASE
6 THE DOCUMENT IN A MANNER THAT COMPLIES WITH ALL FEDERAL AND
7 COLORADO LAWS REGARDING THE PROVISION OF PERSONAL IDENTIFYING
8 INFORMATION.

9 SECTION 5. 12-35-129 (7) (e), Colorado Revised Statutes, is
10 amended to read:

11 **12-35-129. Causes for denial of issuance or renewal -**
12 **suspension or revocation of licenses - other disciplinary action -**
13 **unprofessional conduct defined - disciplinary panels - cease and**
14 **desist - protection of complaint documents.** (7) (e) (I) Investigations,
15 examinations, hearings, meetings, or any other proceedings of the board
16 conducted pursuant to this section ~~shall be~~ ARE exempt from the
17 provisions of any law requiring that proceedings of the board be
18 conducted publicly or that the minutes or records of the board with
19 respect to action of the board taken pursuant to this section are open to
20 public inspection; except that the final action of the board taken pursuant
21 to this section ~~shall be~~ IS open to the public.

22 (II) (A) EXCEPT AS PROVIDED IN SUB-SUBPARAGRAPH (B) OF THIS
23 SUBPARAGRAPH (II), ANY DOCUMENTS THAT THE BOARD HAS IN ITS
24 POSSESSION RESULTING FROM A COMPLAINT CONCERNING A LICENSED
25 DENTIST OR DENTAL HYGIENIST, INCLUDING THE COMPLAINT, RESPONSE,
26 INVESTIGATION REPORT, NOTES, AND MEMORANDA, ARE NOT SUBJECT TO
27 SUBPOENA OR DISCOVERY IN ANY CIVIL ACTION AGAINST THE LICENSED

1 DENTIST OR DENTAL HYGIENIST WHO IS THE SUBJECT OF THE DOCUMENTS,
2 AND THE DOCUMENTS ARE NOT OPEN OR AVAILABLE FOR PUBLIC
3 INSPECTION.

4 (B) THE PROTECTIONS SPECIFIED IN SUB-SUBPARAGRAPH (A) OF
5 THIS SUBPARAGRAPH (II) DO NOT APPLY TO A SEARCH WARRANT OR
6 SUBPOENA ISSUED BY AN AGENCY THAT ENFORCES CIVIL OR CRIMINAL
7 LAWS THAT IS SEEKING ACCESS TO OR RELEASE OF DOCUMENTS
8 REGARDING A LICENSED DENTIST OR DENTAL HYGIENIST. THE BOARD MAY
9 RELEASE A DOCUMENT DESCRIBED IN SUB-SUBPARAGRAPH (A) OF THIS
10 SUBPARAGRAPH (II) IN ITS DISCRETION TO ANY AGENCY THAT ENFORCES
11 CIVIL OR CRIMINAL LAWS OR STATE REGULATORY OR LICENSING BOARD IN
12 THIS OR ANOTHER STATE IF THE BOARD DETERMINES THAT RELEASE OF THE
13 DOCUMENT IS NECESSARY TO CARRY OUT THE BOARD'S LEGISLATIVE
14 MANDATE. THE BOARD SHALL RELEASE THE DOCUMENT IN A MANNER
15 THAT COMPLIES WITH ALL FEDERAL AND COLORADO LAWS REGARDING
16 THE PROVISION OF PERSONAL IDENTIFYING INFORMATION.

17 **SECTION 6.** 12-38-116.5 (9), Colorado Revised Statutes, is
18 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

19 **12-38-116.5. Disciplinary procedures of the board - inquiry**
20 **and hearings panels - protection of complaint documents.**

21 (9) (c) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS
22 PARAGRAPH (c), ANY DOCUMENTS THAT THE BOARD HAS IN ITS
23 POSSESSION RESULTING FROM A COMPLAINT CONCERNING A LICENSED
24 NURSE, INCLUDING THE COMPLAINT, RESPONSE, INVESTIGATION REPORT,
25 NOTES, AND MEMORANDA, ARE NOT SUBJECT TO SUBPOENA OR DISCOVERY
26 IN ANY CIVIL ACTION AGAINST THE LICENSED NURSE WHO IS THE SUBJECT
27 OF THE DOCUMENTS, AND THE DOCUMENTS ARE NOT OPEN OR AVAILABLE

