

HOUSE BILL 1299
SECOND PRINTING

Unofficial Copy
D3

2004 Regular Session
4r2993

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Introduced and read first time: February 13, 2004
Assigned to: Economic Matters and Judiciary

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 27, 2004

CHAPTER _____

1 AN ACT concerning

2 ~~Task Force on~~ **Medical Malpractice Reforms and Task Force**

3 FOR the purpose of ~~establishing a Task Force on Medical Malpractice; providing for~~
4 ~~the composition, chairman, and staff of the Task Force; providing that members~~
5 ~~of the Task Force may not receive compensation, but may be reimbursed for~~
6 ~~certain expenses; providing for the duties of the Task Force; requiring the Task~~
7 ~~Force to report to the Governor and the General Assembly by a certain date;~~
8 ~~providing for the termination of this Act; and generally relating to the Task~~
9 ~~Force on Medical Malpractice; requiring that certain health care malpractice~~
10 ~~awards or verdicts be itemized in a certain manner; providing that a health care~~
11 ~~malpractice award or verdict be reduced to the extent of certain payments,~~
12 ~~reimbursements, or indemnification for past medical expenses, less certain~~
13 ~~costs, under certain circumstances; prohibiting certain recovery and certain~~
14 ~~claims of subrogation relating to certain payments, reimbursements, or~~
15 ~~indemnification under certain circumstances; requiring mediation of certain~~
16 ~~health care malpractice actions under certain circumstances; requiring the~~
17 ~~Court of Appeals to adopt a certain application process to be on a roster of~~
18 ~~mediators for a health care malpractice case; providing for certain mediation~~
19 ~~procedures and costs; providing for certain immunity from civil liability for~~

1 certain mediators; requiring a certain supplemental certificate of a qualified
2 expert in a health care malpractice claim or action under certain circumstances;
3 providing for the contents of the supplemental certificate; requiring certain
4 procedures concerning the supplemental certificate; providing that a health care
5 malpractice claim or action may be dismissed if a claimant or plaintiff fails to
6 file a certain supplemental certificate that meets certain requirements under
7 certain circumstances; limiting venue for certain actions against an insurer of a
8 health care provider under certain circumstances; defining certain terms;
9 requiring insurers providing professional liability insurance to a health care
10 provider in the State to submit certain information to the Maryland Insurance
11 Commissioner; authorizing the Commissioner to require certain insurers to
12 submit certain reports; requiring the Commissioner to submit a certain report to
13 the House Economic Matters Committee, House Judiciary Committee, Senate
14 Finance Committee, and Senate Judicial Proceedings Committee on or before a
15 certain date of each year; establishing a Task Force on Medical Malpractice;
16 providing for the composition, co-chairmen, and staff of the Task Force;
17 providing for the duties of the Task Force; requiring the Task Force to report to
18 the Governor and the General Assembly by a certain date; providing for the
19 termination of certain provisions of this Act; making stylistic changes; and
20 generally relating to medical malpractice tort and insurance reform.

21 BY repealing and reenacting, with amendments,
22 Article - Courts and Judicial Proceedings
23 Section 3-2A-01, 3-2A-04(b), 3-2A-05(e) and (h), 3-2A-06(f), 3-2A-09, and
24 5-615
25 Annotated Code of Maryland
26 (2002 Replacement Volume and 2003 Supplement)

27 BY repealing and reenacting, without amendments,
28 Article - Courts and Judicial Proceedings
29 Section 6-201 and 6-203(a)
30 Annotated Code of Maryland
31 (2002 Replacement Volume and 2003 Supplement)

32 BY adding to
33 Article - Courts and Judicial Proceedings
34 Section 3-2A-06C, 3-2A-06D, and 6-203(f)
35 Annotated Code of Maryland
36 (2002 Replacement Volume and 2003 Supplement)

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

1 Article - Courts and Judicial Proceedings

2 3-2A-01.

3 (a) In this subtitle the following terms have the meanings indicated unless the
4 context of their use requires otherwise.

