
By: **Senator Hollinger (Chairman, Health Subcommittee)**
Introduced and read first time: February 1, 2002
Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

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
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 (Faculty); adding certain members to the
12 membership of the Board; altering the requirements for certain practicing
13 licensed physician members of the Board; altering the appointment process for
14 certain physician members of the Board; changing one of the consumer members
15 of the Board to be a certain public member of the Board; altering the
16 requirements for both the consumer members and the public member of the
17 Board; requiring the Board to provide a certain notice of a vacancy of certain
18 members of the Board, to provide information regarding a certain selection
19 process, to solicit professional organizations and licensed physicians in the State
20 to submit a certain nomination or petition, and to forward to the Governor a list
21 of all valid nominations and petitions; authorizing the Governor to make certain
22 reappointments and appointments to the Board in a certain manner; repealing a
23 provision of law requiring the chairman of the Board to be appointed by the
24 Governor; providing for the chairman of the Board to be elected by the members
25 of the Board; requiring fees charged by the Board to approximate the costs of
26 maintaining the Board; requiring certain interest and other investment income
27 to be paid into the Board of Physician Quality Assurance Fund (Fund); requiring
28 the Board to fund the budget of the Physician Rehabilitation Committee with
29 fees collected and distributed to the Fund; authorizing the Board to allocate
30 moneys from the Fund after review and approval of a certain budget; requiring
31 a certain vote of the Board in order to dismiss certain actions against a
32 restricted license holder; repealing provisions of law requiring the Faculty to
33 conduct certain investigations and peer review and to provide certain
34 malpractice information to the Board; requiring the Board to enter into a
35 written contract with an entity to provide certain investigation and peer review

1 services; prohibiting a certain agreement for corrective action from being used
2 except under certain circumstances; specifying that the members of the
3 Physician Rehabilitation Committee are appointed by the Faculty; requiring the
4 chairman of the Board to appoint a member to serve as a liaison to the Physician
5 Rehabilitation Committee; authorizing the chairman of the Board to appoint a
6 certain subcommittee of the Board to conduct certain hearings in a certain
7 manner; requiring a certain vote of the Board in order to dismiss certain charges
8 against a licensee; altering certain requirements for licensee profiles created by
9 the Board; requiring the Board to maintain a single website containing certain
10 information; modifying the termination provision for the Maryland Respiratory
11 Care Practitioners Act; defining a certain term; delaying the effective date of a
12 section of this Act and providing that the section is contingent on the Governor's
13 including certain funds in the budget in a certain fiscal year; specifying the
14 terms of certain members of the Board; requiring the Board to submit a certain
15 report on the financial condition of the Board by a certain date; requiring the
16 Board to submit a certain report on investigative caseloads by a certain date;
17 requiring the Board and the Office of the Attorney General to review a certain
18 process, make certain recommendations, and submit a certain report by a
19 certain date; requiring the Board to implement certain changes to the
20 Exceptions Process; requiring the Board to utilize an additional reviewer if
21 certain peer reviewers do not reach an agreement; exempting the Board from
22 certain provisions of law requiring a certain preliminary evaluation; requiring
23 the Governor to include certain funds for certain programs administered by the
24 Maryland Higher Education Commission in a certain fiscal year; providing for a
25 delayed effective date; and generally relating to the State Board of Physician
26 Quality Assurance.

27 BY repealing and reenacting, with amendments,
28 Article - Courts and Judicial Proceedings
29 Section 3-2A-04(a)
30 Annotated Code of Maryland
31 (1998 Replacement Volume and 2001 Supplement)

32 BY repealing and reenacting, with amendments,
33 Article - Health Occupations
34 Section 14-101, 14-202, 14-203, 14-207, 14-321(e), 14-401, 14-402, 14-405,
35 14-406, 14-411.1, 14-5A-25, and 14-702
36 Annotated Code of Maryland
37 (2000 Replacement Volume and 2001 Supplement)

38 BY repealing and reenacting, without amendments,
39 Article - Health Occupations
40 Section 14-404 and 14-413
41 Annotated Code of Maryland
42 (2000 Replacement Volume and 2001 Supplement)