1 FOR PUBLIC INSPECTION.

2 (II) THE PROTECTIONS SPECIFIED IN SUBPARAGRAPH (I) OF THIS
3 PARAGRAPH (c) DO NOT APPLY TO A SEARCH WARRANT OR SUBPOENA
4 ISSUED BY AN AGENCY THAT ENFORCES CIVIL OR CRIMINAL LAWS THAT IS
5 SEEKING ACCESS TO OR RELEASE OF DOCUMENTS REGARDING A LICENSED
6 NURSE. THE BOARD MAY RELEASE A DOCUMENT DESCRIBED IN
7 SUBPARAGRAPH (I) OF THIS PARAGRAPH (c) IN ITS DISCRETION TO ANY
8 AGENCY THAT ENFORCES CIVIL OR CRIMINAL LAWS OR STATE REGULATORY
9 OR LICENSING BOARD IN THIS OR ANOTHER STATE IF THE BOARD
10 DETERMINES THAT RELEASE OF THE DOCUMENT IS NECESSARY TO CARRY
11 OUT THE BOARD'S LEGISLATIVE MANDATE. THE BOARD SHALL RELEASE
12 THE DOCUMENT IN A MANNER THAT COMPLIES WITH ALL FEDERAL AND
13 COLORADO LAWS REGARDING THE PROVISION OF PERSONAL IDENTIFYING
14 INFORMATION.

15 **SECTION 7.** 12-38.1-114 (13), Colorado Revised Statutes, is
16 amended to read:

17 **12-38.1-114. Disciplinary proceedings - hearing officers -**
18 **protection of complaint documents.** (13) (a) Except when a decision
19 to proceed with a disciplinary action has been agreed upon by a majority
20 of the board or its designee and notice of formal complaint is drafted and
21 served on the licensee by first-class mail, any investigations,
22 examinations, hearings, meetings, or any other proceedings of the board
23 related to discipline that are conducted pursuant to ~~the provisions of this~~
24 section ~~shall be~~ ARE exempt from the open records provisions of article
25 72 of title 24, C.R.S., requiring that the proceedings of the board be
26 conducted publicly or that the minutes or records of the board with
27 respect to action of the board taken pursuant to ~~the provisions of this~~

1 section be open to public inspection.

2 (b) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS
3 PARAGRAPH (b), ANY DOCUMENTS THAT THE BOARD HAS IN ITS
4 POSSESSION RESULTING FROM A DISMISSED COMPLAINT CONCERNING A
5 CERTIFIED NURSE AIDE, INCLUDING BUT NOT LIMITED TO THE COMPLAINT,
6 RESPONSE, INVESTIGATION REPORT, NOTES, AND MEMORANDA, ARE NOT
7 SUBJECT TO SUBPOENA OR DISCOVERY IN ANY CIVIL ACTION AGAINST THE
8 CERTIFIED NURSE AIDE WHO IS THE SUBJECT OF THE DOCUMENTS, AND THE
9 DOCUMENTS ARE NOT OPEN OR AVAILABLE FOR PUBLIC INSPECTION.

10 (II) THE PROTECTIONS SPECIFIED IN SUBPARAGRAPH (I) OF THIS
11 PARAGRAPH (b) DO NOT APPLY TO A SEARCH WARRANT OR SUBPOENA
12 ISSUED BY AN AGENCY THAT ENFORCES CIVIL OR CRIMINAL LAWS THAT IS
13 SEEKING ACCESS TO OR RELEASE OF DOCUMENTS REGARDING A CERTIFIED
14 NURSE AIDE. THE BOARD MAY RELEASE A DOCUMENT DESCRIBED IN
15 SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) IN ITS DISCRETION TO ANY
16 AGENCY THAT ENFORCES CIVIL OR CRIMINAL LAWS OR STATE REGULATORY
17 OR LICENSING BOARD IN THIS OR ANOTHER STATE IF THE BOARD
18 DETERMINES THAT RELEASE OF THE DOCUMENT IS NECESSARY TO CARRY
19 OUT THE BOARD'S LEGISLATIVE MANDATE. THE BOARD SHALL RELEASE
20 THE DOCUMENT IN A MANNER THAT COMPLIES WITH ALL FEDERAL AND
21 COLORADO LAWS REGARDING THE PROVISION OF PERSONAL IDENTIFYING
22 INFORMATION.