5 (b) "Arbitration panel" means the arbitrators selected to determine a health
6 care malpractice claim in accordance with this subtitle.

7 (c) "Court" means a circuit court for a county.

8 (d) "Director" means the Director of the Health Claims Arbitration Office.

9 (e) (1) (I) "Health care provider" means a hospital, a related institution as
10 defined in § 19-301 of the Health - General Article, A MEDICAL DAY CARE CENTER, A
11 HOSPICE CARE PROGRAM, AN ASSISTED LIVING PROGRAM, A FREESTANDING
12 AMBULATORY CARE FACILITY AS DEFINED IN § 19-3B-01 OF THE HEALTH - GENERAL
13 ARTICLE, a physician, an osteopath, an optometrist, a chiropractor, a registered or
14 licensed practical nurse, a dentist, a podiatrist, a psychologist, a licensed certified
15 social worker-clinical, and a physical therapist, licensed or authorized to provide one
16 or more health care services in Maryland.

17 (II) "Health care provider" does not [mean] INCLUDE any nursing
18 institution conducted by and for those who rely upon treatment by spiritual means
19 through prayer alone in accordance with the tenets and practices of a recognized
20 church or religious denomination.

21 (f) "Medical injury" means injury arising or resulting from the rendering or
22 failure to render health care.

23 (G) "NONECONOMIC DAMAGES" MEANS:

24 (1) IN A CLAIM FOR PERSONAL INJURY, PAIN, SUFFERING,
25 INCONVENIENCE, PHYSICAL IMPAIRMENT, DISFIGUREMENT, LOSS OF CONSORTIUM,
26 OR OTHER NONPECUNIARY INJURY; OR

27 (2) IN A CLAIM FOR WRONGFUL DEATH, MENTAL ANGUISH, EMOTIONAL
28 PAIN AND SUFFERING, LOSS OF SOCIETY, COMPANIONSHIP, COMFORT, PROTECTION,
29 CARE, MARITAL CARE, PARENTAL CARE, FILIAL CARE, ATTENTION, ADVICE,
30 COUNSEL, TRAINING, GUIDANCE, OR EDUCATION, OR OTHER NONECONOMIC
31 DAMAGES AUTHORIZED UNDER SUBTITLE 9 OF THIS TITLE.

32 3-2A-04.

33 (b) Unless the sole issue in the claim is lack of informed consent:

34 (1) (i) 1. Except as provided in subparagraph (ii) of this paragraph,
35 a claim filed after July 1, 1986, shall be dismissed, without prejudice, if the claimant
36 fails to file a certificate of a qualified expert with the Director attesting to departure

- 1 (i) A party may not serve as a party's expert; and
2 (ii) The certificate may not be signed by:
3 1. A party;
4 2. An employee or partner of a party; or
5 3. An employee or stockholder of any professional
6 corporation of which the party is a stockholder.

7 3-2A-05.

8 (e) (1) The arbitration panel shall first determine the issue of liability with
9 respect to a claim referred to it.

10 (2) If the arbitration panel determines that the health care provider is
11 not liable to the claimant or claimants the award shall be in favor of the health care
12 provider.

13 (3) If the arbitration panel determines that a health care provider is
14 liable to the claimant or claimants, it shall then consider, itemize, assess, and
15 apportion appropriate damages against one or more of the health care providers that
16 it has found to be liable.

17 (4) [The award shall itemize by category and amount any damages
18 assessed for incurred medical expenses, rehabilitation costs, and loss of earnings.
19 Damages assessed for any future expenses, costs, and losses shall be itemized
20 separately.] THE ARBITRATION PANEL SHALL ITEMIZE THE AWARD TO REFLECT THE
21 MONETARY AMOUNT INTENDED FOR:

22 (I) PAST MEDICAL EXPENSES;

23 (II) FUTURE MEDICAL EXPENSES;

24 (III) PAST LOSS OF EARNINGS;

25 (IV) FUTURE LOSS OF EARNINGS;

26 (V) NONECONOMIC DAMAGES;

27 (VI) IN A WRONGFUL DEATH ACTION, THE PECUNIARY LOSS OR
28 BENEFIT; AND

29 (VII) OTHER DAMAGES.

