

DISTRICT COURT, CITY AND COUNTY OF
DENVER, COLORADO

2nd Judicial District
Denver City and County Building
1437 Bannock St
Denver, CO 80202
(720) 865-8301

Plaintiffs:

COLORADO MEDICAL SOCIETY, COLORADO
SOCIETY OF OSTEOPATHIC MEDICINE, CLEAR
CREEK VALLEY MEDICAL SOCIETY, WELD
COUNTY MEDICAL SOCIETY, AURORA-ADAMS
COUNTY MEDICAL SOCIETY, DENVER MEDICAL
SOCIETY, MESA COUNTY MEDICAL SOCIETY,
COLORADO CHAPTER OF AMERICAN COLLEGE
OF EMERGENCY PHYSICIANS, COLORADO
RADIOLOGICAL SOCIETY, BOULDER COUNTY
MEDICAL SOCIETY, LARIMER COUNTY MEDICAL
SOCIETY, COLORADO ORTHOPAEDIC SOCIETY,
COLORADO SOCIETY OF ANESTHESIOLOGISTS

v.

Defendant:

COLORADO BOARD OF CHIROPRACTIC
EXAMINERS

Attorneys for All Plaintiffs:

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Attorneys for Plaintiff Colorado Medical Society:

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Colorado Medical Society

◆ COURT USE ONLY ◆

Case Number:

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**VERIFIED COMPLAINT FOR ENJOINMENT OF AGENCY ACTION TO PREVENT
IRREPARABLE INJURY AND FOR JUDICIAL REVIEW OF AGENCY ACTION**

Plaintiffs Colorado Medical Society, Colorado Society of Osteopathic Medicine, Clear Creek Valley Medical Society, Weld County Medical Society, Aurora-Adams County Medical Society, Denver Medical Society, Mesa County Medical Society, Colorado Radiological Society, Colorado Chapter of American College of Emergency Physicians, Boulder County Medical Society, Larimer County Medical Society, Colorado Orthopedic Society and Colorado Society of Anesthesiologists by and through their counsel, Martin Conklin, P.C. and Susan G. Koontz, J.D., general counsel for the Colorado Medical Society, and pursuant to C.R.S., § 24-4-101 *et. seq.*, submit this Verified Complaint for Enjoinment of Agency Action to Prevent Irreparable Injury and for Judicial Review of Agency Action and allege as follows:

PARTIES, JURIDICATION, AND VENUE

1. The Colorado Medical Society (“CMS”) CMS is a nonprofit organization qualified to conduct business in Colorado.
2. The Colorado Society of Osteopathic Medicine (“CSOM”) is a nonprofit organization qualified to conduct business in Colorado.
3. The Clear Creek Valley Medical Society (“CCVMS”) is a nonprofit organization qualified to conduct business in Colorado.
4. The Weld County Medical Society (“WCMS”) is a nonprofit organization qualified to conduct business in Colorado.
5. The Aurora-Adams County Medical Society (“AACMS”) is a nonprofit organization qualified to conduct business in Colorado.
6. The Denver Medical Society (“DMS”) is a nonprofit organization qualified to conduct business in Colorado.
7. The Mesa County Medical Society (“MCMS”) is a nonprofit organization qualified to conduct business in Colorado.

8. The Colorado Radiological Society (“CRS”) is a nonprofit organization qualified to conduct business in Colorado.

9. The Colorado Chapter of American College of Emergency Physicians (“CC of ACEP”) is a nonprofit organization qualified to conduct business in Colorado.

10. The Boulder County Medical Society (“BCMS”) is a nonprofit organization qualified to conduct business in Colorado.

11. The Larimer County Medical Society (“LCMS”) is a nonprofit organization qualified to conduct business in Colorado.

12. The Colorado Orthopedic Society (“COS”) and is a nonprofit organization qualified to conduct business in Colorado.

13. The Colorado Society of Anesthesiologists (“CSA”) is a nonprofit organization qualified to conduct business in Colorado.