1 BY repealing and reenacting, with amendments,
2 Article - State Government
3 Section 8-403(b)(50)
4 Annotated Code of Maryland
5 (1999 Replacement Volume and 2001 Supplement)

6 BY repealing and reenacting, with amendments,
7 Article - Health Occupations
8 Section 14-207(c)
9 Annotated Code of Maryland
10 (2000 Replacement Volume and 2001 Supplement)
11 (As enacted by Section 1 of this Act)

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

14 **Article - Courts and Judicial Proceedings**

15 3-2A-04.

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

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

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

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

Article - Health Occupations

1 14-101.

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

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

4 (c) "Civil action" includes a health care malpractice claim under Title 3,
5 Subtitle 2A of the Courts Article.

6 (d) "Faculty" means the Medical and Chirurgical Faculty of the State of
7 Maryland.

8 (e) "Hospital" has the meaning stated in § 19-301 of the Health - General
9 Article.

10 (f) "License" means, unless the context requires otherwise, a license issued by
11 the Board to practice medicine.

12 (g) "Licensed physician" means, unless the context requires otherwise, a
13 physician, including a doctor of osteopathy, who is licensed by the Board to practice
14 medicine.

15 (h) "Licensee" means an individual to whom a license is issued, including an
16 individual practicing medicine within or as a professional corporation or professional
17 association.

18 (i) "Perform acupuncture" means to stimulate a certain point or points on or
19 near the surface of the human body by the insertion of needles to prevent or modify
20 the perception of pain or to normalize physiological functions, including pain control,
21 for the treatment of ailments or conditions of the body.

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

23 (k) "PHYSICIAN REHABILITATION COMMITTEE" MEANS THE COMMITTEE OF
24 THE FACULTY THAT EVALUATES AND PROVIDES ASSISTANCE TO IMPAIRED
25 PHYSICIANS IN NEED OF TREATMENT AND REHABILITATION FOR ALCOHOLISM,
26 CHEMICAL DEPENDENCY, OR OTHER PHYSICAL, EMOTIONAL, OR MENTAL
27 CONDITIONS.

28 (L) (1) "Practice medicine" means to engage, with or without compensation,
29 in medical:

30 (i) Diagnosis;

31 (ii) Healing;

32 (iii) Treatment; or

33 (iv) Surgery.

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

3 (i) Diagnosing, healing, treating, preventing, prescribing for, or
4 removing any physical, mental, or emotional ailment or supposed ailment of an
5 individual:

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

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

9 (ii) Ending of a human pregnancy; and

10 (iii) Performing acupuncture.

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

12 (i) Selling any nonprescription drug or medicine;

13 (ii) Practicing as an optician; or

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

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

18 14-202.

19 (a) (1) The Board shall consist of [15] 21 members appointed by the
20 Governor WITH THE ADVICE OF THE SECRETARY.

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

22 (i) [10] 15 [shall be practicing licensed physicians] appointed
23 [from a list submitted by the Faculty] AS FOLLOWS:

24 1. 7 SHALL BE PRACTICING LICENSED PHYSICIANS WHO
25 PRIMARILY SPECIALIZE IN:

26 A. INTERNAL MEDICINE;

27 B. PSYCHIATRY;

28 C. FAMILY PRACTICE;

29 D. OBSTETRICS/GYNECOLOGY;

30 E. ANESTHESIOLOGY;

1 F. SURGERY; AND

2 G. ORTHOPAEDICS; AND

3 2. 8 SHALL BE PRACTICING LICENSED PHYSICIANS;

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

6 (iii) [1 shall be a representative of the Department nominated by
7 the Secretary;] 1 SHALL BE A PRACTICING LICENSED PHYSICIAN WHO PRACTICES
8 COMPLEMENTARY AND ALTERNATIVE METHODS OF CARE APPOINTED AT THE
9 GOVERNOR'S DISCRETION WITH THE ADVICE OF THE SECRETARY;