30 (h) (1) A party may apply to the arbitration panel to modify or correct an
31 award as to liability, damages, or costs in accordance with § 3-222 of this article.

1 (2) (I) The application may include a request that damages be reduced
2 to the extent that the claimant has been or will be paid, reimbursed, or indemnified
3 under statute, insurance, or contract for all or part of the damages assessed.

4 (II) The panel chairman shall receive such evidence in support and
5 opposition to a request for reduction, including evidence of the cost to obtain such
6 payment, reimbursement, or indemnity.

7 (III) After hearing the evidence in support and opposition to the
8 request, the panel chairman:

9 1. SUBJECT TO ITEM 2 OF THIS SUBPARAGRAPH, may modify
10 the award if satisfied that modification is supported by the evidence; AND

11 2. SHALL MODIFY THE AWARD FOR DAMAGES FOR PAST
12 MEDICAL EXPENSES IF SATISFIED THAT MODIFICATION IS SUPPORTED BY THE
13 EVIDENCE.

14 (IV) 1. THIS SUBPARAGRAPH DOES NOT APPLY TO SUMS PAID OR
15 PAYABLE FOR PAST MEDICAL EXPENSES.

16 2. The award may not be modified as to any sums paid or
17 payable to a claimant under any workers' compensation act, criminal injuries
18 compensation act, employee benefit plan established under a collective bargaining
19 agreement between an employer and an employee or a group of employers and a
20 group of employees that is subject to the provisions of the federal Employee
21 Retirement Income Security Act of 1974, program of the Department of Health and
22 Mental Hygiene for which a right of subrogation exists under §§ 15-120 and 15-121.1
23 of the Health - General Article, or as a benefit under any contract or policy of life
24 insurance or Social Security Act of the United States. An award may not be modified
25 as to any damages assessed for any future expenses, costs, and losses unless the panel
26 chairman orders the defendant or the defendant's insurer to provide adequate
27 security or, if the insurer is authorized to do business in this State, maintains
28 reserves in compliance with rules of the Insurance Commissioner to assure the
29 payment of all such future damages up to the amount by which the award has been
30 modified as to such future damages in the event of termination.

31 (V) THE DAMAGES FOR PAST MEDICAL EXPENSES IN AN AWARD
32 MAY NOT BE MODIFIED AS TO ANY SUMS PAID OR PAYABLE TO A CLAIMANT:

33 1. UNDER ANY CRIMINAL INJURIES COMPENSATION ACT; OR

34 2. FOR WHICH A RIGHT TO RECOVER FROM THE CLAIMANT
35 OR FOR WHICH A RIGHT TO ASSERT A CLAIM OF SUBROGATION AGAINST A
36 DEFENDANT IS EXPRESSLY PROVIDED BY FEDERAL STATUTE.

37 (VI) [Except] NOTWITHSTANDING ANY OTHER PROVISION OF LAW,
38 EXCEPT as expressly provided by federal statute, no person may recover from the
39 claimant or assert a claim of subrogation against a defendant for any sum included in
40 the modification of an award.

1 3-2A-06.

2 (f) (1) Upon timely request, the trier of fact shall by special verdict or
3 specific findings itemize by category and amount any damages assessed for incurred
4 medical expenses, rehabilitation costs, and loss of earnings. Damages assessed for
5 any future expenses, costs, and losses shall be itemized separately. If the verdict or
6 findings include any amount for such expenses, costs, and losses, a] THE TRIER OF
7 FACT SHALL ITEMIZE THE VERDICT TO REFLECT THE MONETARY AMOUNT
8 INTENDED FOR:

9 (I) PAST MEDICAL EXPENSES;

10 (II) FUTURE MEDICAL EXPENSES;

11 (III) PAST LOSS OF EARNINGS;

12 (IV) FUTURE LOSS OF EARNINGS;

13 (V) NONECONOMIC DAMAGES;

14 (VI) IN A WRONGFUL DEATH ACTION, THE PECUNIARY LOSS OR
15 BENEFIT; AND

16 (VII) OTHER DAMAGES.

