
By: **Chairman, Environmental Matters Committee**

Introduced and read first time: February 7, 2002

Assigned to: Environmental Matters

Committee Report: Favorable with amendments

House action: Adopted with floor amendments

Read second time: March 23, 2002

CHAPTER _____

1 AN ACT concerning

2 **State Board of Physician Quality Assurance - Sunset Extension and**
3 **Program Evaluation**

4 FOR the purpose of continuing the State Board of Physician Quality Assurance (the
5 Board) in accordance with the provisions of the Maryland Program Evaluation
6 Act by extending to a certain date the termination provisions relating to the
7 statutory and regulatory authority of the Board; requiring that an evaluation of
8 the Board and the statutes and regulations that relate to the Board be
9 performed on or before a certain date; repealing a provision requiring the Health
10 Claims Arbitration Office (HCAO) to forward certain information to the Medical
11 and Chirurgical Faculty of Maryland (the Faculty); adding certain members to
12 the membership of the Board; altering the requirements for the consumer
13 members of the Board; providing an exception from certain consumer
14 membership requirements for a certain member of the Board; altering the
15 appointment process for certain physician members of the Board; requiring the
16 Board to provide a certain notice of a vacancy of certain members of the Board,
17 to provide a certain process for a licensed physician to submit a certain petition,
18 and to forward a list of all licensed physicians submitting certain valid petitions
19 to the Governor; authorizing the Governor to make certain reappointments to
20 the Board or to make an appointment to the Board from lists submitted by
21 certain organizations or from a certain list forwarded by the Board; ~~repealing a~~
22 ~~provision of law requiring the chairman of the Board to be appointed by the~~
23 ~~Governor; providing for the chairman of the Board to be elected by the members~~
24 ~~of the Board;~~ requiring fees charged by the Board to approximate the costs of
25 maintaining the Board; requiring certain interest and other investment income
26 to be paid into the Board of Physician Quality Assurance Fund (the Fund);
27 requiring the Board to fund the budget of the Physician Rehabilitation
28 Committee with fees collected and distributed to the Fund; authorizing the

1 Board to allocate moneys from the Fund after review and approval of a certain
 2 budget; repealing provisions of law requiring the Faculty ~~to conduct certain~~
 3 ~~investigations and peer review and~~ to provide certain malpractice information to
 4 the Board; ~~requiring~~ authorizing the Board to enter into a written contract with
 5 ~~an a certain~~ entity to provide certain investigation and peer review services
 6 under certain circumstances; establishing certain minimum qualifications for
 7 peer reviewers conducting a peer review; prohibiting a certain agreement for
 8 corrective action from being used under certain circumstances; specifying that
 9 the members of the Physician Rehabilitation Committee are appointed by the
 10 Faculty; requiring the chairman of the Board to appoint a member to serve as a
 11 liaison to the Physician Rehabilitation Committee; authorizing the chairman of
 12 the Board to appoint a certain subcommittee of the Board to conduct certain
 13 hearings in a certain manner; altering certain requirements for licensee profiles
 14 created by the Board; requiring the Board to maintain a single website
 15 containing certain information; modifying the termination provision for the
 16 Maryland Respiratory Care Practitioners Act; altering the manner in which the
 17 Comptroller of the State distributes certain fees; defining a certain term;
 18 specifying the terms of certain members of the Board; requiring the Board to
 19 submit a certain report on investigative caseloads by a certain date; requiring
 20 the Board, the Faculty, the Office of Administrative Hearings, and the Office of
 21 the Attorney General to review a certain process, propose a certain joint plan,
 22 make certain recommendations, and submit a certain report by a certain date;
 23 requiring the Board to submit a certain report on the financial condition of the
 24 Board by a certain date; exempting the Board from certain provisions of law
 25 requiring a certain preliminary evaluation; requiring the Board to use an
 26 additional reviewer if certain peer reviewers do not reach an agreement;
 27 requiring the Governor to include certain funds for certain programs
 28 administered by the Maryland Higher Education Commission in a certain fiscal
 29 year; providing for a delayed effective date for certain provisions of this Act;
 30 requiring the Secretary of Health and Mental Hygiene, in conjunction with
 31 health occupations boards and the Attorney General's Office, to evaluate a
 32 certain evidentiary standard, consider certain legal protections, and submit a
 33 certain report by a certain date; and generally relating to the State Board of
 34 Physician Quality Assurance.

35 BY repealing and reenacting, with amendments,
 36 Article - Courts and Judicial Proceedings
 37 Section 3-2A-04(a)
 38 Annotated Code of Maryland
 39 (1998 Replacement Volume and 2001 Supplement)

40 BY repealing and reenacting, with amendments,
 41 Article - Health Occupations
 42 Section 14-101, 14-202, ~~14-203,~~ 14-207, 14-401, 14-402, 14-405, 14-411.1,
 43 14-5A-25, and 14-702
 44 Annotated Code of Maryland
 45 (2000 Replacement Volume and 2001 Supplement)

1 BY repealing and reenacting, without amendments,
2 Article - Health Occupations
3 Section 14-404(a)(22), 14-406, and 14-413
4 Annotated Code of Maryland
5 (2000 Replacement Volume and 2001 Supplement)

6 BY repealing and reenacting, with amendments,
7 Article - State Government
8 Section 8-403(b)(50)
9 Annotated Code of Maryland
10 (1999 Replacement Volume and 2001 Supplement)

11 BY repealing and reenacting, with amendments,
12 Article - Health Occupations
13 Section 14-207(c)
14 Annotated Code of Maryland
15 (2000 Replacement Volume and 2001 Supplement)
16 (As enacted by Section 1 of this Act)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
18 MARYLAND, That the Laws of Maryland read as follows:

19 **Article - Courts and Judicial Proceedings**

20 3-2A-04.