10 (IV) 1 SHALL BE A PRACTICING LICENSED PHYSICIAN APPOINTED
11 TO SERVE AS A REPRESENTATIVE OF AN ACADEMIC MEDICAL INSTITUTION IN THIS
12 STATE APPOINTED FROM A LIST CONTAINING:

13 1. 3 NAMES SUBMITTED BY THE JOHNS HOPKINS
14 UNIVERSITY SCHOOL OF MEDICINE; AND

15 2. 3 NAMES SUBMITTED BY THE UNIVERSITY OF MARYLAND
16 SCHOOL OF MEDICINE;

17 [(iv)] (V) 2 shall be consumer members appointed with the advice
18 and consent of the Senate; and

19 [(v)] (VI) 1 shall be a [consumer] PUBLIC member knowledgeable in
20 risk management or quality assurance matters appointed from a list submitted by the
21 Maryland Hospital Association.

22 (b) (1) Each consumer OR PUBLIC member of the Board:

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

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

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

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

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

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

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

1 (2) A CONSUMER MEMBER OF THE BOARD MAY NOT HAVE A
2 SUBSTANTIAL PERSONAL, BUSINESS, PROFESSIONAL, OR PECUNIARY CONNECTION
3 WITH A MEDICAL FIELD OR WITH AN INSTITUTION OF MEDICAL EDUCATION OR A
4 HEALTH CARE FACILITY.

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

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

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

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

14 (e)] While SERVING AS a member of the Board, [a] EACH consumer member
15 [may not have a substantial financial interest in a person regulated by the Board]
16 AND THE PUBLIC MEMBER SHALL CONTINUE TO MEET THE REQUIREMENTS OF
17 SUBSECTION (B) OF THIS SECTION.

18 (D) (1) FOR EACH VACANCY OF A PRACTICING LICENSED PHYSICIAN
19 APPOINTED BY THE GOVERNOR WITH THE ADVICE OF THE SECRETARY UNDER
20 SUBSECTION (A)(2)(I) OF THIS SECTION, THE BOARD SHALL:

21 (I) NOTIFY ALL PRACTICING LICENSED PHYSICIANS AND
22 PROFESSIONAL ORGANIZATIONS REPRESENTING AT LEAST 25 LICENSED PHYSICIANS
23 IN THE STATE OF THE VACANCY;

24 (II) PROVIDE INFORMATION REGARDING THE SELECTION PROCESS
25 AS PROVIDED UNDER SUBSECTION (A)(2)(I) OF THIS SECTION;

26 (III) SOLICIT NOMINATIONS FOR THE VACANCY; AND

27 (IV) FORWARD TO THE GOVERNOR:

28 1. VALID NOMINATIONS SUBMITTED BY PROFESSIONAL
29 ORGANIZATIONS REPRESENTING AT LEAST 25 LICENSED PHYSICIANS IN THE STATE;
30 AND

31 2. VALID PETITIONS SUBMITTED BY PRACTICING LICENSED
32 PHYSICIANS.

33 (2) THE BOARD SHALL MEET THE REQUIREMENTS OF PARAGRAPH (1) OF
34 THIS SUBSECTION WITHIN:

35 (I) 4 MONTHS PRIOR TO AN UPCOMING VACANCY ON THE BOARD;
36 OR

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

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

4 (1) MAY:

5 (I) REAPPOINT A MEMBER WHO HAS NOT SERVED FOR MORE THAN
6 TWO CONSECUTIVE FULL TERMS; OR

7 (II) APPOINT A PRACTICING LICENSED PHYSICIAN IN ACCORDANCE
8 WITH SUBSECTION (A)(2)(I) OF THIS SECTION FROM LISTS SUBMITTED BY THE BOARD
9 AS PROVIDED IN SUBSECTION (D)(1)(IV) OF THIS SECTION; AND

10 (2) MAY NOT REAPPOINT OR APPOINT A PRACTICING LICENSED
11 PHYSICIAN FROM A PARTICULAR MEDICAL SPECIALTY IF THERE ARE 2 CURRENT
12 MEMBERS SERVING ON THE BOARD FROM THE SAME MEDICAL SPECIALTY.