17 (2) A party filing a motion for a new trial may object to the damages as
18 excessive on the ground that the claimant has been or will be paid, reimbursed, or
19 indemnified to the extent and subject to the limits stated in § 3-2A-05(h) of this
20 subtitle.

21 (3) The court shall hold a hearing and receive evidence on the objection.

22 (4) (I) If the court finds from the evidence that the damages are
23 excessive on the grounds stated in § 3-2A-05(h) of this subtitle, subject to the limits
24 and conditions stated in § 3-2A-05(h) of this subtitle, it may grant a new trial as to
25 such damages or may deny a new trial if the claimant agrees to a remittitur of the
26 excess and the order required adequate security when warranted by the conditions
27 stated in § 3-2A-05(h) of this subtitle.

28 (II) In the event of a new trial granted under this subsection,
29 evidence considered by the court in granting the remittitur shall be admissible if
30 offered at the new trial and the jury shall be instructed to consider such evidence in
31 reaching its verdict as to damages.

32 (III) Upon a determination of those damages at the new trial, no
33 further objection to damages may be made exclusive of any party's right of appeal.

34 (5) (I) ON MOTION BY A PARTY, DAMAGES FOR PAST MEDICAL
35 EXPENSES IN A VERDICT SHALL BE REDUCED ON THE GROUND THAT THE CLAIMANT

1 WILL BE PAID, REIMBURSED, OR INDEMNIFIED TO THE EXTENT AND SUBJECT TO
2 THE LIMITS STATED IN § 3-2A-05(H) OF THIS SUBTITLE.

3 (II) THE COURT SHALL HOLD A HEARING AND RECEIVE EVIDENCE
4 ON THE MOTION.

5 (III) IF THE COURT FINDS FROM THE EVIDENCE THAT THE
6 DAMAGES FOR PAST MEDICAL EXPENSES HAVE BEEN OR WILL BE PAID,
7 REIMBURSED, OR INDEMNIFIED AS DESCRIBED IN § 3-2A-05(H) OF THIS SUBTITLE,
8 SUBJECT TO THE LIMITATIONS AND CONDITIONS STATED IN § 3-2A-05(H) OF THIS
9 SUBTITLE, THE COURT SHALL MODIFY THE DAMAGES FOR THE PAST MEDICAL
10 EXPENSES IN THE VERDICT.

11 (6) [Except] NOTWITHSTANDING ANY OTHER PROVISION OF LAW,
12 EXCEPT as expressly provided by federal law, no person may recover from the
13 claimant or assert a claim of subrogation against a defendant for any sum included;

14 (I) [in] IN a remittitur or awarded in a new trial on damages
15 granted under this subsection; OR

16 (II) IN A MODIFICATION FOR DAMAGES FOR PAST MEDICAL
17 EXPENSES IN A VERDICT.

18 (7) Nothing in this subsection shall be construed to otherwise limit the
19 common law grounds for remittitur.

20 3-2A-06C.

21 (A) IN THIS SECTION, "ROSTER" MEANS THE ROSTER OF MEDIATORS FOR
22 HEALTH CARE MALPRACTICE CASES.

23 (B) EXCEPT AS PROVIDED IN SUBSECTION (L)(1) OF THIS SECTION, ANY CLAIM
24 THAT IS FILED UNDER THIS SUBTITLE FOR WHICH ARBITRATION IS WAIVED UNDER §
25 3-2A-06A OR § 3-2A-06B OF THIS SUBTITLE IS SUBJECT TO MEDIATION UNDER THIS
26 SECTION.

27 (C) (1) THE COURT OF APPEALS SHALL ADOPT AN APPLICATION PROCESS
28 FOR QUALIFIED INDIVIDUALS TO BE ON A ROSTER OF MEDIATORS FOR A HEALTH
29 CARE MALPRACTICE CASE.

