

## CHAPTER 240

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**PROFESSIONS AND OCCUPATIONS**


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**HOUSE BILL 03-1012**

BY REPRESENTATIVE(S) Williams T., Clapp, Coleman, Hall, Hoppe, Johnson R., King, and Stafford;  
also SENATOR(S) Hillman, Andrews, Arnold, Cairns, Chlouber, Evans, and Johnson S.

**AN ACT**

**CONCERNING THE PROHIBITION OF THE CORPORATE PRACTICE OF MEDICINE BY A PROFESSIONAL SERVICES CORPORATION FORMED BY PERSONS LICENSED TO PRACTICE MEDICINE.**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1. Legislative declaration.** The general assembly hereby finds, determines, and declares that the purpose of enacting HB03-1012 is to state clearly and unequivocally the legislative intent of the general assembly to restore and reinstate the corporate practice of medicine doctrine in this state so that no individual or entity, other than a patient's physician, may be held liable or vicariously liable in any action for the physician's professional negligence or other tortious conduct. The general assembly further declares that the Colorado Supreme Court's decision in Pediatric Neurosurgery, P.C. v. Russell, 44 P.3d 1063 (Colo. 2002), no longer reflects current statute, as amended by HB03-1012.

**SECTION 2.** The introductory portion to 12-36-134 (1), 12-36-134 (1) (b) and (1) (f), the introductory portion to 12-36-134 (1) (g), and 12-36-134 (3) and (7), Colorado Revised Statutes, are amended to read:

**12-36-134. Professional service corporations, limited liability companies, and registered limited liability partnerships for the practice of medicine - definitions.** (1) Persons licensed to practice medicine by the board may form professional service corporations for ~~the~~ SUCH PERSONS' practice of medicine under the ~~"Colorado Corporation Code"~~, "COLORADO BUSINESS CORPORATION ACT", ARTICLES 101 TO 117 OF TITLE 7, C.R.S., if such corporations are organized and operated in accordance with the provisions of this section. The articles of incorporation of such corporations shall contain provisions complying with the following requirements:

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

(b) The corporation shall be organized solely for the ~~purposes of conducting the practice of medicine only through persons licensed by the board to practice medicine in the state of Colorado~~ PURPOSE OF PERMITTING INDIVIDUALS TO CONDUCT THE PRACTICE OF MEDICINE THROUGH A CORPORATE ENTITY, SO LONG AS ALL THE INDIVIDUALS ARE ACTIVELY LICENSED BY THE BOARD TO PRACTICE MEDICINE IN THE STATE OF COLORADO.

(f) The president shall be a shareholder and a director and, to the extent possible, all other directors and officers shall be persons having the qualifications described in paragraph (d) of this subsection (1). Lay directors and officers shall not exercise any authority whatsoever over ~~professional matters~~ THE INDEPENDENT MEDICAL JUDGMENT OF PERSONS LICENSED BY THE BOARD TO PRACTICE MEDICINE IN THIS STATE. Notwithstanding sections 7-108-103 to 7-108-106, C.R.S., relating to the terms of office and classification of directors, a professional service corporation for the practice of medicine may provide in the articles of incorporation or the bylaws that the directors may have terms of office of up to six years and that the directors may be divided into either two or three classes, each class to be as nearly equal in number as possible, with the terms of each class staggered to provide for the periodic, but not LESS THAN annual, election of less than all the directors. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO CAUSE A PROFESSIONAL SERVICE CORPORATION TO BE VICARIOUSLY LIABLE TO A PATIENT OR THIRD PERSON FOR THE PROFESSIONAL NEGLIGENCE OR OTHER TORTIOUS CONDUCT OF A PHYSICIAN WHO IS A SHAREHOLDER OR EMPLOYEE OF A PROFESSIONAL SERVICE CORPORATION.