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

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

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

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

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

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

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

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

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

33 (3) The Governor may remove a member for incompetence or
34 misconduct.

1 14-203.

2 (a) [The Governor shall appoint the chairman of the Board from among the
3 physician members on the Board.

4 (b)] From among its members, the Board shall elect a CHAIRMAN,
5 secretary-treasurer, and any other officers that it considers necessary.

6 [(c)] (B) The Board shall determine:

7 (1) The manner of election of officers;

8 (2) The term of office of each officer; and

9 (3) The duties of each officer.

10 14-207.

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

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

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

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

18 (c) (1) [Except for fees assessed in accordance with the provisions of §
19 14-402(e) of this title, the] THE Board shall pay all fees collected under the provisions
20 of this title to the Comptroller of the State.

21 (2) The Comptroller shall distribute:

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

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

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

32 (ii) The balance of the fees to the Board of Physician Quality
33 Assurance Fund.

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

4 (2) (i) The Fund is a continuing, nonlapsing fund, not subject to §
5 7-302 of the State Finance and Procurement Article.

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

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

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

12 (e) (1) IN ADDITION TO THE REQUIREMENTS OF SUBSECTION (D) OF THIS
13 SECTION, THE BOARD SHALL FUND THE BUDGET OF THE PHYSICIAN
14 REHABILITATION COMMITTEE WITH FEES SET, COLLECTED, AND DISTRIBUTED TO
15 THE FUND UNDER THIS TITLE.

16 (2) AFTER REVIEW AND APPROVAL BY THE BOARD OF A BUDGET
17 SUBMITTED BY THE PHYSICIAN REHABILITATION COMMITTEE, THE BOARD MAY
18 ALLOCATE MONEYS FROM THE FUND TO THE PHYSICIAN REHABILITATION
19 COMMITTEE.

20 (F) (1) The chairman of the Board or the designee of the chairman shall
21 administer the Fund.

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

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

26 14-321.

27 (e) (1) Subject to the requirements of the Administrative Procedure Act, the
28 Board on the affirmative vote of its full authorized membership, may reprimand a
29 restricted license holder, may place any restricted license holder on probation, or
30 suspend or revoke a restricted license for any of the grounds for Board action under §
31 14-404 of this title.

32 (2) THE BOARD MAY ONLY DISMISS A CASE AGAINST A RESTRICTED
33 LICENSE HOLDER ON THE AFFIRMATIVE VOTE OF ITS FULL AUTHORIZED
34 MEMBERSHIP.

1 14-401.

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

5 (b) If an allegation of grounds for disciplinary or other action is made by a
6 patient or a family member of a patient [in a standard of care case] BASED ON §
7 14-404(A)(22) OF THIS SUBTITLE and a full investigation results from that allegation,
8 the full investigation shall include an offer of an interview with the patient or a
9 family member of the patient who was present on or about the time that the incident
10 that gave rise to the allegation occurred.

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

14 (i) Refer the allegation for further investigation to the [Faculty]
15 ENTITY THAT HAS CONTRACTED WITH THE BOARD UNDER SUBSECTION (E) OF THIS
16 SECTION;

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

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

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

27 [(ii)] The Faculty may refer the allegation for investigation and
28 report to the appropriate:

29 1. County medical society; or

30 2. Committee of the Faculty.]

31 (3) If, after performing any necessary preliminary investigation, the
32 Board determines that an allegation involving fees for professional or ancillary
33 services does not constitute grounds for disciplinary or other action, the Board shall
34 offer the complainant and the licensee an opportunity to mediate the dispute.