30 (2) IN ORDER TO BE LISTED ON THE ROSTER, AN INDIVIDUAL SHALL:

31 (I) BE QUALIFIED AS A MEDIATOR UNDER MARYLAND RULE
32 17-104;

33 (II) BE A MEMBER IN GOOD STANDING OF THE MARYLAND BAR;

34 (III) 1. HAVE AT LEAST 10 YEARS' EXPERIENCE IN THE ACTIVE
35 PRACTICE OF MEDICAL MALPRACTICE LAW; OR

36 2. HAVE SERVED AS A JUDGE IN A MARYLAND COURT; AND

(IV) AGREE:

1
2 1. TO ABIDE BY THE STANDARDS OF CONDUCT FOR
3 MEDIATORS ADOPTED BY THE COURT OF APPEALS IN ACCORDANCE WITH
4 MARYLAND RULE 17-104; AND

5 2. NOT TO CHARGE MORE THAN \$300 PER HOUR.

6 (3) A MEDIATOR SHALL ABIDE BY THE STANDARDS ADOPTED BY THE
7 COURT OF APPEALS.

8 (4) THE DIRECTOR SHALL MAINTAIN THE ROSTER OF MEDIATORS FOR A
9 HEALTH CARE MALPRACTICE CASE.

10 (D) (1) WITHIN 10 DAYS AFTER A SCHEDULING ORDER WITH A DISCOVERY
11 DEADLINE IS ISSUED BY THE COURT, THE PARTIES SHALL FILE A COPY OF THE
12 SCHEDULING ORDER WITH THE DIRECTOR.

13 (2) AT LEAST 75 DAYS BEFORE THE DISCOVERY DEADLINE IN THE
14 SCHEDULING ORDER, THE PARTIES MAY CHOOSE A MEDIATOR FROM THE ROSTER.

15 (3) IF THE PARTIES CHOOSE A MEDIATOR, THE PARTIES SHALL
16 IMMEDIATELY NOTIFY THE DIRECTOR OF THE NAME OF THE MEDIATOR.

17 (E) (1) IF THE PARTIES DO NOT NOTIFY THE DIRECTOR THAT THEY HAVE
18 CHOSEN A MEDIATOR WITHIN THE TIME REQUIRED UNDER SUBSECTION (D) OF THIS
19 SECTION, THE DIRECTOR SHALL ASSIGN, WITHIN 30 DAYS, A MEDIATOR FROM THE
20 ROSTER TO THE CASE.

21 (2) THE DIRECTOR MAY CONSULT WITH THE PARTIES BEFORE
22 ASSIGNING A MEDIATOR TO THE CASE.

23 (3) (I) BEFORE ASSIGNING A MEDIATOR, THE DIRECTOR SHALL
24 INQUIRE OF THE INDIVIDUAL AND BE SATISFIED THAT THE INDIVIDUAL DOES NOT
25 HAVE A PERSONAL OR ECONOMIC RELATIONSHIP WITH ANY OF THE PARTIES OR
26 THEIR ATTORNEYS, OR ANY CASE IN WHICH THE INDIVIDUAL IS A PARTY BEFORE
27 THE HEALTH CLAIMS ARBITRATION OFFICE, THAT MAY FORM THE BASIS OF ANY
28 PARTIALITY ON THE INDIVIDUAL'S PART.

29 (II) AFTER A PERSON IS SELECTED AS A MEDIATOR, IF THE
30 DIRECTOR DETERMINES, IN THE DIRECTOR'S JUDGMENT, THAT THE INDIVIDUAL
31 HAS A PERSONAL OR ECONOMIC RELATIONSHIP WITH A PARTY OR A PARTY'S
32 ATTORNEY, OR ANY CASE IN WHICH THE INDIVIDUAL IS A PARTY BEFORE THE
33 HEALTH CLAIMS ARBITRATION OFFICE, THAT MAY FORM THE BASIS OF ANY
34 PARTIALITY ON THE INDIVIDUAL'S PART, THE DIRECTOR SHALL ASSIGN ANOTHER
35 INDIVIDUAL TO BE THE MEDIATOR.

