

CHAPTER 201

HEALTH AND ENVIRONMENT

SENATE BILL 95-212

BY SENATOR Coffman;
also REPRESENTATIVES Kaufman, Entz, George, and Prinster.**AN ACT****CONCERNING THE EMPLOYMENT OF CERTAIN HEALTH CARE PROFESSIONALS BY LICENSED OR CERTIFIED HOSPITALS, AND, IN CONNECTION THEREWITH, PROVIDING FOR REMEDIES TO ASSURE INDEPENDENT PROFESSIONAL JUDGMENT.***Be it enacted by the General Assembly of the State of Colorado:*

SECTION 1. Legislative declaration. (1) The general assembly hereby acknowledges and declares that Colorado is one of the few remaining states with a prohibition against the corporate practice of medicine. In 1993, however, the fifty-ninth general assembly enacted legislation allowing the employment of physicians, dentists, and podiatrists by hospitals in counties with populations of less than one hundred thousand. There is also increased interest by physicians who choose to be employed by hospitals, and in the near future, they may wish to be employed by other entities that provide medical care. However, the physician's right and duty to provide appropriate medical care to patients must be preserved whether the physician practices independently, in a direct employment situation, or through a contractual relationship.

(2) Therefore, the general assembly declares that in the limited repeal of the prohibition on the corporate practice of medicine with regard to hospitals, nothing in this act shall be construed to permit any entity to limit or otherwise exercise control over the physician's independent judgment concerning the practice of medicine, diagnosis, or treatment in such a manner as to compromise patient care. To this end, physicians must use their best efforts and skills in the care of patients and be wary of those forces in society that can erode ethical medical practice and be vigilant to ensure that the welfare of patients has priority over the financial interest of the

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

physician or of any hiring or contracting entity.

SECTION 2. 25-3-103.7 (1) (a), (3), and (5), Colorado Revised Statutes, 1989 Repl. Vol., as amended, are amended, and the said 25-3-103.7 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

25-3-103.7. Employment of physicians - when permissible - conditions.

(1) For purposes of this section:

(a) "Hospital" means a hospital currently licensed or certified by the department of public health and environment pursuant to the department's authority under section 25-1-107 (1) (1). ~~and located in a county with a population of less than one hundred thousand as determined by the most recent available estimate by the division of planning in the department of local affairs.~~

(3) Nothing in this section shall be construed to allow any hospital which employs a physician to limit or otherwise exercise control over the physician's independent professional judgment concerning the practice of medicine or diagnosis or treatment or to require physicians to refer exclusively to the hospital OR THE HOSPITAL'S EMPLOYED PHYSICIANS. Any hospital which knowingly OR RECKLESSLY so limits or controls a physician IN SUCH MANNER or attempts to do so shall be deemed to have violated hospital standards of operation and ~~shall~~ MAY be held liable TO THE PATIENT OR THE PHYSICIAN, OR BOTH, for such violations, including proximately caused damages. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO AFFECT ANY SUCH HOSPITAL'S DECISIONS WITH RESPECT TO THE AVAILABILITY OF SERVICES, TECHNOLOGY, EQUIPMENT, FACILITIES, OR TREATMENT PROGRAMS, OR AS REQUIRING ANY SUCH HOSPITAL TO MAKE AVAILABLE TO PATIENTS OR PHYSICIANS ADDITIONAL SERVICES, TECHNOLOGY, EQUIPMENT, FACILITIES, OR TREATMENT PROGRAMS.

(5) The MEDICAL STAFF bylaws OR POLICIES OR HOSPITAL POLICIES of any hospital which employs physicians shall not discriminate with regard to credentials or staff privileges on the basis of whether a physician is an employee of, A PHYSICIAN WITH STAFF PRIVILEGES AT, or a contracting physician with, the hospital. ANY HOSPITAL THAT DISCRIMINATES WITH REGARD TO CREDENTIALS OR STAFF PRIVILEGES ON THE BASIS OF WHETHER A PHYSICIAN IS AN EMPLOYEE OF, A PHYSICIAN WITH STAFF PRIVILEGES AT, OR A CONTRACTING PHYSICIAN WITH, THE HOSPITAL SHALL BE DEEMED TO HAVE VIOLATED HOSPITAL STANDARDS OF OPERATION AND MAY BE HELD LIABLE TO THE PHYSICIAN FOR SUCH VIOLATIONS, INCLUDING PROXIMATELY CAUSED DAMAGES. THIS SUBSECTION (5) SHALL NOT AFFECT THE TERMS OF ANY CONTRACT OR WRITTEN EMPLOYMENT ARRANGEMENT WHICH PROVIDES THAT THE CREDENTIALS OR STAFF AND CLINICAL PRIVILEGES OF ANY PRACTITIONER ARE INCIDENT TO OR COTERMINOUS WITH THE CONTRACT OR EMPLOYMENT ARRANGEMENT OR THE INDIVIDUAL'S ASSOCIATION WITH A GROUP HOLDING THE CONTRACT.

(7) THE MEDICAL STAFF BYLAWS OR POLICIES OR HOSPITAL POLICIES OF ANY HOSPITAL THAT EMPLOYS PHYSICIANS SHALL CONTAIN A PROCEDURE BY WHICH COMPLAINTS BY PHYSICIANS ALLEGING A VIOLATION OF SUBSECTION (3), (4), OR (5) OF THIS SECTION MAY BE HEARD AND RESOLVED, WHICH PROCEDURE SHALL ENSURE THAT THE DUE PROCESS RIGHTS OF THE PARTIES ARE PROTECTED. A PHYSICIAN WHO BELIEVES HE OR SHE HAS BEEN THE SUBJECT OF A VIOLATION OF SUBSECTION (3), (4), OR (5) OF THIS SECTION HAS A RIGHT TO COMPLAIN AND REQUEST REVIEW OF THE

MATTER PURSUANT TO SUCH PROCEDURE.

(8) NOTHING IN THIS SECTION SHALL PRECLUDE A PHYSICIAN OR A PATIENT FROM SEEKING OTHER REMEDIES AVAILABLE TO THE PHYSICIAN OR TO THE PATIENT AT LAW OR IN EQUITY.

SECTION 3. Effective date. This act shall take effect July 1, 1995.

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 25, 1995