35 (4) (i) [If the Board determines that an agreement for corrective
36 action is warranted and patient safety is not an issue, the Board shall notify the
37 licensee of the identified deficiencies and enter into an agreement for corrective
38 action, which may not be made public and which shall not be considered a disciplinary

1 action for purposes of this subtitle.] EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF
2 THIS PARAGRAPH, IF AN ALLEGATION IS BASED ON § 14-404(40) OF THIS SUBTITLE,
3 THE BOARD:

4 1. MAY DETERMINE THAT AN AGREEMENT FOR CORRECTIVE
5 ACTION IS WARRANTED; AND

6 2. SHALL NOTIFY THE LICENSEE OF THE IDENTIFIED
7 DEFICIENCIES AND ENTER INTO AN AGREEMENT FOR CORRECTIVE ACTION WITH
8 THE LICENSEE AS PROVIDED IN THIS PARAGRAPH.

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

11 [(ii)] (III) The Board shall subsequently evaluate the licensee and
12 shall:

13 1. Terminate the corrective action if the Board is satisfied
14 that the licensee is in compliance with the agreement for corrective action and has
15 corrected the deficiencies; or

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

19 (IV) AN AGREEMENT FOR CORRECTIVE ACTION UNDER THIS
20 PARAGRAPH MAY NOT BE MADE PUBLIC OR CONSIDERED A DISCIPLINARY ACTION
21 UNDER THIS TITLE.

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

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

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

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

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

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

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

8 (E) THE BOARD SHALL ENTER INTO A WRITTEN CONTRACT WITH AN ENTITY
9 OR ENTITIES FOR FURTHER INVESTIGATION AND PHYSICIAN PEER REVIEW OF
10 ALLEGATIONS BASED ON § 14-404(A)(22) OF THIS SUBTITLE.

11 (f) (1) To facilitate the investigation and prosecution of disciplinary matters
12 and the mediation of fee disputes coming before it, the Board may:

13 (i) Contract with the Faculty, its committees, and the component
14 medical societies for the purchase of investigatory, mediation, and related services;
15 and

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

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

21 (i) Investigators;

22 (ii) Attorneys;

23 (iii) Accountants;

24 (iv) Expert witnesses;

25 (v) Consultants; and

26 (vi) Mediators.

27 (g) The Board may issue subpoenas and administer oaths in connection with
28 any investigation under this section and any hearing or proceeding before it.

29 (h) Those individuals not licensed under this title but covered under §
30 14-413(a)(1)(ii)3 and 4 of this subtitle are subject to the hearing provisions of §
31 14-405 of this subtitle.

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

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

4 14-402.

5 (a) In reviewing an application for licensure, certification, or registration or in
6 investigating an allegation brought against a licensed physician or any allied health
7 professional regulated by the Board under this title, the [medical society or Faculty
8 committee] PHYSICIAN REHABILITATION COMMITTEE may request the Board to
9 direct, or the Board on its own initiative may direct, the licensed physician or any
10 allied health professional regulated by the Board under this title to submit to an
11 appropriate examination.

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

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

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

19 (c) The unreasonable failure or refusal of the licensed, certified, or registered
20 individual to submit to an examination is prima facie evidence of the licensed,
21 certified, or registered individual's inability to practice medicine or the respective
22 discipline competently, unless the Board finds that the failure or refusal was beyond
23 the control of the licensed, certified, or registered individual.

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

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

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

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

34 (2) THE CHAIRMAN OF THE BOARD SHALL APPOINT ONE MEMBER OF
35 THE BOARD TO SERVE AS A LIAISON TO THE PHYSICIAN REHABILITATION
36 COMMITTEE.

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

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

5 14-404.

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

10 (1) Fraudulently or deceptively obtains or attempts to obtain a license
11 for the applicant or licensee or for another;

12 (2) Fraudulently or deceptively uses a license;

13 (3) Is guilty of immoral or unprofessional conduct in the practice of
14 medicine;

15 (4) Is professionally, physically, or mentally incompetent;

16 (5) Solicits or advertises in violation of § 14-505 of this title;

17 (6) Abandons a patient;

18 (7) Habitually is intoxicated;

19 (8) Is addicted to, or habitually abuses, any narcotic or controlled
20 dangerous substance as defined in Article 27 of the Code;

21 (9) Provides professional services:

22 (i) While under the influence of alcohol; or

23 (ii) While using any narcotic or controlled dangerous substance, as
24 defined in Article 27 of the Code, or other drug that is in excess of therapeutic
25 amounts or without valid medical indication;