14. Defendant is the Colorado Board of Chiropractic Examiners, a state agency regulating the practice of chiropractic in Colorado pursuant to Article 33 of Title 12, C.R.S. § 12-33-101 et. seq., the “Chiropractors Practice Act”.

15. Judicial Review of 3 CCR 707-1, Chiropractic Board Rule 7(c), “Rule 7(c)”, is available under the Colorado Administrative Procedure Act, C.R.S. § 24-4-106. A copy of 3 CCR 707-1, Chiropractic Board Rule 7(c) is attached to this Complaint as Exhibit A.

16. Rule 7(c) was published in the Colorado Register on December 25, 2012. This petition for judicial review is timely filed pursuant to C.R.S. § 24-4-106(5) and (8).

17. CMS’s members are adversely affected or aggrieved by Defendant’s attempted action. CMS is a nonprofit organization whose more than 7,000 members include the majority of physicians practicing in Colorado. As Colorado’s largest organization of physicians, residents, and medical students, the Society’s mission is to promote the science and art of medicine, the betterment of public health, and the welfare of Colorado physicians and the patients they serve. All of CMS’s members are impacted by Rule 7(c)’s intrusion on the practice of medicine by attempting to authorize chiropractors to administer drugs through topical, oral, inhalation and injection. The issues in this case and interests sought to be protected are germane to CMS’s purpose. Per its mission statement, CMS’s mission is to promote “the betterment of public health” and “the welfare of Colorado physicians and the patients they serve.” There is no question that the interests CMS seeks to protect in this action are germane to CMS’s purpose.

18. Similarly, co-Plaintiffs CSOM, CCVMS, WCMS, AACMS, DMS, MCMS, CRS, CC of ACEP, BCMS, LCMS, COS, and CSA are professional organizations of Colorado physicians

who are impacted by Rule 7(c)'s intrusion on the practice of medicine by attempting to authorize chiropractors to administer drugs through topical, oral, inhalation and injection. The public health and patient safety issues in this case and interests of Colorado physicians sought to be protected are germane to the purposes of these professional organizations of Colorado physicians. There is no question that the interests Plaintiffs seek to protect in this action are germane to Plaintiffs' purpose.

19. The enactment of Rule 7(c) threatens irreparable injury to Plaintiffs' members and the public they serve. Rule 7(c) exceeds the statutory authority of Defendant set forth in the Chiropractors Practice Act, in C.R.S. § 12-33-101 *et. seq.*, and impermissibly intrudes on the practice of medicine, threatening irreparable injury to the members of CMS CSOM, CCVMS, WCMS, AACMS, DMS, MCMS, CRS, CC of ACEP, BCMS, LCMS, COS, and CSA who are professionally licensed under the Medical Practice Act, *see* C.R.S. § 12-36-101 *et. seq.* Moreover, authorizing chiropractors to administer drugs and perform injections threatens irreparable injury to the public welfare and the safety of the patients Plaintiffs' members serve to protect.

20. Venue is proper pursuant to C.R.S. § 24-4-106(4) and C.R.C.P. 98.

GENERAL ALLEGATIONS

21. This is an action for injunctive relief and judicial review and declaratory judgment regarding a rulemaking by the Board of Chiropractic Examiners. The Board of Chiropractic Examiners has exceeded its statutory authority to regulate the practice of chiropractic by seeking to authorize chiropractors to administer drugs through topical, oral, inhalation and injection. Plaintiffs ask the Court to enjoin the enactment of Rule 7(c) to protect the public welfare and prevent irreparable injury to the members of CMS CSOM, CCVMS, WCMS, AACMS, DMS, MCMS, CRS, CC of ACEP, BCMS, LCMS, COS, CSA, and the patients they serve.

