

<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>FILED Document CO Denver County District Court 2nd JD Filing Date: Jun 30 2008 1:34PM MDT Filing ID: 20455982 Review Clerk: Ruth Daphney Ranum</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>ANSWER TO COMPLAINT</p>	

Defendant, by and through counsel, in Answer to Plaintiff's Complaint, admits, avers and denies as follows.

Jurisdiction and Venue

1. Defendant admits the allegations in paragraphs 1, 2, 3, 4, and 7 of Plaintiff's complaint.
2. There is no paragraph 5 in the complaint requiring response.
3. The claim set forth in paragraph 6 has been voluntarily dismissed by Plaintiff pursuant to Rule 41 C.R.C.P., therefore no response is deemed necessary.

General Allegations

4. There are 2 paragraphs numbered 24 and 2 paragraphs numbered 25, each of which contains different allegations. In this Answer, the first paragraph 24 is identified as 24(a) and the second as 24(b). The first paragraph 25 is likewise identified as 25(a) and the second as 25(b).

5. With respect to the allegations in paragraph 8, Defendant admits that CNHP was created as a Colorado nonprofit corporation on September 8, 1995 pursuant to CRS § 12-38-131(as it then existed) to handle the nurses' diversion program for the State Board of Nursing , a division of the Department. Defendant lacks sufficient information to form a belief as to the truth of the remainder of the allegations contained therein and therefore denies same.

6. Defendant admits the allegations in paragraphs 9, 10, 14, 16, 24(a), 26, and 28.

7. With respect to the allegations in paragraph 11, Defendant admits only that the quote of the section of the RFP is accurate. Defendant denies the remainder of the allegations contained therein.

8. With respect to the allegation in paragraph 12, Defendant admits only that it did not send any letter to CNHP denying its request for confidentiality. To the extent this allegation suggests CNHP made a request for confidentiality in compliance with the requirements of the RFP thereby warranting a written denial, it is denied.

9. Defendant denies the allegations in paragraphs 13, 17, 18, 19, 20, 21, 22, 25(b), 27, 31, 34 and 35.

10. With respect to the allegations contained in paragraph 15, Defendant admits only that Plaintiff made inquiries as to the status of the contract after the issuance of the Notice of Intent to Award and was advised that the contracting process takes time. Defendant lacks sufficient information to form a belief as to the remainder of the allegations contained therein and therefore denies same.

11. With respect to the allegations in paragraph 23, Defendant admits only it met with PAS and its counsel on December 20, 2007 and that CNHP was not notified of the meeting.

12. With respect to the allegations in paragraph 24(b), Defendant admits only that the quoted language from the letter is accurate. Defendant denies the remainder of the allegations contained therein.

12. With respect to the allegations in paragraph 25(a), Defendant admits only that the Department mailed a letter to Plaintiff on or about January 8, 2008, notifying it that RFP 0801 was being cancelled. Defendant lacks sufficient information to form a belief as to the truth of the remainder of the allegations contained therein and therefore denies same.

13. With respect to the allegations in paragraph 29, Defendant admits only that the PAS bid was lower than its first monetary bid and less than CNPH's first monetary bid. Defendant denies the remainder of the allegations contained therein.

14. With respect to the allegations in paragraph 30, Defendant lacks sufficient information to form a belief as to the truth of the allegations contained therein and therefore denies same.

15. With respect to the allegations in paragraph 32, Defendant admits only that CNHP timely filed its protest pursuant to C.R.S. § 24-109-203 and 205. The basis for the protest is set out in the protest letter, which speaks for itself.

16. With respect to the allegations in paragraph 33, Defendant admits only that the protest denial letter is dated May 23, 2008 and was mailed on that date.

FIRST CLAIM FOR RELIEF
(Appeal from Final Determination of Executive Director)

17. With respect to the allegations in paragraph 36, Defendant incorporates its responses to paragraphs 1-35 as if fully set forth herein.

18. Defendant admits the allegations in paragraph 37.

19. Defendant denies the allegations in paragraphs 38, 39, 40, 41, 42, 43, and 44.

SECOND CLAIM FOR RELIEF
(Violation of the State Administrative Procedure ACT, CRS § 24-4-101. et seq.)

20. With respect to the allegations in paragraph 45, Defendant incorporates its responses to paragraphs 1-44 as if fully set forth herein.

21. Defendant denies the allegations in paragraph 46.

THIRD CLAIM FOR RELIEF
(Misappropriate of Trade Secrets)

22. Plaintiff has voluntarily dismissed this claim for relief pursuant to Rule 41 C.R.C.P., therefore no response to paragraphs 47, 48, 49, 50, 51 and 52 is deemed necessary.

AFFIRMATIVE DEFENSES

1. Plaintiff's complaint fails to state a claim upon which relief can be granted against Defendant.

2. Plaintiff's claims lack substantial justification, are frivolous and groundless, and Defendant is entitled to attorney fees pursuant to CRS § 13-17-102 and CRS § 24-4-106 (8).

3. Upon information and belief, Plaintiff's second claim for relief may be barred by the statute of limitations set forth in C.R.S. § 24-4-106(8).

4. Plaintiff's claims are barred by the doctrines of estoppel and waiver.

WHEREFORE, Defendant prays for dismissal of the complaint, its costs and attorney fees incurred in defending the complaint and any further and just relief as this Court deems just under the circumstances.

Dated this 30th day of June, 2008.

E-filed pursuant to C.R.C.P. 121 1-26.

A duly signed original is on file at the Colorado Department of Law.

JOHN W. SUTHERS
Attorney General

/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 30th of June 2008, a copy of the foregoing **ANSWER TO COMPLAINT** 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/ _____