21 (a) (1) A person having a claim against a health care provider for damage
22 due to a medical injury shall file his claim with the Director, and, if the claim is
23 against a physician, the Director shall forward copies of the claim to the State Board
24 of Physician Quality Assurance [and the Medical and Chirurgical Faculty of the State
25 of Maryland]. The Director shall cause a copy of the claim to be served upon the
26 health care provider by the appropriate sheriff in accordance with the Maryland
27 Rules. The health care provider shall file a response with the Director and serve a
28 copy on the claimant and all other health care providers named therein within the
29 time provided in the Maryland Rules for filing a responsive pleading to a complaint.
30 The claim and the response may include a statement that the matter in controversy
31 falls within one or more particular recognized specialties.

32 (2) A third-party claim shall be filed within 30 days of the response of
33 the third-party claimant to the original claim unless the parties consent to a later
34 filing or a later filing is allowed by the panel chairman for good cause shown.

35 (3) A claimant may not add a new defendant after the arbitration panel
36 has been selected, or 10 days after the prehearing conference has been held,
37 whichever is later.

1 (4) Until all costs attributable to the first filing have been satisfied, a
2 claimant may not file a second claim on the same or substantially the same grounds
3 against any of the same parties.

4

Article - Health Occupations

5 14-101.

6 (a) In this title the following words have the meanings indicated.

7 (b) "Board" means the State Board of Physician Quality Assurance.

8 (c) "Civil action" includes a health care malpractice claim under Title 3,
9 Subtitle 2A of the Courts Article.10 (d) "Faculty" means the Medical and Chirurgical Faculty of the State of
11 Maryland.12 (e) "Hospital" has the meaning stated in § 19-301 of the Health - General
13 Article.14 (f) "License" means, unless the context requires otherwise, a license issued by
15 the Board to practice medicine.16 (g) "Licensed physician" means, unless the context requires otherwise, a
17 physician, including a doctor of osteopathy, who is licensed by the Board to practice
18 medicine.19 (h) "Licensee" means an individual to whom a license is issued, including an
20 individual practicing medicine within or as a professional corporation or professional
21 association.22 (i) "Perform acupuncture" means to stimulate a certain point or points on or
23 near the surface of the human body by the insertion of needles to prevent or modify
24 the perception of pain or to normalize physiological functions, including pain control,
25 for the treatment of ailments or conditions of the body.

26 (j) "Physician" means an individual who practices medicine.

27 (k) "PHYSICIAN REHABILITATION COMMITTEE" MEANS THE COMMITTEE OF
28 THE FACULTY THAT EVALUATES AND PROVIDES ASSISTANCE TO IMPAIRED
29 PHYSICIANS IN NEED OF TREATMENT AND REHABILITATION FOR ALCOHOLISM,
30 CHEMICAL DEPENDENCY, OR OTHER PHYSICAL, EMOTIONAL, OR MENTAL
31 CONDITIONS.32 (L) (1) "Practice medicine" means to engage, with or without compensation,
33 in medical:

34 (i) Diagnosis;

1 (ii) Healing;

2 (iii) Treatment; or

3 (iv) Surgery.

4 (2) "Practice medicine" includes doing, undertaking, professing to do,
5 and attempting any of the following:

6 (i) Diagnosing, healing, treating, preventing, prescribing for, or
7 removing any physical, mental, or emotional ailment or supposed ailment of an
8 individual:

9 1. By physical, mental, emotional, or other process that is
10 exercised or invoked by the practitioner, the patient, or both; or

11 2. By appliance, test, drug, operation, or treatment;

12 (ii) Ending of a human pregnancy; and

13 (iii) Performing acupuncture.

14 (3) "Practice medicine" does not include:

15 (i) Selling any nonprescription drug or medicine;

16 (ii) Practicing as an optician; or

17 (iii) Performing a massage or other manipulation by hand, but by no
18 other means.

19 [(L)] (M) "Related institution" has the meaning stated in § 19-301 of the
20 Health - General Article.

21 14-202.

22 (a) (1) The Board shall consist of [15] 21 members appointed by the
23 Governor.

24 (2) Of the [15] 21 members:

25 (i) [10] 13 shall be practicing licensed physicians, AT LEAST ONE
26 OF WHOM SHALL BE A DOCTOR OF OSTEOPATHY, appointed [from a list submitted by
27 the Faculty] BY THE GOVERNOR AS PROVIDED IN SUBSECTION (D) OF THIS SECTION;

28 (ii) 1 shall be a practicing licensed physician appointed at the
29 Governor's discretion;

30 (iii) 1 shall be a representative of the Department nominated by the
31 Secretary;

1 (iv) [2] 5 shall be consumer members appointed with the advice and
2 consent of the Senate; and

3 (v) 1 shall be a consumer member knowledgeable in risk
4 management or quality assurance matters appointed from a list submitted by the
5 Maryland Hospital Association.

6 (b) (1) Each consumer member of the Board:

7 [(1)] (I) Shall be a member of the general public;

8 [(2)] (II) SHALL BE A RESIDENT OF THE STATE FOR AT LEAST 5 YEARS;

9 (III) May not be or ever have been a physician or in training to
10 become a physician;

11 [(3)] (IV) May not have a household member who is a physician or in
12 training to become a physician;

13 [(4) May not participate or ever have participated in a commercial or
14 professional field related to medicine;]

15 [(5)] (V) May not have a household member who participates in a
16 commercial or professional field related to medicine; and

17 [(6)] (VI) May not have had within 2 years before appointment a
18 substantial financial interest in a person regulated by the Board.

19 (2) EXCEPT FOR THE CONSUMER MEMBER APPOINTED FROM A LIST
20 SUBMITTED BY THE MARYLAND HOSPITAL ASSOCIATION UNDER SUBSECTION
21 (A)(2)(V) OF THIS SECTION, EACH CONSUMER MEMBER OF THE BOARD MAY NOT HAVE
22 A SUBSTANTIAL PERSONAL, BUSINESS, PROFESSIONAL, OR PECUNIARY CONNECTION
23 WITH A MEDICAL FIELD OR WITH AN INSTITUTION OF MEDICAL EDUCATION OR A
24 HEALTH CARE FACILITY.