26 (10) Promotes the sale of drugs, devices, appliances, or goods to a patient
27 so as to exploit the patient for financial gain;

28 (11) Willfully makes or files a false report or record in the practice of
29 medicine;

30 (12) Willfully fails to file or record any medical report as required under
31 law, willfully impedes or obstructs the filing or recording of the report, or induces
32 another to fail to file or record the report;

1 (13) On proper request, and in accordance with the provisions of Title 4,
2 Subtitle 3 of the Health - General Article, fails to provide details of a patient's
3 medical record to the patient, another physician, or hospital;

4 (14) Solicits professional patronage through an agent or other person or
5 profits from the acts of a person who is represented as an agent of the physician;

6 (15) Pays or agrees to pay any sum to any person for bringing or referring
7 a patient or accepts or agrees to accept any sum from any person for bringing or
8 referring a patient;

9 (16) Agrees with a clinical or bioanalytical laboratory to make payments
10 to the laboratory for a test or test series for a patient, unless the licensed physician
11 discloses on the bill to the patient or third-party payor:

12 (i) The name of the laboratory;

13 (ii) The amount paid to the laboratory for the test or test series; and

14 (iii) The amount of procurement or processing charge of the licensed
15 physician, if any, for each specimen taken;

16 (17) Makes a willful misrepresentation in treatment;

17 (18) Practices medicine with an unauthorized person or aids an
18 unauthorized person in the practice of medicine;

19 (19) Grossly overutilizes health care services;

20 (20) Offers, undertakes, or agrees to cure or treat disease by a secret
21 method, treatment, or medicine;

22 (21) Is disciplined by a licensing or disciplinary authority or convicted or
23 disciplined by a court of any state or country or disciplined by any branch of the
24 United States uniformed services or the Veterans' Administration for an act that
25 would be grounds for disciplinary action under this section;

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

29 (23) Willfully submits false statements to collect fees for which services
30 are not provided;

31 (24) Was subject to investigation or disciplinary action by a licensing or
32 disciplinary authority or by a court of any state or country for an act that would be
33 grounds for disciplinary action under this section and the licensee:

34 (i) Surrendered the license issued by the state or country to the
35 state or country; or

- 1 (ii) Allowed the license issued by the state or country to expire or
2 lapse;
- 3 (25) Knowingly fails to report suspected child abuse in violation of § 5-704
4 of the Family Law Article;
- 5 (26) Fails to educate a patient being treated for breast cancer of
6 alternative methods of treatment as required by § 20-113 of the Health - General
7 Article;
- 8 (27) Sells, prescribes, gives away, or administers drugs for illegal or
9 illegitimate medical purposes;
- 10 (28) Fails to comply with the provisions of § 12-102 of this article;
- 11 (29) Refuses, withholds from, denies, or discriminates against an
12 individual with regard to the provision of professional services for which the licensee
13 is licensed and qualified to render because the individual is HIV positive;
- 14 (30) Except as to an association that has remained in continuous
15 existence since July 1, 1963:
- 16 (i) Associates with a pharmacist as a partner or co-owner of a
17 pharmacy for the purpose of operating a pharmacy;
- 18 (ii) Employs a pharmacist for the purpose of operating a pharmacy;
19 or
- 20 (iii) Contracts with a pharmacist for the purpose of operating a
21 pharmacy;
- 22 (31) Except in an emergency life-threatening situation where it is not
23 feasible or practicable, fails to comply with the Centers for Disease Control's
24 guidelines on universal precautions;
- 25 (32) Fails to display the notice required under § 14-415 of this title;
- 26 (33) Fails to cooperate with a lawful investigation conducted by the
27 Board;
- 28 (34) Is convicted of insurance fraud as defined in § 27-801 of the
29 Insurance Article;
- 30 (35) Is in breach of a service obligation resulting from the applicant's or
31 licensee's receipt of State or federal funding for the licensee's medical education;
- 32 (36) Willfully makes a false representation when seeking or making
33 application for licensure or any other application related to the practice of medicine;
- 34 (37) By corrupt means, threats, or force, intimidates or influences, or
35 attempts to intimidate or influence, for the purpose of causing any person to withhold

