

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO</p> <p>1437 Bannock Street Denver, CO 80202</p> <hr/> <p>IMPAIRED PROFESSIONAL DIVERSION PROGRAM, D/B/A COLORADO NURSE HEALTH PROGRAM,</p> <p>Plaintiff,</p> <p>v.</p> <p>COLORADO DEPARTMENT OF REGULATORY AGENCIES,</p> <p>Defendant.</p>	<p>EFILED Document CO Denver County District Court 2nd JD Filing Date: Jul 2 2008 3:04PM MDT Filing ID: 20496526 Review Clerk: Charmaine Bright</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>JOHN W. SUTHERS, Attorney General LINDA S. COMER, Assistant Attorney General* 1525 Sherman Street, 7th Floor Denver, CO 80203 303-866-5513 Registration Number: 11267 *Counsel of Record</p>	<p>Case No.: 08-CV-4924</p>
<p>CERTIFICATION OF COUNSEL PURSUANT TO RULE 65(B) C.R.C.P.</p>	

Counsel for Defendant hereby certifies that the following attempts were made to give notice to Plaintiff's counsel in compliance with Rule 65(b) C.R.C.P.

1. Counsel contacted Plaintiff's attorney of record by e-mail on June 26, 2008 to find out if counsel and her client would agree to honor appropriate releases for records of nurse clients and agree not destroy any records of existing clients until the underlying case is resolved. A copy of the e-mail to Plaintiff's counsel is attached to the motion for temporary restraining order and motion for preliminary injunction as Exhibit 7, and her e-mail response is attached as Exhibit 8 to the motion for a temporary restraining order and preliminary injunction. Counsel indicated that she could give no assurances on behalf of her client until she met with its board on June 30, 2008.

2. On June 26, DORA e-filed a Motion for Preliminary Injunction and Temporary Restraining Order seeking a temporary restraining order prohibiting CNHP from destroying

any records and a preliminary injunction requiring it to honor properly executed release forms that complied with federal requirements. The case was assigned to courtroom 21, 08 CV 5592. That motion was denied on June 27, 2008 for failure to comply with part b of Rule 65 C.R.C.P., addressing notice and opportunity for opposing party to be heard. There was no determination on the merits. On June 27, counsel called Plaintiff's attorney to tell her the motion had been denied. Defendant's counsel sent a copy of the motion and the exhibits to Plaintiff's counsel on June 27, 2008, advising her that DORA intended to renew the motion. A copy of that e-mail is Exhibit 10 to this motion for temporary restraining order and preliminary injunction. Plaintiff's counsel filed a response to the motion on June 30, 2008, requesting that it be denied. Her response is Exhibit 11 to this motion for temporary restraining order and motion for preliminary injunction.

3. On June 30, 2008, the day of the board meeting, Counsel for Defendant called and sent an e-mail to Plaintiff's counsel to try and get an answer as to whether CNHP would agree not to destroy any records and agree to honor release for records presented by the client or PAS. A copy of that e-mail is Exhibit 12 to this motion for temporary restraining order and motion for preliminary injunction. Plaintiff's counsel did not respond to the e-mail or telephone call. A letter was sent to Plaintiff's counsel by e-mail on July 1, 2008, asking the same question. That letter is not attached because it contains a proposal to resolve some pending issues. Plaintiff's counsel has not responded to that letter.

4. Defendant's counsel called Plaintiff's counsel on July 1, 2008, inquiring about a response to the letter and the request for assurances. Plaintiff's counsel stated her husband was in the hospital after an accident, and she had not received the letter. The letter was resent and counsel indicated she would get back to the undersigned on July 2, 2008. At that time, she was advised that the motion would be renewed if the issue as to the destruction of records was not resolved on July 2, 2008. Defendant's counsel is sympathetic to Plaintiff's counsel's situation but Defendant needs to know that the records will not be destroyed.

5. This motion was e-filed today (as counsel of record in this matter, she will receive notification). It was also e-mailed to her.

6. Plaintiff's counsel has received adequate notice of this motion and in fact responded to the prior motion. However, in this situation, notice and opportunity is not required, as the issuance of the temporary restraining order prohibiting the destruction of records does not harm Plaintiff and preserves the status quo. In contrast, the records are lost forever to the client, his/her subsequent provider and the Board of Nursing if destroyed. All Defendant is seeking is assurances that the records will not be destroyed. The issuance of the temporary restraining order will accomplish that.

WHEREFORE, Counsel for DORA requests that this court enter an order ex parte prohibiting CNHP from destroying any records pending a hearing on the Motion for Preliminary Injunction.

Dated this 2nd day of July, 2008.

JOHN W. SUTHERS
Attorney General

E-filed pursuant to C.R.C.P. 121 1-26.
A duly signed original is on file at the
Colorado Department of Law.

/s/ Linda S. Comer

LINDA S. COMER, 11267*

Assistant Attorney General

Attorneys for Defendant

*Counsel of Record

CERTIFICATE OF SERVICE

I do hereby certify that on the 2nd of July 2008, a copy of the foregoing **CERTIFICATION OF COUNSEL PURSUANT TO RULE 65(B) C.R.C.P.** was mailed, First Class U.S. postage prepaid, as follows:

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E-filed pursuant to C.R.C.P. 121 1-26. A
duly signed original is on file at the Colorado
Department of Law.

/s/ _____