25 (c) [For each initial vacancy of a member appointed from a list submitted by
26 the Faculty, the Faculty shall:

27 (1) Notify all licensed physicians in the State of the vacancy to solicit
28 nominations to fill the vacancy; and

29 (2) Conduct a balloting process to select the name of the licensed
30 physician that will be submitted to the Governor that provides all licensed physicians
31 in the State with an equal vote.

32 (d) Once appointed, a physician named on the list submitted by the Faculty
33 shall remain on the list for 2 consecutive full terms.

34 (e)] While SERVING AS a member of the Board, [a] EACH consumer member
35 [may not have a substantial financial interest in a person regulated by the Board]

1 SHALL CONTINUE TO MEET THE REQUIREMENTS OF SUBSECTION (B) OF THIS
2 SECTION.

3 (D) FOR EACH VACANCY OF A LICENSED PHYSICIAN APPOINTED BY THE
4 GOVERNOR UNDER SUBSECTION (A)(2)(I) OF THIS SECTION, THE GOVERNOR MAY:

5 (1) REAPPOINT A MEMBER WHO HAS NOT BEEN APPOINTED FOR MORE
6 THAN TWO CONSECUTIVE FULL TERMS; OR

7 (2) APPOINT A PRACTICING LICENSED PHYSICIAN FROM A LIST
8 SUBMITTED BY:

9 (I) A PROFESSIONAL ORGANIZATION REPRESENTING AT LEAST 25
10 LICENSED PHYSICIANS IN THE STATE; OR

11 (II) THE BOARD THAT CONTAINS THE NAMES OF THE LICENSED
12 PHYSICIANS WHO HAVE SUBMITTED A PETITION TO THE BOARD SIGNED BY AT LEAST
13 25 LICENSED PHYSICIANS IN THE STATE AS PROVIDED IN SUBSECTION (E) OF THIS
14 SECTION.

15 (E) (1) FOR EACH VACANCY OF A PRACTICING LICENSED PHYSICIAN
16 APPOINTED BY THE GOVERNOR UNDER SUBSECTION (A)(2)(I) OF THIS SECTION, THE
17 BOARD SHALL:

18 (I) NOTIFY ALL PRACTICING LICENSED PHYSICIANS IN THE STATE
19 OF THE VACANCY;

20 (II) PROVIDE A PROCESS FOR A PRACTICING LICENSED PHYSICIAN
21 TO SUBMIT A PETITION SUPPORTING THE APPOINTMENT OF THE PHYSICIAN TO THE
22 BOARD THAT IS SIGNED BY AT LEAST 25 LICENSED PHYSICIANS IN THE STATE; AND

23 (III) FORWARD TO THE GOVERNOR THE LIST OF ALL PRACTICING
24 LICENSED PHYSICIANS WHO HAVE SUBMITTED VALID PETITIONS UNDER ITEM (II) OF
25 THIS PARAGRAPH.

26 (2) THE BOARD SHALL MEET THE REQUIREMENTS OF PARAGRAPH (1) OF
27 THIS SUBSECTION WITHIN:

28 (I) 4 MONTHS PRIOR TO AN UPCOMING VACANCY ON THE BOARD;
29 OR

30 (II) 2 MONTHS AFTER A VACANCY EXISTS ON THE BOARD.

31 (f) Before taking office, each appointee to the Board shall take the oath
32 required by Article I, § 9 of the State Constitution.

33 (g) (1) The term of a member is 4 years[, except that the initial term of one
34 of the consumer members is 3 years].

35 (2) The terms of members are staggered as required by the terms
36 provided for members of the Board on July 1, [1988] 2002.

1 (3) At the end of a term, a member continues to serve until a successor is
2 appointed and qualifies.

3 (4) A member may not serve more than 2 consecutive full terms.

4 (h) (1) If a vacancy occurs as to a member, the Governor shall appoint a new
5 member to serve only for the rest of the term and until a successor is appointed and
6 qualifies.

7 (2) To the extent practicable, the Governor shall fill any vacancy on the
8 Board within 60 days of the date of the vacancy.

9 (i) (1) On the recommendation of the Board, the Secretary may remove any
10 member of the Board for neglect of duty, misconduct, malfeasance, or misfeasance in
11 office.

12 (2) Upon the recommendation of the Secretary, the Governor may
13 remove a member whom the Secretary finds to have been absent from 2 successive
14 Board meetings without adequate reason.

15 (3) The Governor may remove a member for incompetence or
16 misconduct.

17 ~~14-203.~~

18 (a) ~~[The Governor shall appoint the chairman of the Board from among the~~
19 ~~physician members on the Board.~~

20 (b) ~~From among its members, the Board shall elect a CHAIRMAN,~~
21 ~~secretary treasurer, and any other officers that it considers necessary.~~

22 (c) ~~(B) The Board shall determine:~~

23 (1) ~~The manner of election of officers;~~

24 (2) ~~The term of office of each officer; and~~

25 (3) ~~The duties of each officer.~~

26 ~~14-207.~~

27 (a) There is a Board of Physician Quality Assurance Fund.

28 (b) (1) The Board may set reasonable fees for the issuance and renewal of
29 licenses and its other services.

30 (2) THE FEES CHARGED SHALL BE SET SO AS TO APPROXIMATE THE
31 COST OF MAINTAINING THE BOARD.

32 (3) Funds to cover the compensation and expenses of the Board members
33 shall be generated by fees set under this section.

1 (c) (1) [Except for fees assessed in accordance with the provisions of §
2 14-402(e) of this title, the] THE Board shall pay all fees collected under the provisions
3 of this title to the Comptroller of the State.

4 (2) The Comptroller shall distribute:

5 (i) 14 percent of the fees received from the Board to the State
6 Scholarship Administration to be used as follows:

7 1. One-half to make grants under the Health Manpower
8 Shortage Incentive Grant Program under § 18-803 of the Education Article; and

9 2. One-half to make grants under the Janet L. Hoffman
10 Loan Assistance Repayment Program under § 18-1502(c) of the Education Article to
11 physicians engaged in primary care or to medical residents specializing in primary
12 care who agree to practice for at least 2 years as primary care physicians in a
13 geographic area of the State that has been designated by the Secretary of Health and
14 Mental Hygiene as being medically underserved; and

15 (ii) The balance of the fees to the Board of Physician Quality
16 Assurance Fund.