1 or change testimony in hearings or proceedings before the Board or those otherwise
2 delegated to the Office of Administrative Hearings;

3 (38) By corrupt means, threats, or force, hinders, prevents, or otherwise
4 delays any person from making information available to the Board in furtherance of
5 any investigation of the Board;

6 (39) Intentionally misrepresents credentials for the purpose of testifying
7 or rendering an expert opinion in hearings or proceedings before the Board or those
8 otherwise delegated to the Office of Administrative Hearings; or

9 (40) Fails to keep adequate medical records as determined by appropriate
10 peer review.

11 (b) (1) On the filing of certified docket entries with the Board by the Office
12 of the Attorney General, the Board shall order the suspension of a license if the
13 licensee is convicted of or pleads guilty or nolo contendere with respect to a crime
14 involving moral turpitude, whether or not any appeal or other proceeding is pending
15 to have the conviction or plea set aside.

16 (2) After completion of the appellate process if the conviction has not
17 been reversed or the plea has not been set aside with respect to a crime involving
18 moral turpitude, the Board shall order the revocation of a license on the certification
19 by the Office of the Attorney General.

20 14-405.

21 (a) Except as otherwise provided in the Administrative Procedure Act, before
22 the Board takes any action under § 14-404(a) of this subtitle or § 14-5A-17(a) or §
23 14-606(f) of this title, it shall give the individual against whom the action is
24 contemplated an opportunity for a hearing before a hearing officer OR THE
25 SUBCOMMITTEE OF THE BOARD ESTABLISHED UNDER SUBSECTION (B) OF THIS
26 SECTION.

27 (B) THE CHAIRMAN OF THE BOARD MAY DELEGATE THE AUTHORITY TO
28 CONDUCT A HEARING TO A SUBCOMMITTEE CONSISTING OF THREE OR MORE BOARD
29 MEMBERS.

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

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

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

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

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

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

8 14-406.

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

13 (b) After the charges are filed, if the Board finds, ON AN AFFIRMATIVE VOTE
14 OF ITS FULL AUTHORIZED MEMBERSHIP, that there are no grounds for action under §
15 14-404 of this subtitle, the Board:

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

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

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

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

23 14-411.1.

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

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

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

31 (2) A description of any final disciplinary action taken by a licensing
32 board in any other state or jurisdiction against the licensee within the most recent
33 10-year period as reported to the National Practitioner Data Bank;

34 (3) THE NUMBER OF MEDICAL MALPRACTICE COURT JUDGMENTS AND
35 ARBITRATION AWARDS AGAINST THE LICENSEE WITHIN THE MOST RECENT 10-YEAR
36 PERIOD;

1 (4) THE NUMBER OF MEDICAL MALPRACTICE SETTLEMENTS INVOLVING
2 THE LICENSEE WITH A SETTLEMENT AMOUNT OF \$150,000 OR GREATER WITHIN THE
3 MOST RECENT 10-YEAR PERIOD;

4 (5) A DESCRIPTION OF ANY ACTIONS RELATING TO THE LICENSEE THAT
5 MIGHT BE GROUNDS FOR DISCIPLINARY ACTION UNDER § 14-404 OF THIS SUBTITLE
6 THAT ARE REPORTED TO THE BOARD BY HOSPITALS OR RELATED INSTITUTIONS
7 UNDER § 14-413(A) OF THIS SUBTITLE WITHIN THE MOST RECENT 10-YEAR PERIOD;

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

11 (7) MEDICAL EDUCATION AND PRACTICE INFORMATION ABOUT THE
12 LICENSEE INCLUDING:

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

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

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

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

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

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

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

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

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

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

34 (2) INCLUDE A STATEMENT ON EACH LICENSEE'S PROFILE OF
35 INFORMATION TO BE TAKEN INTO CONSIDERATION BY A CONSUMER WHEN VIEWING

1 A LICENSEE'S PROFILE, INCLUDING FACTORS TO CONSIDER WHEN EVALUATING A
2 LICENSEE'S MALPRACTICE DATA.

3 (d) The Board:

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

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

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

11 (1) Unless the licensee authorizes and requests a copy of the licensee's
12 profile by electronic means, provide a licensee with a written copy of the licensee's
13 profile; and

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

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

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

23 14-413.

