

DISTRICT COURT, CITY AND COUNTY OF
DENVER, COLORADO
1437 Bannock Street
Denver, Colorado 80202

Plaintiff: IMPAIRED PROFESSIONAL
DIVERSION PROGRAM d/b/a COLORADO
NURSE HEALTH PROGRAM, a Colorado
nonprofit corporation,

v.

Defendant: COLORADO DEPARTMENT OF
REGULATORY AGENCIES

Counsel for Plaintiff:
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Case Number: 2008 CV 4924

Div. 2 Ctrm:

**PLAINTIFF’S REPLY TO RESPONSE TO MOTION TO DISMISS
DEFENDANT’S COUNTERCLAIM-MOTION ALREADY FILED IN 2008 CV
5592, DIVISION 6, DENVER DISTRICT COURT, AND
TO STRIKE DEFENDANT’S AMENDED ANSWER**

Plaintiff (“CNHP”) replies to Defendant’s Response to the Motion to Dismiss Defendant’s Counterclaim-Motion already filed in 2008 CV 5592, Division 6, Denver District Court, and to Strike Defendant’s Amended Answer as follows:

1. Defendant (“DORA”) actually asserts in its response that its counterclaim-motion, already filed in a separate action in Case No. 2008 CV 5592 in a calculated attempt to obtain injunctive relief against CNHP without notice, “deals directly with the issues in this lawsuit and arises out of the same operative facts, thus it is more appropriately asserted as a

counterclaim in this action.”¹ Then, why wasn’t it? DORA had been served with the present action 16 days before DORA filed Case No. 2008 CV 5592 in Division 6.

2. The Amended Answer itself states: “This Counterclaim-motion is essentially a resubmission of that motion [which DORA filed in Case No. 2008 CV 5592] with updated facts, additional exhibits, and the requisite certifications. The legal basis remains the same. . .”²

3. DORA has no legal right to amend pleadings to add redundant matter, and DORA has no *good faith* explanation as to why its amendment was not included in its original answer, but was instead filed as a separate lawsuit.

4. The fact is that, since Judge Hood did not allow Ms. Comer, DORA’s counsel, to obtain her relief there without allowing CNHP an opportunity to respond, Ms. Comer now wants to redundantly litigate the same issue here. This is a calculated attempt to needlessly and exponentially increase CNHP’s litigation costs at a time when DORA is also forcing it to close by cutting off its funding.

5. In addition, DORA’s lawsuit in Case No. 2008 CV 5592, “arising out of the same operative facts,”³ also sought an order that was completely unfounded in law – to require Plaintiff to actually give its files, protected by federal confidentiality laws, to a third party! This was not the only basis on which Ms. Comer’s motion in Division 6 was without merit, but it goes to the heart of the fact that DORA believes it can proceed with impunity in Denver District Court. Again, CNHP responded to that motion immediately, because Ms. Comer had intentionally withheld a copy of her order while stating, “I plan to renew the motion on

¹ See DORA’s Response to this Motion, p. 2, ¶ 2.

² Amended Answer, p. 6, ¶ 9.

³ DORA’s Response to this Motion, p. 2, ¶ 2.

Monday.” (Exhibit A).⁴ Most attorneys would assume that the motion would be renewed in the same courtroom, and not that Ms. Comer would resort to “forum shopping” to try to again get an *ex parte* TRO in another courtroom.

.6. Consequently, CNHP filed a response in Case No., 2008 CV 5592, with legal authority which established that DORA was not entitled to the relief it requested. Now, Ms. Comer has tried to “correct” her motion in some respects and refile it again in this courtroom. It’s hard to imagine a better example of a “redundant” filing under Rule 12, C.R.C.P.

7. Rule 11(a), C.R.C.P., states, in pertinent part, as follows:

The signature of an attorney constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

8. For an attorney to intentionally file a separate lawsuit in another courtroom that, in her own words, “deals directly with the issues in this lawsuit and arises out of the same operative facts” as the present matter and then, when she is unable to obtain her *ex parte* relief there, seek to “correct” her motion and file it again in this courtroom in the guise of a “counterclaim-motion” in an “amended” answer, is contrary to the tenets of Rule 11 and a clear abuse of the legal system.

9. The bottom line is that Ms. Comer’s motion is unfounded in law, and even as “fixed” is contrary to a federal statute, and is being submitted in an attempt to hijack this litigation and drain CNHP’s scant legal resources and monies.

⁴ The Court may also find it interesting that, despite Ms. Comer’s protestations of “inadvertently” omitting the order (*see* DORA’s Response to this Motion, ¶2, p. 2) when she alluded to it in her e-mail sent to the undersigned on June 27, 2008, Ms. Comer didn’t even put this order in the mail until July 1, 2008. The undersigned has the postmarked envelope in the event this is relevant in consideration of sanctions.

10. Ms. Comer should be required to litigate her motion as originally filed, and already responded to by CNHP, in Case No. 2008 CV 5592. If allowed to continue as a “counterclaim-motion” here, CNHP will be required to again respond, this time to Ms. Comer’s “corrected” motion, and her fabricated emergency will further distract from the merits of the litigation before this Court.

11. Consequently, it is requested that Ms. Comer’s “red herring” be stricken from this action and instead be litigated as *she* elected to file it in the first place, in Case No. 2008 CV 5592, Division 6.

WHEREFORE, pursuant to Rule 12 of the Colorado Rules of Civil Procedure, CNHP respectfully renews its request that this Court dismiss or strike DORA’s Motion for Temporary Restraining Order and Motion for Preliminary Injunction appended as a counterclaim-motion in its Amended Answer, as it is “essentially a resubmission of that motion”⁵ which DORA has already filed Case No. 2008 CV 5592, Denver District Court, Division 6, before Judge Hood. Plaintiff further requests that this Court strike the Amended Answer, which amendment seeks solely to incorporate the motion filed in Case No. 2008 CV 5592, as redundant, also pursuant to Rule 12, C.R.C.P. Finally, CNHP requests such other and further relief as this Court may deem appropriate for Defendant’s actions in needlessly increasing the cost of this litigation.

DATED this 7th day of July, 2008.

Respectfully submitted,
LESLIE J. RANNIGER, P.C.

/s/ Leslie J. Ranniger
Original signature on file
By: Leslie J. Ranniger, #15202
Attorney for Plaintiff

⁵ DORA’s own characterization in its Amended Answer, p. 6, ¶ 9.

CERTIFICATE OF SERVICE

I hereby certify that I did, on this 7th day of July, 2008, serve a true and correct copy of the foregoing on the following via LexisNexis:

Linda Comer, Esq.
Senior Litigation Counsel
Office of Attorney General
1525 Sherman St., 7th floor
Denver, CO 80203
Counsel for Defendant, Colorado
Department of Regulatory Agencies

/s/ Leslie J. Ranniger
Original signature on file