17 (d) (1) The Fund shall be used exclusively to cover the actual documented
18 direct and indirect costs of fulfilling the statutory and regulatory duties of the Board
19 as provided by the provisions of this title.

20 (2) (i) The Fund is a continuing, nonlapsing fund, not subject to §
21 7-302 of the State Finance and Procurement Article.

22 (ii) Any unspent portions of the Fund may not be transferred or
23 revert to the General Fund of the State, but shall remain in the Fund to be used for
24 the purposes specified in this title.

25 (3) INTEREST OR OTHER INCOME EARNED ON THE INVESTMENT OF
26 MONEYS IN THE FUND SHALL BE PAID INTO THE FUND.

27 (4) No other State money may be used to support the Fund.

28 (e) (1) IN ADDITION TO THE REQUIREMENTS OF SUBSECTION (D) OF THIS
29 SECTION, THE BOARD SHALL FUND THE BUDGET OF THE PHYSICIAN
30 REHABILITATION COMMITTEE WITH FEES SET, COLLECTED, AND DISTRIBUTED TO
31 THE FUND UNDER THIS TITLE.

32 (2) AFTER REVIEW AND APPROVAL BY THE BOARD OF A BUDGET
33 SUBMITTED BY THE PHYSICIAN REHABILITATION COMMITTEE, THE BOARD MAY
34 ALLOCATE MONEYS FROM THE FUND TO THE PHYSICIAN REHABILITATION
35 COMMITTEE.

36 (F) (1) The chairman of the Board or the designee of the chairman shall
37 administer the Fund.

1 (2) Moneys in the Fund may be expended only for any lawful purpose
2 authorized by the provisions of this title.

3 [(f)] (G) The Legislative Auditor shall audit the accounts and transactions of
4 the Fund as provided in § 2-1220 of the State Government Article.

5 14-401.

6 (a) The Board shall perform any necessary preliminary investigation before
7 the Board refers to an investigatory body an allegation of grounds for disciplinary or
8 other action brought to its attention.

9 (b) If an allegation of grounds for disciplinary or other action is made by a
10 patient or a family member of a patient [in a standard of care case] BASED ON
11 § 14-404(A)(22) OF THIS TITLE and a full investigation results from that allegation, the
12 full investigation shall include an offer of an interview with the patient or a family
13 member of the patient who was present on or about the time that the incident that
14 gave rise to the allegation occurred.

15 (c) (1) Except as otherwise provided in this subsection, after performing any
16 necessary preliminary investigation of an allegation of grounds for disciplinary or
17 other action, the Board may:

18 (i) Refer the allegation for further investigation to the {Faculty}
19 OR ENTITY THAT HAS CONTRACTED WITH THE BOARD UNDER SUBSECTION (E) OF
20 THIS SECTION;

21 (ii) Take any appropriate and immediate action as necessary; or

22 (iii) Come to an agreement for corrective action with a licensee
23 pursuant to paragraph (4) of this subsection.

24 (2) {(i)} After performing any necessary preliminary investigation of an
25 allegation of grounds for disciplinary or other action, the Board shall refer any
26 allegation [involving standards of medical care, as determined by the Board, and any
27 allegation based on § 14-404(a)(19) to the Faculty] BASED ON § 14-404(A)(22) OF THIS
28 TITLE TO THE FACULTY OR THE ENTITY OR ENTITIES THAT HAVE CONTRACTED WITH
29 THE BOARD UNDER SUBSECTION (E) OF THIS SECTION for further investigation and
30 physician peer review within the involved medical specialty or specialties.

31 {(ii)} The Faculty may refer the allegation for investigation and
32 report to the appropriate:

33 1. County medical society; or

34 2. Committee of the Faculty.}

35 (3) If, after performing any necessary preliminary investigation, the
36 Board determines that an allegation involving fees for professional or ancillary

1 services does not constitute grounds for disciplinary or other action, the Board shall
2 offer the complainant and the licensee an opportunity to mediate the dispute.

3 (4) (i) [If the Board determines that an agreement for corrective
4 action is warranted and patient safety is not an issue, the Board shall notify the
5 licensee of the identified deficiencies and enter into an agreement for corrective
6 action, which may not be made public and which shall not be considered a disciplinary
7 action for purposes of this subtitle.] EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF
8 THIS PARAGRAPH, THE BOARD:

9 1. MAY DETERMINE THAT AN AGREEMENT FOR CORRECTIVE
10 ACTION IS WARRANTED; AND

11 2. SHALL NOTIFY THE LICENSEE OF THE IDENTIFIED
12 DEFICIENCIES AND ENTER INTO AN AGREEMENT FOR CORRECTIVE ACTION WITH
13 THE LICENSEE AS PROVIDED IN THIS PARAGRAPH.

14 (II) THE BOARD MAY NOT ENTER INTO AN AGREEMENT FOR
15 CORRECTIVE ACTION WITH A LICENSEE IF PATIENT SAFETY IS AN ISSUE.

16 [(ii)] (III) The Board shall subsequently evaluate the licensee and
17 shall:

18 1. Terminate the corrective action if the Board is satisfied
19 that the licensee is in compliance with the agreement for corrective action and has
20 corrected the deficiencies; or

21 2. Pursue disciplinary action under § 14-404 of this subtitle
22 if the deficiencies persist or the licensee has failed to comply with the agreement for
23 corrective action.

24 (IV) AN AGREEMENT FOR CORRECTIVE ACTION UNDER THIS
25 PARAGRAPH MAY NOT BE MADE PUBLIC OR CONSIDERED A DISCIPLINARY ACTION
26 UNDER THIS TITLE.

27 [(iii)] (V) The Board shall provide a summary of the corrective
28 action agreements in the executive director's report of Board activities.