36 (F) (1) THE PARTIES SHALL CONTACT THE MEDIATOR TO ESTABLISH A
37 MEDIATION SCHEDULE THAT IS CONSISTENT WITH THE REQUIREMENTS OF THIS
38 SECTION.

1 (2) THE INITIAL MEDIATION SESSION SHALL BE HELD WITHIN 30 DAYS
2 FOLLOWING THE DISCOVERY DEADLINE.

3 (3) THE PARTIES SHALL SUBMIT TO A MINIMUM OF 2 HOURS OF
4 MEDIATION.

5 (4) ALL MEDIATION SESSIONS SHALL BE COMPLETED NO LATER THAN
6 30 DAYS AFTER THE DATE THAT DISCOVERY IS COMPLETED AND AT LEAST 90 DAYS
7 BEFORE THE DATE SCHEDULED FOR TRIAL.

8 (5) AT LEAST 24 HOURS BEFORE A SCHEDULED MEDIATION SESSION, A
9 PARTY SHALL PROVIDE NOTICE TO THE MEDIATOR OF A REQUEST BY THE PARTY TO
10 POSTPONE OR CANCEL THE MEDIATION SESSION.

11 (G) (1) AT LEAST 15 DAYS BEFORE THE INITIAL MEDIATION SESSION, EACH
12 PARTY SHALL SEND THE MEDIATOR A BRIEF WRITTEN OUTLINE OF THE STRENGTHS
13 AND WEAKNESSES OF THEIR RESPECTIVE CASES.

14 (2) A PARTY IS NOT REQUIRED TO PROVIDE TO ANOTHER PARTY THE
15 WRITTEN OUTLINE DESCRIBED IN THIS SUBSECTION.

16 (H) EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN MARYLAND RULE
17 17-109, THE OUTLINE DESCRIBED IN SUBSECTION (G) OF THIS SECTION AND ANY
18 MEDIATION COMMUNICATION UNDER THIS SECTION:

19 (1) IS PRIVILEGED;

20 (2) IS CONFIDENTIAL;

21 (3) MAY NOT BE DISCLOSED TO ANOTHER PARTY WITHOUT CONSENT;

22 (4) DOES NOT CONSTITUTE AN ADMISSION; AND

23 (5) IS NOT DISCOVERABLE.

24 (I) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, EACH
25 COUNSEL, PARTY, AND PERSON WITH ACTUAL SETTLEMENT AUTHORITY SHALL
26 ATTEND AND PARTICIPATE IN EACH MEDIATION SESSION HELD UNDER THIS
27 SECTION.

28 (2) A HEALTH CARE PROVIDER WHO IS NAMED AS A PARTY IN THE CASE
29 SHALL ATTEND EACH MEDIATION SESSION HELD UNDER THIS SECTION UNLESS THE
30 PARTIES, WITH THE APPROVAL OF THE MEDIATOR, AGREE TO WAIVE THE HEALTH
31 CARE PROVIDER'S PRESENCE AT THE MEDIATION SESSION.

32 (J) (1) A PARTY WHO FAILS TO COMPLY WITH THE PROVISIONS OF THIS
33 SECTION IS SUBJECT TO THE PROVISIONS OF MARYLAND RULE 1-341.

34 (2) THE COURT MAY IMPOSE SANCTIONS, INCLUDING CONTEMPT OR
35 REMOVAL OF THE CASE FROM THE TRIAL DOCKET, AGAINST A PARTY OR COUNSEL
36 WHO FAILS TO PARTICIPATE IN ONE OR MORE MEDIATION SESSIONS.

1 (3) A PARTY OR COUNSEL WHO FAILS TO ATTEND A MEDIATION SESSION
2 OR TO PROVIDE THE MEDIATOR WITH A TIMELY REQUEST FOR POSTPONEMENT OR
3 CANCELLATION OF A MEDIATION SESSION SHALL PAY THE MEDIATOR FOR THE TIME
4 THE MEDIATOR RESERVED FOR CONDUCTING THE MEDIATION SESSION.