23 **SECTION 8.** 12-39-114 (6), Colorado Revised Statutes, is
24 amended to read:

25 **12-39-114. Disciplinary proceedings - administrative law**
26 **judge - judicial review - protection of complaint documents.**

27 (6) (a) (I) SUBJECT TO THE LIMITATIONS AND REQUIREMENTS IN

1 SUBPARAGRAPHS (II) AND (III) OF THIS PARAGRAPH (a), complaints,
2 investigations, hearings, meetings, or any other proceedings of the board
3 conducted pursuant to ~~the provisions of~~ this article and relating to
4 disciplinary proceedings ~~shall be~~ ARE exempt from the provision of any
5 law requiring that proceedings of the board be conducted publicly or that
6 the minutes or records of the board with respect to action of the board
7 taken pursuant to ~~the provisions of~~ this article be open to public
8 inspection. ~~except that this~~

9 (II) THE exemption ~~shall apply~~ APPLIES only:

10 (A) When the board, or an administrative law judge acting on
11 behalf of the board, specifically determines that it is in the best interest of
12 a complainant or other recipient of services to keep ~~such~~ THE proceedings
13 or documents relating ~~thereto~~ TO THE PROCEEDINGS closed to the public;
14 or

15 (B) If the licensee is violating section 12-39-111 (1) (g), IS
16 participating in good faith in a program approved by the board or
17 designed by the board to end any addiction or dependency specified in
18 said section, and ~~the licensee~~ has not violated any provisions of the board
19 order regarding participation in ~~such~~ a treatment program.

20 (III) If the board determines that it is in the best interest of a
21 complainant or other recipient of services to keep ~~such~~ THE proceedings
22 or RELATED documents ~~relating thereto~~ closed to the public, ~~then~~ the final
23 action of the board shall be open to the public without disclosing the
24 name of the client or other recipient.

25 (b) Final board actions and orders appropriate for judicial review
26 may be judicially reviewed in the court of appeals in accordance with
27 section 24-4-106 (11), C.R.S.

1 (c) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS
2 PARAGRAPH (c), ANY DOCUMENTS THAT THE BOARD HAS IN ITS
3 POSSESSION RESULTING FROM A COMPLAINT CONCERNING A LICENSED
4 NURSING HOME ADMINISTRATOR THAT THE BOARD HAS DETERMINED TO BE
5 CLOSED PURSUANT TO THIS SUBSECTION (6), INCLUDING THE COMPLAINT,
6 RESPONSE, INVESTIGATION REPORT, NOTES, AND MEMORANDA, ARE NOT
7 SUBJECT TO SUBPOENA OR DISCOVERY IN ANY CIVIL ACTION AGAINST THE
8 LICENSED NURSING HOME ADMINISTRATOR WHO IS THE SUBJECT OF THE
9 DOCUMENTS, AND THE DOCUMENTS ARE NOT OPEN OR AVAILABLE FOR
10 PUBLIC INSPECTION.

11 (II) THE PROTECTIONS SPECIFIED IN SUBPARAGRAPH (I) OF THIS
12 PARAGRAPH (c) DO NOT APPLY TO A SEARCH WARRANT OR SUBPOENA
13 ISSUED BY AN AGENCY THAT ENFORCES CIVIL OR CRIMINAL LAWS THAT IS
14 SEEKING ACCESS TO OR RELEASE OF DOCUMENTS REGARDING A LICENSED
15 NURSING HOME ADMINISTRATOR. THE BOARD MAY RELEASE A DOCUMENT
16 DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (c) IN ITS
17 DISCRETION TO ANY AGENCY THAT ENFORCES CIVIL OR CRIMINAL LAWS OR
18 STATE REGULATORY OR LICENSING BOARD IN THIS OR ANOTHER STATE IF
19 THE BOARD DETERMINES THAT RELEASE OF THE DOCUMENT IS NECESSARY
20 TO CARRY OUT THE BOARD'S LEGISLATIVE MANDATE. THE BOARD SHALL
21 RELEASE THE DOCUMENT IN A MANNER THAT COMPLIES WITH ALL FEDERAL
22 AND COLORADO LAWS REGARDING THE PROVISION OF PERSONAL
23 IDENTIFYING INFORMATION.