29 (d) [(1)] The Faculty, all committees of the Faculty, except the physician
30 rehabilitation committee, and all county medical societies shall refer to the Board all
31 complaints that set forth allegations of grounds for disciplinary action under § 14-404
32 of this subtitle.

33 [(2)] If the Faculty determines that 3 or more malpractice claims have
34 been filed against an individual licensed physician under § 3-2A-04(a) of the Courts
35 and Judicial Proceedings Article within a 5-year period, the Faculty shall submit the
36 name of the individual licensed physician to the Board and, subject to the approval of
37 the Board, shall refer the claims to the Faculty's appropriate committee for
38 investigation and report to the Board as if the Board had referred the claims to the
39 committee of the Faculty.

1 (e) (1) (i) Unless the Board grants an extension, the medical society or
 2 Faculty committee shall report to the Board on its investigation within 90 days after
 3 the referral.

4 (ii) However, if the investigatory body does not complete its report
 5 within 90 days, the Board may refer the allegation to another investigatory body.

6 (2) The report shall contain the information and recommendations
 7 necessary for appropriate action by the Board.

8 (3) On receipt of the report, the Board shall consider the
 9 recommendations made in the report and take the action, including further
 10 investigation, that it finds appropriate under this title.]

11 (E) (1) THE BOARD SHALL MAY ENTER INTO A WRITTEN CONTRACT WITH
 12 AN A NONPROFIT ENTITY OR ENTITIES FOR FURTHER INVESTIGATION AND
 13 PHYSICIAN PEER REVIEW OF ALLEGATIONS BASED ON § 14-404(A)(22) OF THIS TITLE.

14 (2) THE BOARD MAY ENTER INTO THE WRITTEN CONTRACT UNDER
 15 PARAGRAPH (1) OF THIS SUBSECTION IF THE BOARD DETERMINES, AFTER
 16 PROVIDING THE FACULTY WITH NOTICE AND AN OPPORTUNITY FOR COMMENT,
 17 THAT THE FACULTY IS NOT ADEQUATELY PERFORMING THE FACULTY'S PHYSICIAN
 18 PEER REVIEW DUTIES.

19 (F) ~~THE WRITTEN CONTRACT ENTERED INTO UNDER SUBSECTION (E) OF THIS~~
 20 ~~SECTION BOARD~~ SHALL REQUIRE, AT A MINIMUM, THAT THE PEER REVIEWERS
 21 CONDUCTING THE PEER REVIEW:

22 (1) ARE SELECTED FROM THE SAME MEDICAL SPECIALTY AS THE
 23 LICENSEE UNDER REVIEW;

24 (2) ARE BOARD CERTIFIED;

25 (3) HAVE A SPECIFIED AMOUNT OF MEDICAL EXPERIENCE;

26 (4) HAVE NO FORMAL BOARD ACTIONS AGAINST THEIR LICENSE;

27 (5) RECEIVE PEER REVIEW TRAINING; ~~AND~~

28 (6) HAVE A STANDARD FORMAT FOR PEER REVIEW REPORTS; AND

29 (7) ARE MARYLAND LICENSED PHYSICIANS, UNLESS THE USE OF A
 30 MARYLAND LICENSED PHYSICIAN IS IMPRACTICAL.

31 [(f)] (G) (1) To facilitate the investigation and prosecution of disciplinary
 32 matters and the mediation of fee disputes coming before it, the Board may:

33 (i) Contract with the Faculty, its committees, and the component
 34 medical societies for the purchase of investigatory, mediation, and related services;
 35 and

1 (ii) Contract with others for the purchase of investigatory,
2 mediation, and related services and make these services available to the Faculty, its
3 committees, and the component medical societies.

4 (2) Services that may be contracted for under this subsection include the
5 services of:

- 6 (i) Investigators;
- 7 (ii) Attorneys;
- 8 (iii) Accountants;
- 9 (iv) Expert witnesses;
- 10 (v) Consultants; and
- 11 (vi) Mediators.

12 [(g)] (H) The Board may issue subpoenas and administer oaths in connection
13 with any investigation under this section and any hearing or proceeding before it.

14 [(h)] (I) Those individuals not licensed under this title but covered under
15 § 14-413(a)(1)(ii)3 and 4 of this subtitle are subject to the hearing provisions of
16 § 14-405 of this subtitle.

17 [(i)] (J) (1) It is the intent of this section that the disposition of every
18 complaint against a licensee that sets forth allegations of grounds for disciplinary
19 action filed with the Board shall be completed as expeditiously as possible [and, in
20 any event, within 18 months after the complaint was received by the Board].

21 (2) If the Board is unable to complete the disposition of a complaint
22 within 1 year, the Board shall include in the record of that complaint a detailed
23 explanation of the reason for the delay.

24 14-402.

25 (a) In reviewing an application for licensure, certification, or registration or in
26 investigating an allegation brought against a licensed physician or any allied health
27 professional regulated by the Board under this title, the [medical society or Faculty
28 committee] PHYSICIAN REHABILITATION COMMITTEE may request the Board to
29 direct, or the Board on its own initiative may direct, the licensed physician or any
30 allied health professional regulated by the Board under this title to submit to an
31 appropriate examination.

32 (b) In return for the privilege given by the State issuing a license,
33 certification, or registration, the licensed, certified, or registered individual is deemed
34 to have:

35 (1) Consented to submit to an examination under this section, if
36 requested by the Board in writing; and

1 (2) Waived any claim of privilege as to the testimony or examination
2 reports.

3 (c) The unreasonable failure or refusal of the licensed, certified, or registered
4 individual to submit to an examination is prima facie evidence of the licensed,
5 certified, or registered individual's inability to practice medicine or the respective
6 discipline competently, unless the Board finds that the failure or refusal was beyond
7 the control of the licensed, certified, or registered individual.

8 (d) The Board shall pay the costs of any examination made under this section.

9 (e) (1) [(i) The Board shall assess each applicant for a license to practice
10 medicine or for renewal of a license to practice medicine a fee of not more than \$50 to
11 be set after the submission of a budget for the physician rehabilitation program and
12 peer review activities by the Faculty to the Board.