5 (K) (1) IF A CASE IS SETTLED AS A RESULT OF MEDIATION, THE PARTIES
6 SHALL:

7 (I) IMMEDIATELY NOTIFY THE DIRECTOR THAT THE CASE HAS
8 BEEN SETTLED; AND

9 (II) FILE A STIPULATION OF DISMISSAL AND COURT COSTS AND A
10 COMPLETED SETTLEMENT ORDER WITH THE COURT.

11 (2) IF THE PARTIES FAIL TO AGREE TO A SETTLEMENT, THE MEDIATOR
12 SHALL:

13 (I) FILE A WRITTEN NOTICE WITH THE DIRECTOR AND THE COURT
14 THAT THE MEDIATION HAS NOT BEEN EFFECTIVE; AND

15 (II) SEND COPIES OF THE NOTICE TO THE PARTIES.

16 (L) (1) (I) AT LEAST 180 DAYS BEFORE THE DISCOVERY DEADLINE, A
17 PARTY MAY FILE A MOTION WITH THE COURT OBJECTING TO MEDIATION ON THE
18 GROUND THAT MEDIATION IS NOT APPROPRIATE UNDER THE CIRCUMSTANCES OF
19 THE CASE.

20 (II) WITHIN 30 DAYS AFTER THE MOTION UNDER THIS PARAGRAPH
21 IS FILED, THE COURT SHALL RULE ON THE MOTION AND MAY EXCEPT THE CASE
22 FROM MEDIATION UNDER THIS SECTION IF THE COURT FINDS THAT MEDIATION IS
23 NOT APPROPRIATE UNDER THE CIRCUMSTANCES OF THE CASE.

24 (2) THE REQUIREMENTS OF THIS SECTION MAY BE MODIFIED BY:

25 (I) AGREEMENT OF THE PARTIES WITH THE APPROVAL OF THE
26 MEDIATOR; OR

27 (II) ORDER OF THE COURT ON THE MOTION OF A PARTY.

28 (M) (1) THE PARTIES SHALL COMPENSATE THE MEDIATOR BASED ON THE
29 RATE APPROVED BY THE DIRECTOR.

30 (2) UNLESS OTHERWISE AGREED BY THE PARTIES, THE COST OF
31 MEDIATION SHALL BE DIVIDED EQUALLY BETWEEN THE PARTIES.

32 (N) A MEDIATOR SHALL HAVE THE IMMUNITY FROM SUIT DESCRIBED UNDER
33 § 5-615 OF THIS ARTICLE.

1 3-2A-06D.

2 (A) (1) THIS SECTION APPLIES ONLY TO A CLAIM OR ACTION FOR WHICH A
3 CERTIFICATE OF A QUALIFIED EXPERT WAS REQUIRED TO BE FILED IN
4 ACCORDANCE WITH § 3-2A-04(B) OF THIS SUBTITLE.

5 (2) EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS SECTION,
6 THE MARYLAND RULES APPLY TO ANY MOTION DESCRIBED IN THIS SECTION.

7 (B) SUBJECT TO THE PROVISIONS OF THIS SECTION, IF A CLAIMANT OR
8 PLAINTIFF FAILS TO FILE A SUPPLEMENTAL CERTIFICATE OF A QUALIFIED EXPERT,
9 A PANEL CHAIRMAN OR A COURT, AS THE CASE MAY BE, SHALL DISMISS, WITH
10 PREJUDICE, THE PLAINTIFF'S CLAIM OR ACTION.