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

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

- 28 1. Is employed by the hospital or related institution;
29 2. Has privileges with the hospital or related institution; and
30 3. Has applied for privileges with the hospital or related
31 institution; and

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

- 34 1. The hospital or related institution denied the application
35 of a physician for staff privileges or limited, reduced, otherwise changed, or

1 (d) Any person shall have the immunity from liability described under §
2 5-715(d) of the Courts and Judicial Proceedings Article for giving any of the
3 information required by this section.

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

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

9 14-5A-25.

10 Subject to the evaluation and reestablishment provisions of the Maryland
11 Program Evaluation Act AND SUBJECT TO THE TERMINATION OF THIS TITLE UNDER
12 § 14-702 OF THIS TITLE, this subtitle and all rules and regulations adopted under this
13 subtitle shall terminate and be of no effect after July 1, 2006.

14 14-702.

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

18 **Article - State Government**

19 8-403.

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

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

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

28 **Article - Health Occupations**

29 14-207.

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

32 (2) The Comptroller shall distribute[:

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

1 (4) a detailed plan to address the expenditures identified in the fiscal
2 estimate.

3 SECTION 6. AND BE IT FURTHER ENACTED, That on or before January 1,
4 2003, the State Board of Physician Quality Assurance and the Office of the Attorney
5 General (OAG) shall:

6 (1) review all aspects of the Board investigative processes;

7 (2) recommend a revised investigative process that will ensure in a consistent
8 manner that all cases transmitted to the OAG are fully investigated and developed to
9 the satisfaction of both the Board and the OAG so that cases can proceed with the
10 minimum of additional delay after transmittal; and

11 (3) in accordance with § 2-1246 of the State Government Article, report to the
12 Governor, the Senate Education, Health, and Environmental Affairs Committee and
13 the House Environmental Matters Committee on the findings, recommendations and
14 any legislative or regulatory changes necessary to implement the recommended
15 changes.

16 SECTION 7. AND BE IT FURTHER ENACTED, That the State Board of
17 Physician Quality Assurance, in conducting an Exceptions Hearing as provided in
18 COMAR 10.32.02.03F, shall provide an opportunity to appear before the Board to both
19 the licensee who has been charged and the individual who has filed the complaint
20 against the licensee giving rise to the charge and shall adopt regulations to
21 implement this section.

22 SECTION 8. AND BE IT FURTHER ENACTED, That the entity or entities with
23 which the State Board of Physician Quality Assurance contracts under § 14-401(e) of
24 the Health Occupations Article for further investigation and peer review of
25 allegations based on § 14-404(a)(22) of the Health Occupations Article shall utilize
26 two peer reviewers, and in the event of a lack of agreement between the two
27 reviewers, the Board shall utilize a third reviewer to render a final peer review
28 decision.

29 SECTION 9. AND BE IT FURTHER ENACTED, That the provisions of § 8-404
30 of the State Government Article requiring a preliminary evaluation do not apply to
31 the State Board of Physician Quality Assurance prior to the evaluation required on or
32 before July 1, 2007.

33 SECTION 10. AND BE IT FURTHER ENACTED, That Section 2 of this Act
34 shall take effect July 1, 2003 contingent on the Governor including in the budget for
35 fiscal year 2004 at least \$750,000 for the operation of the Health Manpower Shortage
36 Incentive Grant Program and the Loan Assistance Repayment Program - Primary
37 Care Services administered by the Maryland Higher Education Commission.

38 SECTION 11. AND BE IT FURTHER ENACTED, That, except as provided in
39 Section 10 of this Act, this Act shall take effect July 1, 2002.