22. The Colorado General Assembly has delegated the limited rule-making authority to Defendant to: "[a]dopt, promulgate, and from time to time revise such rules and regulations not inconsistent with the law as may be necessary to enable it to carry out the provisions of this article." *See* C.R.S. § 12-33-107(1)(a).

23. The General Assembly has not provided Defendant with the authority to authorize the administration of drugs or the use of intramuscular, intravertebral and subcutaneous injections by chiropractors. *See* Article 33 of Title 12, C.R.S. § 12-33-101 *et. seq.*

24. The administration of drugs or the use of intramuscular, intravertebral and subcutaneous injections by chiropractors are not within the scope of chiropractic practice as defined in C.R.S. § 12-33-102(1.7).

25. The General Assembly has also specifically limited the practice of chiropractic to not infringe on the practice of medicine: "Such license shall not confer upon the licensee the

right to practice surgery or obstetrics or to prescribe, compound or administer drugs, or to administer anesthetics.” See C.R.S. § 12-33-118.

26. The General Assembly has further statutorily delegated to the Colorado Medical Board the sole authority to adopt rules interpreting the Colorado Medical Practice Act. C.R.S. 12-26-101 *et. seq.* Defendant is without the statutory authority to adopt rules defining the practice of medicine, either by affirmative statement as to what the practice of medicine includes or does not include.

27. Article III of the Colorado Constitution provides that the “powers of the government of this state are divided into three distinct departments,-the legislative, executive and judicial; and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any power properly belonging to either of the others.” As a state agency, the Defendant is constitutionally constrained to its administrative function on behalf of the executive branch. Defendant has violated the separation of powers embodied in the Colorado Constitution and assumed a legislative role by attempting to enact law via the administrative rulemaking process.

28. Defendant held a rulemaking hearing for Rule 7(c) on August 9, 2012. CMS participated in this rule making hearing, including the submission of written comments and oral testimony on the proposed rule. CMS further submitted, with Defendants written authorization, supplemental written comments on the proposed rule. CMS’s comments included the assertion that the adoption of Rule 7(c) exceeds the Board of Chiropractic Examiner’s statutory authority, conflicts with the Medical Practice Act, and seriously compromises patient safety and jeopardizes the public welfare.

29. Defendant adopted Rule 7(c) on November 15, 2012.

30. On December 5, 2012, the Attorney General issued his opinion that Rule 7(c) exceeds the legislative scope of authority granted to the Board of Chiropractic Examiners. A copy of the Attorney General’s Opinion is attached as Exhibit B.

31. Rule 7(c) was published in the Colorado Register on December 25, 2012 and is set to become effective on January 14, 2013.

32. Should Rule 7(c) take effect, the members of CMS CSOM, CCVMS, WCMS, AACMS, DMS, MCMS, CRS, CC of ACEP, BCMS, LCMS, COS, CSA and the patients they serve will suffer irreparable harm.

FIRST CLAIM FOR RELIEF
(Judicial Review of Agency Action pursuant to C.R.S. 24-4-106(5), (8) – Declaratory Judgment and Injunctive Relief)

33. Plaintiffs incorporate paragraphs 1-32 above.

34. The Colorado General Assembly's delegation of limited rule-making authority to Defendant does not include authority to authorize the administration of drugs or the use of subcutaneous injections by chiropractors. *See* C.R.S. § 12-33-101 *et. seq.*

35. The General Assembly has specifically limited the practice of chiropractics to not infringe on the practice of medicine by precluding chiropractors from such acts as administering drugs or performing invasive procedures such as intramuscular, intravertebral and subcutaneous injections. *See* C.R.S. § 12-38-118.

36. Rule 7(c) authorizes chiropractors to, *inter alia*, administer drugs and perform subcutaneous, intramuscular and intravertebral injections.

37. Rule 7(c) is contrary to the Chiropractors' Practice Act, C.R.S. § 12-33-101 *et. seq.*, the Colorado Medical Practice Act, *see* C.R.S. § 12-36-11 *et. seq.*, and Colorado case law, and exceeds the Board of Chiropractic Examiners authority to promulgate rules to "carry out" the provisions of the Chiropractors' Practice Act.