13 (ii) The fee is to be used to fund the physician rehabilitation
14 program and peer review activities of the Faculty, as approved by the Secretary.

15 (iii) The Board shall set a fee under this subsection in accordance
16 with the budget submitted by the Faculty.] THE FACULTY SHALL APPOINT THE
17 MEMBERS OF THE PHYSICIAN REHABILITATION COMMITTEE.

18 (2) THE CHAIRMAN OF THE BOARD SHALL APPOINT ONE MEMBER OF
19 THE BOARD TO SERVE AS A LIAISON TO THE PHYSICIAN REHABILITATION
20 COMMITTEE.

21 (F) THE BOARD SHALL FUND THE BUDGET OF THE PHYSICIAN
22 REHABILITATION COMMITTEE AS PROVIDED IN § 14-207 OF THIS TITLE.

23 [(2)] (G) The Legislative Auditor shall every 2 years audit the accounts
24 and transactions of the [Faculty for the physician rehabilitation program and peer
25 review activities] PHYSICIAN REHABILITATION COMMITTEE as provided in § 2-1220
26 of the State Government Article.

27 14-404.

28 (a) Subject to the hearing provisions of § 14-405 of this subtitle, the Board, on
29 the affirmative vote of a majority of its full authorized membership, may reprimand
30 any licensee, place any licensee on probation, or suspend or revoke a license if the
31 licensee:

32 (22) Fails to meet appropriate standards as determined by appropriate
33 peer review for the delivery of quality medical and surgical care performed in an
34 outpatient surgical facility, office, hospital, or any other location in this State;

35 14-405.

36 (a) Except as otherwise provided in the Administrative Procedure Act, before
37 the Board takes any action under § 14-404(a) of this subtitle or § 14-5A-17(a) or

1 § 14-606(f) of this title, it shall give the individual against whom the action is
2 contemplated an opportunity for a hearing before a hearing officer OR THE
3 SUBCOMMITTEE OF THE BOARD ESTABLISHED UNDER SUBSECTION (B) OF THIS
4 SECTION.

5 (B) THE CHAIRMAN OF THE BOARD MAY DELEGATE THE AUTHORITY TO
6 CONDUCT A HEARING TO A SUBCOMMITTEE CONSISTING OF THREE OR MORE BOARD
7 MEMBERS.

8 [(b)] (C) The hearing officer OR THE SUBCOMMITTEE OF THE BOARD shall
9 give notice and hold the hearing in accordance with the Administrative Procedure Act
10 ~~{except that factual findings shall be supported by clear and convincing evidence}.~~

11 [(c)] (D) The individual may be represented at the hearing by counsel.

12 [(d)] (E) If after due notice the individual against whom the action is
13 contemplated fails or refuses to appear, nevertheless the hearing officer OR THE
14 SUBCOMMITTEE OF THE BOARD may hear and refer the matter to the Board for
15 disposition.

16 [(e)] (F) After performing any necessary hearing under this section, the
17 hearing officer OR THE SUBCOMMITTEE OF THE BOARD shall refer proposed factual
18 findings to the Board for the Board's disposition.

19 [(f)] (G) The Board may adopt regulations to govern the taking of depositions
20 and discovery in the hearing of charges.

21 [(g)] (H) The hearing of charges may not be stayed or challenged by any
22 procedural defects alleged to have occurred prior to the filing of charges.

23 14-406.

24 (a) Following the filing of charges, if a majority of the full authorized
25 membership of the Board finds that there are grounds for action under § 14-404 of
26 this subtitle, the Board shall pass an order in accordance with the Administrative
27 Procedure Act.

28 (b) After the charges are filed, if the Board finds that there are no grounds for
29 action under § 14-404 of this subtitle, the Board:

30 (1) Immediately shall dismiss the charges and exonerate the licensee;

31 (2) (i) Except as provided in item (ii) of this paragraph, shall expunge
32 all records of the charges 3 years after the charges are dismissed; or

33 (ii) If the physician executes a document releasing the Board from
34 any liability related to the charges, shall immediately expunge all records of the
35 charges; and

36 (3) May not take any further action on the charges.

1 14-411.1.

2 (a) [(1)] In this section, "health maintenance organization" has the meaning
3 stated in § 19-701 of the Health - General Article.

4 (b) The Board shall create [an] AND MAINTAIN A PUBLIC individual profile on
5 each licensee that includes the following information:

6 (1) A description of any FINAL disciplinary action taken by the Board
7 against the licensee within the most recent 10-year period as reported to the National
8 Practitioner Data Bank THAT INCLUDES A COPY OF THE PUBLIC ORDER;

9 (2) A description of any final disciplinary action taken by a licensing
10 board in any other state or jurisdiction against the licensee within the most recent
11 10-year period as reported to the National Practitioner Data Bank;

12 (3) A DESCRIPTION OF A CONVICTION, ENTRY OF A PLEA OF GUILTY OR
13 NOLO CONTENDERE BY THE LICENSEE FOR A CRIME INVOLVING MORAL TURPITUDE
14 REPORTED TO THE BOARD UNDER § 14-413(B) OF THIS SUBTITLE; AND

15 (4) MEDICAL EDUCATION AND PRACTICE INFORMATION ABOUT THE
16 LICENSEE INCLUDING:

17 [(3)] (I) The name of any medical school that the licensee attended and
18 the date on which the licensee graduated from the school;

19 [(4)] (II) A description of any internship and residency training;

20 [(5)] (III) A description of any specialty board certification by a recognized
21 board of the American Board of Medical Specialties or the American Osteopathic
22 Association;

23 [(6)] (IV) The name of any hospital where the licensee has medical
24 privileges as reported to the Board under § 14-413 of this subtitle;

25 [(7)] (V) The location of the licensee's primary practice setting; and

26 [(8)] (VI) Whether the licensee participates in the Maryland Medical
27 Assistance Program.