(g) The articles of incorporation shall provide and all shareholders of the corporation shall agree that all shareholders of the corporation shall be jointly and severally liable for all acts, errors, and omissions of the employees of the corporation or that all shareholders of the corporation shall be jointly and severally liable for all acts, errors, and omissions of the employees of the corporation except during periods of time when each person licensed by the board to practice medicine in Colorado who is a shareholder or any employee of the corporation has a professional liability policy insuring himself OR HERSELF and all employees who are not licensed to practice medicine who act at his OR HER direction in the amount of fifty thousand dollars for each claim and an aggregate top limit of liability per year for all claims of one hundred fifty thousand dollars or the corporation maintains in good standing professional liability insurance which shall meet the following minimum standards:

(3) The corporation shall do nothing which, if done by a person licensed to practice medicine in the state of Colorado employed by it, would violate the standards of professional conduct as provided for in section 12-36-117. Any violation by the corporation of this section shall be grounds for the board to terminate or suspend ~~its right to practice medicine~~ THE PERSON OR PERSONS RESPONSIBLE FOR THE VIOLATION FROM THE PRACTICE OF MEDICINE.

(7) (a) ~~Except as provided in this section,~~ Corporations shall not practice medicine. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO ABROGATE A CAUSE OF ACTION AGAINST A PROFESSIONAL CORPORATION FOR ITS INDEPENDENT ACTS OF NEGLIGENCE.

(b) Employment of a physician in accordance with section 25-3-103.7, C.R.S., shall not be considered the corporate practice of medicine.

**SECTION 3.** 12-36-117 (1) (m), Colorado Revised Statutes, is amended to read:

**12-36-117. Unprofessional conduct.** (1) "Unprofessional conduct" as used in this article means:

(m) (I) Except as otherwise provided in section 25-3-103.7 and section 25-3-314, C.R.S., practicing medicine as the partner, agent, or employee of, or in joint adventure with, any person who does not hold a license to practice medicine within this state, or practicing medicine as an employee of, or in joint adventure with, any partnership or association any of whose partners or associates do not hold a license to practice medicine within this state, or practicing medicine as an employee of or in joint adventure with any corporation other than a professional service corporation for the practice of medicine as ~~defined~~ DESCRIBED in section 12-36-134. Any licensee holding a license to practice medicine in this state may accept employment from any person, partnership, association, or corporation to examine and treat the employees of such person, partnership, association, or corporation.

(II) (A) NOTHING IN THIS PARAGRAPH (m) SHALL BE CONSTRUED TO PERMIT A PROFESSIONAL SERVICES CORPORATION FOR THE PRACTICE OF MEDICINE, AS DESCRIBED IN SECTION 12-36-134, TO PRACTICE MEDICINE.

(B) NOTHING IN THIS PARAGRAPH (m) SHALL BE CONSTRUED TO OTHERWISE CREATE AN EXCEPTION TO THE CORPORATE PRACTICE OF MEDICINE DOCTRINE.

**SECTION 4.** 13-64-202 (4), Colorado Revised Statutes, is amended to read:

**13-64-202. Definitions.** As used in this part 2, unless the context otherwise requires:

(4) (a) "Health care professional" means any person licensed in this state or any other state to practice medicine, chiropractic, nursing, physical therapy, podiatry, dentistry, pharmacy, optometry, or other healing arts. The term includes any professional corporation or other professional entity comprised of such health care providers as permitted by the laws of this state.

(b) Repealed.

(c) NOTHING IN THIS SUBSECTION (4) SHALL BE CONSTRUED TO CREATE AN EXCEPTION TO THE CORPORATE PRACTICE OF MEDICINE DOCTRINE.

**SECTION 5.** 13-64-403 (12) (a), Colorado Revised Statutes, is amended to read:

**13-64-403. Agreement for medical services - alternative arbitration procedures - form of agreement - right to rescind.** (12) For the purposes of this section:

(a) (I) "Health care provider" means any person licensed or certified by the state of Colorado to deliver health care and any clinic, health dispensary, or health facility licensed by the state of Colorado. The term includes any professional corporation or other professional entity comprised of such health care providers as permitted by the laws of this state.

(II) (A) NOTHING IN THIS PARAGRAPH (a) SHALL BE CONSTRUED TO PERMIT A PROFESSIONAL SERVICE CORPORATION, AS DESCRIBED IN SECTION 12-36-134, C.R.S., TO PRACTICE MEDICINE.

(B) NOTHING IN THIS PARAGRAPH (a) SHALL BE CONSTRUED TO OTHERWISE CREATE AN EXCEPTION TO THE CORPORATE PRACTICE OF MEDICINE DOCTRINE.

**SECTION 6. Effective date - applicability.** This act shall take effect July 1, 2003, and shall apply to acts or omissions occurring on or after said date.

**SECTION 7. 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 2, 2003