



Malpractice

What it means for Colorado DEMs



Overview

- Introduction of panelists
- Setting the stage
- Panelist experiences
- Common questions/answers

Setting the stage

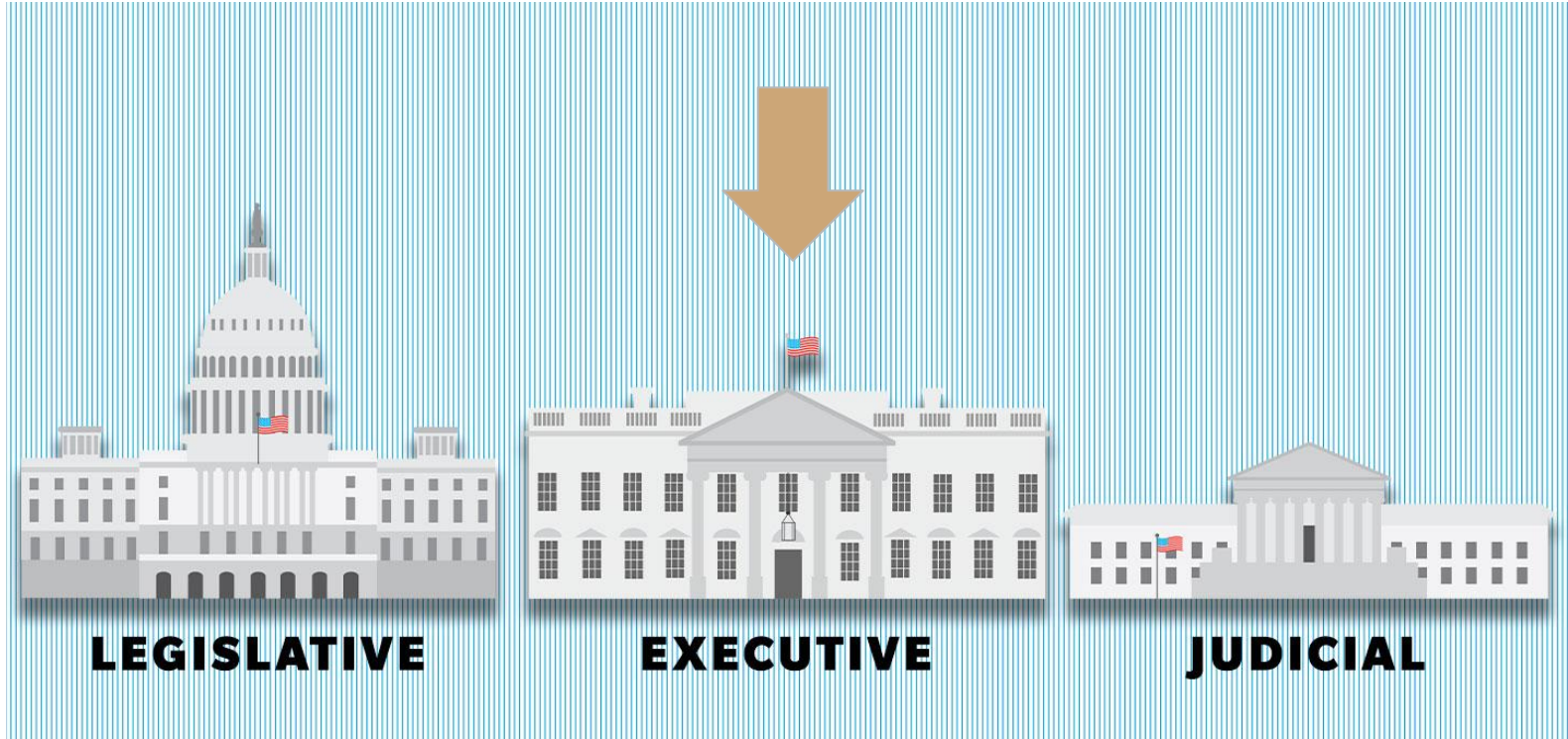
- What does Colorado law say
- What is the role of DORA
- How we got here
- Malpractice in general