28 (c) In addition to the requirements of subsection (b) of this section, the Board
29 shall:

30 (1) [provide] PROVIDE appropriate and accessible Internet links from
31 the Board's Internet site:

32 [(1)] (I) To the extent available, to the appropriate portion of the
33 Internet site of each health maintenance organization licensed in this State which
34 will allow the public to ascertain the names of the physicians affiliated with the
35 health maintenance organization; and

1 [(2)] (II) To the appropriate portion of the Internet site of the American
2 Medical Association; AND

3 (2) INCLUDE A STATEMENT ON EACH LICENSEE'S PROFILE OF
4 INFORMATION TO BE TAKEN INTO CONSIDERATION BY A CONSUMER WHEN VIEWING
5 A LICENSEE'S PROFILE.

6 (d) The Board:

7 (1) On receipt of a written request for a licensee's profile from any
8 person, shall forward a written copy of the profile to the person; and

9 (2) Shall [make all profiles] MAINTAIN A WEBSITE THAT SERVES AS A
10 SINGLE POINT OF ENTRY WHERE ALL PHYSICIAN PROFILE INFORMATION IS available
11 to the public on the Internet.

12 (e) [Subject to subsection (f) of this section, before making a profile initially
13 available to the public under subsection (d) of this section, the Board shall:

14 (1) Unless the licensee authorizes and requests a copy of the licensee's
15 profile by electronic means, provide a licensee with a written copy of the licensee's
16 profile; and

17 (2) Provide a reasonable period for the licensee to correct any factual
18 inaccuracies in the profile.] THE BOARD SHALL PROVIDE A MECHANISM FOR THE
19 NOTIFICATION AND PROMPT CORRECTION OF ANY FACTUAL INACCURACIES IN A
20 LICENSEE'S PROFILE.

21 (f) The Board shall include information relating to a final disciplinary action
22 taken by the Board against a licensee in the licensee's profile within 10 days after the
23 action becomes final.

24 (g) This section does not limit the Board's authority to disclose information as
25 required under § 14-411 of this subtitle.

26 14-413.

27 (a) (1) Every 6 months, each hospital and related institution shall file with
28 the Board a report that:

29 (i) Contains the name of each licensed physician who, during the 6
30 months preceding the report:

- 31 1. Is employed by the hospital or related institution;
- 32 2. Has privileges with the hospital or related institution; and
- 33 3. Has applied for privileges with the hospital or related
34 institution; and

1 (ii) States whether, as to each licensed physician, during the 6
2 months preceding the report:

3 1. The hospital or related institution denied the application
4 of a physician for staff privileges or limited, reduced, otherwise changed, or
5 terminated the staff privileges of a physician, or the physician resigned whether or
6 not under formal accusation, if the denial, limitation, reduction, change, termination,
7 or resignation is for reasons that might be grounds for disciplinary action under
8 § 14-404 of this subtitle;

9 2. The hospital or related institution took any disciplinary
10 action against a salaried, licensed physician without staff privileges, including
11 termination of employment, suspension, or probation, for reasons that might be
12 grounds for disciplinary action under § 14-404 of this subtitle;

13 3. The hospital or related institution took any disciplinary
14 action against an individual in a postgraduate medical training program, including
15 removal from the training program, suspension, or probation for reasons that might
16 be grounds for disciplinary action under § 14-404 of this subtitle;

17 4. A licensed physician or an individual in a postgraduate
18 training program voluntarily resigned from the staff, employ, or training program of
19 the hospital or related institution for reasons that might be grounds for disciplinary
20 action under § 14-404 of this subtitle; or

21 5. The hospital or related institution placed any other
22 restrictions or conditions on any of the licensed physicians as listed in items 1.
23 through 4. of this subparagraph for any reasons that might be grounds for
24 disciplinary action under § 14-404 of this subtitle.

25 (2) The hospital or related institution shall:

26 (i) Submit the report within 10 days of any action described in
27 paragraph (1)(ii) of this subsection; and

28 (ii) State in the report the reasons for its action or the nature of the
29 formal accusation pending when the physician resigned.

30 (3) The Board may extend the reporting time under this subsection for
31 good cause shown.

32 (4) The minutes or notes taken in the course of determining the denial,
33 limitation, reduction, or termination of the staff privileges of any physician in a
34 hospital or related institution are not subject to review or discovery by any person.

35 (b) (1) Each court shall report to the Board each conviction of or entry of a
36 plea of guilty or nolo contendere by a physician for any crime involving moral
37 turpitude.

1 (2) The court shall submit the report within 10 days of the conviction or
2 entry of the plea.

3 (c) The Board may enforce this section by subpoena.

4 (d) Any person shall have the immunity from liability described under
5 § 5-715(d) of the Courts and Judicial Proceedings Article for giving any of the
6 information required by this section.

7 (e) A report made under this section is not subject to subpoena or discovery in
8 any civil action other than a proceeding arising out of a hearing and decision of the
9 Board under this title.

10 (f) Failure to report pursuant to this section shall result in imposition of a
11 civil penalty of up to \$5,000 by a circuit court of this State.

12 14-5A-25.

13 Subject to the evaluation and reestablishment provisions of the Maryland
14 Program Evaluation Act AND SUBJECT TO THE TERMINATION OF THIS TITLE UNDER
15 § 14-702 OF THIS TITLE, this subtitle and all rules and regulations adopted under this
16 subtitle shall terminate and be of no effect after July 1, 2006.

17 14-702.

18 Subject to the evaluation and reestablishment provisions of the Program
19 Evaluation Act, this title and all rules and regulations adopted under this title shall
20 terminate and be of no effect after July 1, [2003] 2008.

21 **Article - State Government**

22 8-403.

23 (b) Except as otherwise provided in subsection (a) of this section, on or before
24 the evaluation date for the following governmental activities or units, an evaluation
25 shall be made of the following governmental activities or units and the statutes and
26 regulations that relate to the governmental activities or units:

27 (50) Physician Quality Assurance, State Board of (§ 14-201 of the Health
28 Occupations Article: July 1, [2002] 2007);

29 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
30 read as follows:

31 **Article - Health Occupations**

32 14-207.

33 (c) (1) The Board shall pay all fees collected under the provisions of this title
34 to the Comptroller of the State.

