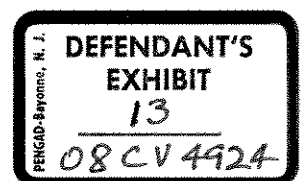


<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO</p> <p>1437 Bannock Street Denver, CO 80202</p> <hr/> <p>IMPAIRED PROFESSIONAL DIVERSION PROGRAM, D/B/A COLORADO NURSE HEALTH PROGRAM,</p> <p>Plaintiff,</p> <p>v.</p> <p>COLORADO DEPARTMENT OF REGULATORY AGENCIES,</p> <p>Defendant.</p>	<p><b>FILED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

AFFIANT Mark Merrill, depose and state as follows:

1. I am over 18 years of age and a resident of the State of Colorado.
  
2. I am the Program Director, for Colorado Department of Regulatory Agencies, Division of Registrations, Board of Nursing. As Program Director, I oversee the administration and functionality of the impaired professional diversion program for the Board of Nursing. I also oversee the compliance monitoring of licensees who are currently enrolled in the program. I have been in this position since June 26, 2006. I report to the Board of Nursing and the program provider reports to me and my staff. I am knowledgeable regarding the functions, purpose, and operation of the impaired professional diversion program.
  
3. The Nurse Health Assistance or Nurse Alternative to Discipline Program was created by statute CRS § 12-38-131. The purpose of the program is to encourage nurses to seek treatment and counseling for physical, emotional, psychiatric, psychological, drug and/or alcohol abuse problems and to allow for an alternative to discipline provided the board is assured by the program provider that the nurse poses no danger to the public. The referral may be voluntary or



at the insistence of the board as part of or in lieu of a disciplinary action. The program provider is required to monitor the status of the referred nurses and inform the board of noncompliance of board referrals or voluntary referrals who pose a risk to the public.

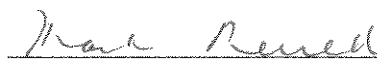
4. Prior to January 1, 2008, the statute authorized the Board of Nursing to create a corporate entity to administer the program and to appoint a committee (Impaired Professional Diversion Committee) to direct the program through the corporate entity. CNHP was the entity created and chosen by the committee to administer the program and did so for many years. The statute was repealed and reenacted, effective January 1, 2008. The new statute abolished the committee and required the board to use a competitive bidding process to select the entity to administer the program and provide the services enumerated in the statute. Peer Assistance Services, Inc. (PAS) is the entity chosen by the board through the competitive bidding process and a contract is in place to begin providing services as of July 1, 2008.

5. Continuity of care is critical to the assurance of public safety. Continuity of care depends on access to prior monitoring treatment records. For example a voluntary participant has in the program doing well and has a relapse. In the absence of any retained records there is no way for the nurse to establish prior compliance as a possible mitigating factor.

6. It is my understanding that CNHP has sent a letter to voluntary clients advising them their records will be destroyed if they do not execute a release allowing CNHP to release the records to a new provider on or before June 30, 2008. Destruction of the records will cause irreparable harm as they cannot be reproduced. They are gone.

7. It is also my understanding that CNHP will not release the records to the client or to PAS on receipt of a properly executed release that complies with the federal law. This too will cause irreparable harm as it will interfere with continuity of care and continued protection of the public

I declare under penalty of perjury that the foregoing is true and correct.  
Further this affiant sayeth not.

  
\_\_\_\_\_  
Mark Merrill, Program Director  
Colorado Department of Regulatory Agencies  
Division of Registrations, Board of Nursing

Subscribed and sworn to before me in the County of Denver, State of Colorado, this 2nd day  
of July 2008.

Rochele R Bernville  
NOTARY PUBLIC

My Commission expires:

July 19, 2008