38. The enactment of Rule 7(c) threatens irreparable injury to Plaintiff's professionally licensed members. Authorizing chiropractors to administer drugs and perform injections threatens irreparable injury to the public welfare and the safety of the patients Plaintiffs' members serve.

39. Any regulation that is inconsistent with or contrary to statute is void. C.R.S. § 24-4-103(8)(a). Any agency action that is arbitrary and capricious, contrary to a constitutional right, in excess of statutory authority, an abuse of discretion, unsupported by the record, or otherwise contrary to law shall be held unlawful and set aside. C.R.S. § 24-4-106(7). The enactment of Rule 7(c) is void and unlawful and must be enjoined and set aside.

40. An agency action that is clearly beyond the statutory jurisdiction or authority of the agency and threatens irreparable injury is properly enjoined. C.R.S. § 24-4-106(5), (8). The unlawful and improper enactment of Rule 7(c) must be enjoined to protect the public welfare and prevent irreparable injury to Plaintiffs' members and the patients they serve.

41. Along with this *Verified Complaint for Enjoinment of Agency Action to Prevent Irreparable Injury and for Judicial Review of Agency Action*, Plaintiffs are filing a *Motion for Immediate Injunctive Relief to Prevent Irreparable Injury Pursuant to C.R.S. 24-4-106(5), (8)* seeking a temporary and permanent injunction enjoining the enactment of Rule 7(c). Immediately after the filing of this action, Plaintiffs will give the Colorado Board of Chiropractic Examiners proper notice by serving the Colorado Board of Chiropractic Examiners with a copy of this *Verified Complaint for Enjoinment of Agency Action to Prevent Irreparable Injury and for Judicial Review of Agency Action*, Plaintiffs are filing a *Motion for Immediate Injunctive Relief to Prevent Irreparable Injury Pursuant to C.R.S. 24-4-106(5), (8)*.

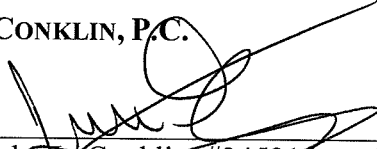
PRAYER FOR RELIEF

Plaintiffs respectfully request that this Court enter a temporary and permanent injunction enjoining the enactment of 3 CCR 707-1, Chiropractic Board Rule 7(c) pursuant to C.R.S. 24-4-106(5) and (8) to prevent irreparable injury to Plaintiffs and the patients the serve; enter a declaratory judgment holding unlawful and setting aside the agency action adopting 3 CCR 707-1, Chiropractic Board Rule 7(c) pursuant to C.R.S. § 24-4-103(8)(a) and C.R.S. 24-4-106(7); and award judgment in Plaintiffs' favor with respect to all claims asserted and enter any other relief as the Court deems just and proper under the circumstances.

Respectfully submitted December 28, 2012.

MARTIN CONKLIN, P.C.

By:



John T. Conklin, #24521
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Attorneys for Plaintiffs

Plaintiffs' Addresses

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Colorado Society of Anesthesiologists
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Boulder County Medical Society
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Colorado Orthopaedic Society
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VERIFICATION OF COMPLAINT

I, Alfred Gilchrist, Executive Director of the Colorado Medical Society, do hereby state that the facts asserted in this Verified Complaint for Enjoinment of Agency Action to Prevent Irreparable Injury and for Judicial Review of Agency Action are true and correct to the best of my personal knowledge.

/s/ Alfred Gilchrist
Alfred Gilchrist

STATE OF COLORADO)
) ss.
COUNTY OF DENVER)

Subscribed and sworn to before me this 28th day of December, 2012, by Alfred Gilchrist.

/s/Rhinon Tyron
Notary Public

My commission expires