1 (2) The Comptroller shall distribute]:

2 (i) 14 percent of the fees received from the Board to the State
3 Scholarship Administration to be used as follows:

4 1. One-half to make grants under the Health Manpower
5 Shortage Incentive Grant Program under § 18-803 of the Education Article; and

6 2. One-half to make grants under the Janet L. Hoffman
7 Loan Assistance Repayment Program under § 18-1502(c) of the Education Article to
8 physicians engaged in primary care or to medical residents specializing in primary
9 care who agree to practice for at least 2 years as primary care physicians in a
10 geographic area of the State that has been designated by the Secretary of Health and
11 Mental Hygiene as being medically underserved; and

12 (ii) The balance of] the fees to the Board of Physician Quality
13 Assurance Fund.

14 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That the terms of the
15 additional 6 members appointed to the State Board of Physician Quality Assurance
16 shall expire as follows:

17 (1) 1 consumer member and 1 physician member in 2004; and

18 (2) 2 consumer members and 2 physician members in 2006.

19 SECTION ~~3~~ 4. AND BE IT FURTHER ENACTED, That the State Board of
20 Physician Quality Assurance shall report to the Governor, the Senate Education,
21 Health, and Environmental Affairs Committee, the Senate Budget and Taxation
22 Committee, the House Environmental Matters Committee, and the House
23 Appropriations Committee on or before November 1, 2002, in accordance with §
24 2-1246 of the State Government Article, on the financial condition of the Board,
25 including a review of the impact of any legislation enacted in 2002 and a review of the
26 impact of any procedural, regulatory, or other changes implemented by the Board. If
27 the Board determines that legislation enacted in 2002 will not resolve the financial
28 condition of the Board, the report shall detail how the Board intends to:

29 (1) stabilize long-term finances of the Board;

30 (2) achieve necessary fund balances; and

31 (3) fully meet the responsibilities and mission of the Board.

32 SECTION ~~4~~ 5. AND BE IT FURTHER ENACTED, That the State Board of
33 Physician Quality Assurance shall report to the Governor, the Senate Education,
34 Health, and Environmental Affairs Committee and the House Environmental Matters
35 Committee on or before January 1, 2003, in accordance with § 2-1246 of the State
36 Government Article, on investigative caseloads of Board investigators including:

37 (1) the optimal level of caseloads;

- 1 (2) additional tools required to improve investigator productivity;
- 2 (3) a fiscal estimate of the resources required to meet optimal caseload levels
3 and provide necessary tools to improve productivity; and
- 4 (4) a detailed plan to address the expenditures identified in the fiscal
5 estimate.

6 SECTION ~~5~~ 6. AND BE IT FURTHER ENACTED, That on or before January
7 1, 2003, the State Board of Physician Quality Assurance, the Faculty, and the Office of
8 the Attorney General (OAG), and the Office of Administrative Hearings (OAH) shall:

- 9 (1) collaboratively review all aspects of the Board investigative processes and
10 propose a joint plan to reduce delays in the disposition of complaints and to make any
11 other necessary changes to Board investigative processes;
- 12 (2) recommend a revised investigative process that will ensure in a consistent
13 manner that all cases transmitted to the OAG are fully investigated and developed to
14 the satisfaction of both the Board and the OAG so that cases can proceed with the
15 minimum of additional delay after transmittal; and
- 16 (3) in accordance with § 2-1246 of the State Government Article, report to the
17 Governor, the Senate Education, Health, and Environmental Affairs Committee and
18 the House Environmental Matters Committee on the findings, recommendations and
19 any legislative or regulatory changes necessary to implement the recommended
20 changes.

21 SECTION ~~6~~ 7. AND BE IT FURTHER ENACTED, That the provisions of §
22 8-404 of the State Government Article requiring a preliminary evaluation do not
23 apply to the State Board of Physician Quality Assurance prior to the evaluation
24 required on or before July 1, 2007.

25 SECTION 8. AND BE IT FURTHER ENACTED, That Section 2 of this Act
26 shall take effect July 1, 2004. The Governor shall appropriate in the State budget for
27 fiscal year 2005 the funds necessary for the operation of the Health Manpower
28 Shortage Incentive Grant Program and the Janet L. Hoffman Loan Assistance
29 Repayment Program administered by the Maryland Higher Education Commission.
30 These funds should equal or exceed the amount that otherwise would have been
31 received from the State Board of Physician Quality Assurance during fiscal year
32 2005.

33 SECTION 9. AND BE IT FURTHER ENACTED, That the Faculty, or the
34 entity or entities with which the State Board of Physician Quality Assurance
35 contracts under § 14-401(e) of the Health Occupations Article, as enacted by Section
36 1 of this Act, for further investigation and peer review of allegations based on §
37 14-404(a)(22) of the Health Occupations Article shall use two peer reviewers, and in
38 the event of a lack of agreement between the two reviewers, the Board shall use a
39 third reviewer to reach a final peer review decision.

1 SECTION 10. AND BE IT FURTHER ENACTED, That the Secretary of
2 Health and Mental Hygiene, in conjunction with the health occupations boards in the
3 Department of Health and Mental Hygiene and the Attorney General's Office, shall
4 evaluate the appropriateness of the clear and convincing standard as the evidentiary
5 standard for discipline by all health occupations boards. The Secretary, in conjunction
6 with the health occupations boards and the Attorney General's Office, shall consider
7 in the evaluation the legal protections afforded licensed health professionals by the
8 federal Constitution and the holding in the case of Bang D. Nguyen v. State of
9 Washington Department of Health Medical Quality Assurance Commission, 144
10 WN.2d 516, 29 P.3d 659 (2001). On or before December 1, 2002, the Secretary shall
11 report the findings of the evaluation and any recommendations for statutory changes
12 to the Senate Education, Health, and Environmental Affairs Committee and the
13 House Environmental Matters Committee.

14 SECTION 7, ~~10~~, 11. AND BE IT FURTHER ENACTED, That, except as
15 provided in Section 8 of this Act, this Act shall take effect July 1, 2002.