24 **SECTION 9.** 12-43-224 (4), Colorado Revised Statutes, is
25 amended to read:

26 **12-43-224. Disciplinary proceedings - judicial review - mental**
27 **and physical examinations - multiple licenses - protection of**

1 **complaint documents.** (4) (a) Except when a decision to proceed with
2 a disciplinary action has been agreed upon by a majority of the board that
3 licenses, registers, or regulates such licensee, registrant, or unlicensed
4 psychotherapist, and a notice of formal complaint is drafted and served
5 on the licensee, registrant, or unlicensed psychotherapist by first-class
6 mail or upon final agency action unless the complaint is dismissed AS
7 PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (4), IF A COMPLAINT IS
8 DISMISSED, RECORDS OF investigations, examinations, hearings, meetings,
9 ~~or any~~ AND other proceedings of the board conducted pursuant to the
10 provisions of this section shall be ARE exempt from the provisions of the
11 open records law, article 72 of title 24, C.R.S. requiring that proceedings
12 of the board be conducted publicly or that the minutes or records of the
13 board with respect to action of the board taken pursuant to the provisions
14 of this section be open to public inspection.

15 (b) THE EXEMPTION FROM THE OPEN RECORDS LAW SPECIFIED IN
16 PARAGRAPH (a) OF THIS SUBSECTION (4) DOES NOT APPLY:

17 (I) WHEN A DECISION TO PROCEED WITH A DISCIPLINARY ACTION
18 HAS BEEN AGREED UPON BY A MAJORITY OF THE APPLICABLE BOARD AND
19 A NOTICE OF FORMAL COMPLAINT IS DRAFTED AND SERVED ON THE
20 LICENSEE OR REGISTRANT BY FIRST-CLASS MAIL; OR

21 (II) UPON FINAL AGENCY ACTION.

22 (c) IN any final agency action or ~~the filing of a~~ formal complaint,
23 ~~when the board, determines it is~~ WHEN IT DEEMS necessary, shall redact
24 all names of clients or other recipients of services to protect such persons'
25 confidentiality.

26 (d) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS
27 PARAGRAPH (d), ANY DOCUMENTS THAT A BOARD HAS IN ITS POSSESSION

1 RESULTING FROM A DISMISSED COMPLAINT CONCERNING A LICENSEE OR
2 REGISTRANT, INCLUDING THE COMPLAINT, RESPONSE, INVESTIGATION
3 REPORT, NOTES, AND MEMORANDA, ARE NOT SUBJECT TO SUBPOENA OR
4 DISCOVERY IN ANY CIVIL ACTION AGAINST THE LICENSEE OR REGISTRANT
5 WHO IS THE SUBJECT OF THE DOCUMENTS, AND THE DOCUMENTS ARE NOT
6 OPEN OR AVAILABLE FOR PUBLIC INSPECTION.

7 (II) THE PROTECTIONS SPECIFIED IN SUBPARAGRAPH (I) OF THIS
8 PARAGRAPH (d) DO NOT APPLY TO A SEARCH WARRANT OR SUBPOENA
9 ISSUED BY AN AGENCY THAT ENFORCES CIVIL OR CRIMINAL LAWS THAT IS
10 SEEKING ACCESS TO OR RELEASE OF DOCUMENTS REGARDING A LICENSEE
11 OR REGISTRANT. A BOARD MAY RELEASE A DOCUMENT DESCRIBED IN
12 SUBPARAGRAPH (I) OF THIS PARAGRAPH (d) IN ITS DISCRETION TO ANY
13 AGENCY THAT ENFORCES CIVIL OR CRIMINAL LAWS OR STATE REGULATORY
14 OR LICENSING BOARD IN THIS OR ANOTHER STATE IF THE BOARD
15 DETERMINES THAT RELEASE OF THE DOCUMENT IS NECESSARY TO CARRY
16 OUT THE BOARD'S LEGISLATIVE MANDATE. THE BOARD SHALL RELEASE
17 THE DOCUMENT IN A MANNER THAT COMPLIES WITH ALL FEDERAL AND
18 COLORADO LAWS REGARDING THE PROVISION OF PERSONAL IDENTIFYING
19 INFORMATION.

20 **SECTION 10. Act subject to petition - effective date -**
21 **applicability.** (1) This act shall take effect at 12:01 a.m. on the day
22 following the expiration of the ninety-day period after final adjournment
23 of the general assembly (August 10, 2011, if adjournment sine die is on
24 May 11, 2011); except that, if a referendum petition is filed pursuant to
25 section 1 (3) of article V of the state constitution against this act or an
26 item, section, or part of this act within such period, then the act, item,
27 section, or part shall not take effect unless approved by the people at the

1 general election to be held in November 2012 and shall take effect on the
2 date of the official declaration of the vote thereon by the governor.

3 (2) The provisions of this act shall apply to documents relating to
4 a complaint that are in the possession of a regulatory board or the director
5 of the division of registrations before, on, or after the applicable effective
6 date of this act.