What the law says now

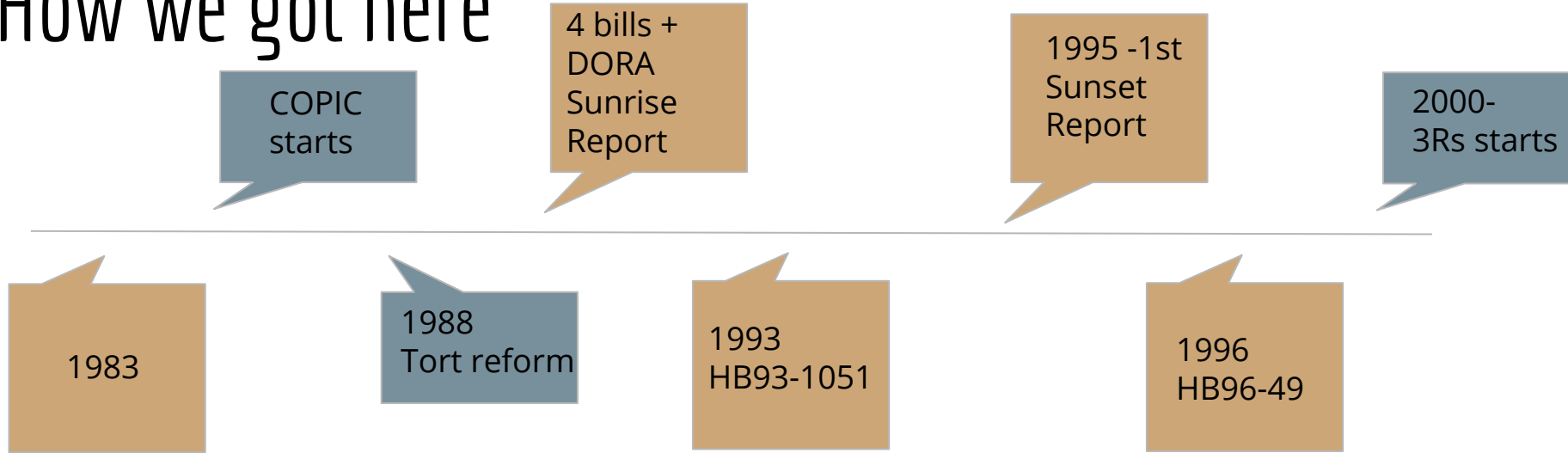
12-225-112. Assumption of risk - no vicarious liability - professional liability insurance required. (1) It is the policy of this state that registrants shall be liable for their acts or omissions in the performance of the services that they provide, and that no licensed physician, nurse, prehospital emergency medical personnel, or health care institution shall be liable for any act or omission resulting from the administration of services by any registrant. This subsection (1) does not relieve any physician, nurse, prehospital emergency personnel, or health care institution from liability for any willful and wanton act or omission or any act or omission constituting gross negligence, or under circumstances where a registrant has a business or supervised relationship with the physician, nurse, prehospital emergency personnel, or health care institution. A physician, nurse, prehospital emergency personnel, or health care institution may provide consultation or education to the registrant without establishing a business or supervisory relationship, and is encouraged to accept referrals from registrants pursuant to this article 225.

(2) If the director finds that liability insurance is available at an affordable price, registrants shall be required to carry liability insurance.

The role of DORA



How we got here



12-37-109. Assumption of risk - no vicarious liability - legislative declaration.
(3) At such time as THE DIRECTOR FINDS THAT liability insurance ~~becomes~~ IS available at an affordable price, the direct-entry midwife shall be required to carry such insurance.

Malpractice in general

The existing system of professional liability coverage in maternity care isn't working – and there is no reason to believe that it would work any better for DEM consumers than hospital consumers.

- Only 1.5%-2.5% of hospital-based maternity-care consumers who sustained negligent injury filed a claim.
- Only 1% of the hospital-based maternity-care consumers who were negligently injured received compensation.
- 54%-78% of compensation payments were made to lawyers, experts and courts.
- “Available evidence, not separately available for maternity care, suggests that the present liability system fails in about 99% of cases to compensate people who are injured as a result of medical error.”

Malpractice in general, con't...

- 98% of people who were surveyed and felt harmed by a birth provider had a hospital-based provider. Everyone prefers models like the 3Rs.
- Only three other states require DEMs to carry insurance: FL, AL, and IN.
- The cost is dependent on how big the risk pool is - since there aren't a lot of direct-entry midwives in Colorado, or in the US, the risk pool is small so the cost is high.
- DORA convened a working group about this in 2016 and issued a report with recommendations - it is available along with other fact sheets from 2016 on the EC website at: <https://www.elephantcircle.net/circle/dem-sunset-2021>

Colorado Department of Regulatory Agencies, Report and Recommendations of the Direct-Entry Midwife Risk Management Working Group: Pursuant to §12-37-109(3)(b)(I), C.R.S., October 1, 2016. Plus our fact sheet on Colorado numbers and liability in general from 2016, and our fact sheet for the working group in 2016.