

<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>THE COLORADO DEPARTMENT OF REGULATORY AGENCIES,</p> <p>Defendant.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</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>SUPPLEMENTAL AUTHORITY IN SUPPORT OF DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION TO DISMISS</b></p>	

Defendant, by and through the Office of the Attorney General, submits this supplemental authority in opposition to Plaintiff's Motion to Dismiss.

1. Plaintiff filed its Motion to Dismiss and /or Strike Amended Complaint and Counterclaim on July 3, 2008.

2. Defendant filed its response on the same date. However, that response failed to include a reference to statutory authority that gives this court authority to entertain a motion seeking the same relief as requested in the Counterclaim for Temporary Restraining Order and Preliminary Injunction. In order to fully apprise this court of all relevant law, Defendant files this supplemental response.

3. Plaintiff's Complaint states an appeal pursuant to the Colorado Administrative Procedure Act C.R.S. § 24-4-106(4), Subsection (5) of the Act provides "Upon a finding that irreparable injury would otherwise result, the reviewing court, upon application therefore, ... and upon such, security, if any, as the court shall find necessary and order, shall issue all necessary and appropriate process to postpone the effective date of the agency action or to preserve the rights of the parties pending conclusion of the review proceedings." Thus this court has statutory authority, on motion, to grant the same relief requested by Defendant in the Counterclaim for a Temporary Restraining Order and Preliminary Injunction.

WHEREFORE, should this court dismiss or strike the counterclaim, Defendant/Counterclaimant asks that this Court treat the counterclaim as a motion pursuant to C.R.S. § 24-4-106(4) and grant the motion in its entirety.

Dated this 7<sup>th</sup> 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

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LINDA S. COMER, 11267\*

Senior Litigation Counsel

Attorneys for Defendants

\*Counsel of Record

CERTIFICATE OF SERVICE

I do hereby certify that on the 7<sup>th</sup> day of July 2008, a copy of the foregoing **SUPPLEMENTAL AUTHORITY IN SUPPORT OF DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION TO DISMISS** 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/ \_\_\_\_\_