

**Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 10-0440.01 Kristen Forrestal

HOUSE BILL 10-1244

HOUSE SPONSORSHIP

Labuda, Apuan, Casso, Curry, Frangas, Gagliardi, Murray, Riesberg, Scanlan, Schafer S.,
Soper

SENATE SPONSORSHIP

Mitchell,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING ALLOWING AN HEIR OF A DECEASED PHYSICIAN**
102 **SHAREHOLDER OF A PROFESSIONAL SERVICE CORPORATION TO**
103 **BECOME A SHAREHOLDER OF THE CORPORATION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill allows an heir of a person licensed to practice medicine who is a shareholder in a professional service corporation to become a shareholder of the corporation if the physician shareholder dies. The bill specifies that when the heir ceases to be a shareholder, provision is made

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

for the shares to be reacquired by the corporation or by a person actively practicing medicine in the offices of the corporation.

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

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

4 **12-36-117. Unprofessional conduct - repeal.**

5 (1) "Unprofessional conduct" as used in this article means:

6 (m) (I) Except as otherwise provided in ~~section~~ SECTIONS
7 12-36-134, 25-3-103.7, and ~~section~~ 25-3-314, C.R.S., practicing medicine
8 as the partner, agent, or employee of, or in joint venture with, any person
9 who does not hold a license to practice medicine within this state, or
10 practicing medicine as an employee of, or in joint venture with, any
11 partnership or association any of whose partners or associates do not hold
12 a license to practice medicine within this state, or practicing medicine as
13 an employee of or in joint venture with any corporation other than a
14 professional service corporation for the practice of medicine as described
15 in section 12-36-134. Any licensee holding a license to practice medicine
16 in this state may accept employment from any person, partnership,
17 association, or corporation to examine and treat the employees of such
18 person, partnership, association, or corporation.

19 **SECTION 2.** 12-36-134 (1) (d) and (1) (f), Colorado Revised
20 Statutes, are amended, and the said 12-36-134 (1) is further amended BY
21 THE ADDITION OF A NEW PARAGRAPH, to read:

22 **12-36-134. Professional service corporations, limited liability**
23 **companies, and registered limited liability partnerships for the**
24 **practice of medicine - definitions.** (1) Persons licensed to practice
25 medicine by the board may form professional service corporations for

1 such persons' practice of medicine under the "Colorado Business
2 Corporation Act", articles 101 to 117 of title 7, C.R.S., if such
3 corporations are organized and operated in accordance with the
4 provisions of this section. The articles of incorporation of such
5 corporations shall contain provisions complying with the following
6 requirements:

7 (d) (I) EXCEPT AS SPECIFIED IN SUBPARAGRAPH (II) OF THIS
8 PARAGRAPH (d), all shareholders of the corporation shall be persons
9 licensed by the board to practice medicine in the state of Colorado, and
10 who at all times own their shares in their own right. They shall be
11 individuals who, except for illness, accident, time spent in the armed
12 services, on vacations, and on leaves of absence not to exceed one year,
13 are actively engaged in the practice of medicine in the offices of the
14 corporation.

15 (II) IF A PERSON LICENSED TO PRACTICE MEDICINE WHO WAS A
16 SHAREHOLDER OF THE CORPORATION DIES, A SURVIVING SPOUSE OR
17 DESIGNATED BENEFICIARY TO THE DECEASED SHAREHOLDER MAY BECOME
18 A SHAREHOLDER OF THE CORPORATION FOR UP TO THREE YEARS,
19 REGARDLESS OF WHETHER THE SURVIVING SPOUSE OR DESIGNATED
20 BENEFICIARY IS LICENSED TO PRACTICE MEDICINE. UNLESS THE DECEASED
21 SHAREHOLDER WAS THE ONLY SHAREHOLDER OF THE CORPORATION, THE
22 SURVIVING SPOUSE OR DESIGNATED BENEFICIARY WHO BECOMES A
23 SHAREHOLDER SHALL BE A NONVOTING SHAREHOLDER IN ALL MATTERS
24 CONCERNING THE CORPORATION. IF THE SURVIVING SPOUSE OR
25 DESIGNATED BENEFICIARY OF THE DECEASED SHAREHOLDER CEASES TO BE
26 A SHAREHOLDER, THE SHARES SHALL BE DISPOSED OF PURSUANT TO
27 PARAGRAPH (e) OF THIS SUBSECTION (1).

1 (f) The president shall be a shareholder and a director and, to the
2 extent possible, all other directors and officers shall be persons having the
3 qualifications described in paragraph (d) of this subsection (1). Lay
4 directors, ~~and~~ officers, AND SURVIVING SPOUSES AND DESIGNATED
5 BENEFICIARIES OF DECEASED SHAREHOLDERS shall not exercise any
6 authority whatsoever over the independent medical judgment of persons
7 licensed by the board to practice medicine in this state. Notwithstanding
8 sections 7-108-103 to 7-108-106, C.R.S., relating to the terms of office
9 and classification of directors, a professional service corporation for the
10 practice of medicine may provide in the articles of incorporation or the
11 bylaws that the directors may have terms of office of up to six years and
12 that the directors may be divided into either two or three classes, each
13 class to be as nearly equal in number as possible, with the terms of each
14 class staggered to provide for the periodic, but not less than annual,
15 election of less than all the directors. Nothing in this article shall be
16 construed to cause a professional service corporation to be vicariously
17 liable to a patient or third person for the professional negligence or other
18 tortious conduct of a physician who is a shareholder or employee of a
19 professional service corporation.

20 (f.5) A SURVIVING SPOUSE OR DESIGNATED BENEFICIARY TO A
21 DECEASED SHAREHOLDER WHO BECOMES A SHAREHOLDER SHALL BE
22 LIABLE ONLY TO THE SAME EXTENT AS THE DECEASED SHAREHOLDER
23 WOULD HAVE BEEN IN HIS OR HER CAPACITY AS A SHAREHOLDER, HAD HE
24 OR SHE LIVED AND REMAINED A SHAREHOLDER, FOR ALL ACTS, ERRORS,
25 AND OMISSIONS OF THE EMPLOYEES OF THE CORPORATION.

26 **SECTION 3. Act subject to petition - effective date.** This act
27 shall take effect at 12:01 a.m. on the day following the expiration of the

1 ninety-day period after final adjournment of the general assembly (August
2 11, 2010, if adjournment sine die is on May 12, 2010); except that, if a
3 referendum petition is filed pursuant to section 1 (3) of article V of the
4 state constitution against this act or an item, section, or part of this act
5 within such period, then the act, item, section, or part shall not take effect
6 unless approved by the people at the general election to be held in
7 November 2010 and shall take effect on the date of the official
8 declaration of the vote thereon by the governor.