11 (C) (1) WITHIN 15 DAYS AFTER THE DATE THAT MEDIATION, IF ANY, AND
12 DISCOVERY IS REQUIRED TO BE COMPLETED, A CLAIMANT OR PLAINTIFF SHALL FILE
13 A SUPPLEMENTAL CERTIFICATE OF A QUALIFIED EXPERT THAT ATTESTS TO:

14 (I) THE SPECIFIC INJURY COMPLAINED OF;

15 (II) THE SPECIFIC STANDARD OF CARE ALLEGED TO HAVE BEEN
16 BREACHED;

17 (III) THE CERTIFYING EXPERT'S BASIS FOR ALLEGING WHAT IS THE
18 SPECIFIC STANDARD OF CARE;

19 (IV) THE CERTIFYING EXPERT'S QUALIFICATIONS TO TESTIFY TO
20 THE SPECIFIC STANDARD OF CARE;

21 (V) HOW THE SPECIFIC STANDARD OF CARE WAS BREACHED;

22 (VI) WHAT SPECIFICALLY SHOULD THE DEFENDANT HAVE DONE TO
23 MEET THE SPECIFIC STANDARD OF CARE; AND

24 (VII) THE INFERENCE THAT THE BREACH OF THE STANDARD OF
25 CARE PROXIMATELY CAUSED THE PLAINTIFF'S INJURY.

26 (2) AN EXTENSION OF THE TIME ALLOWED FOR FILING A
27 SUPPLEMENTAL CERTIFICATE UNDER THIS SECTION SHALL BE GRANTED FOR GOOD
28 CAUSE SHOWN.

29 (3) (I) EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH (II) OF
30 THIS PARAGRAPH, A COPY OF A SUPPLEMENTAL CERTIFICATE SHALL BE FILED
31 WITH:

32 1. THE DIRECTOR; AND

33 2. A COURT IN WHICH AN ACTION IS PENDING.

34 (II) IF A PLAINTIFF FILES A SUPPLEMENTAL CERTIFICATE FOR A
35 CLAIM DETERMINED BY A HEALTH CLAIMS ARBITRATION PANEL AND THE

1 SUPPLEMENTAL CERTIFICATE MEETS THE REQUIREMENTS OF THIS SECTION,
2 ANOTHER SUPPLEMENTAL CERTIFICATE IS NOT REQUIRED TO BE FILED ON A
3 JUDICIAL REVIEW OF THE PANEL'S DECISION.

4 (4) THE PROVISIONS OF § 3-2A-04(B)(3)(I), (4), (6), AND (7) OF THIS
5 SUBTITLE APPLY TO A SUPPLEMENTAL CERTIFICATE UNDER THIS SECTION.

6 (5) THE FACTS REQUIRED TO BE INCLUDED IN THE SUPPLEMENTAL
7 CERTIFICATE SHALL BE CONSIDERED NECESSARY TO SHOW ENTITLEMENT TO
8 RELIEF SOUGHT BY A CLAIMANT OR PLAINTIFF.

9 (D) THE CLAIMANT OR PLAINTIFF SHALL SERVE A COPY OF THE
10 SUPPLEMENTAL CERTIFICATE ON EACH PARTY TO THE CLAIM OR ACTION, OR THE
11 PARTY'S ATTORNEY OF RECORD, IN ACCORDANCE WITH THE MARYLAND RULES.

12 (E) (1) A DEFENDANT MAY MOVE TO DISMISS A CLAIM OR ACTION IF:

13 (I) THE CLAIMANT OR PLAINTIFF FAILS TO FILE A SUPPLEMENTAL
14 CERTIFICATE AS REQUIRED UNDER THIS SECTION; OR

15 (II) A SUPPLEMENTAL CERTIFICATE FILED BY THE CLAIMANT OR
16 PLAINTIFF DOES NOT CONTAIN THE STATEMENTS OF FACT REQUIRED UNDER THIS
17 SECTION AND NECESSARY TO SHOW ENTITLEMENT TO RELIEF.

18 (2) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A DEFENDANT
19 MAY FILE A MOTION TO DISMISS UNDER THIS SECTION WITHIN 15 DAYS AFTER
20 BEING SERVED WITH THE SUPPLEMENTAL CERTIFICATE.

21 (3) NOTHING CONTAINED IN THIS SECTION PROHIBITS OR LIMITS A
22 DEFENDANT FROM MOVING FOR SUMMARY JUDGMENT IN ACCORDANCE WITH THE
23 MARYLAND RULES.

24 (F) A CLAIMANT OR PLAINTIFF SHALL FILE ANY RESPONSE WITHIN 15 DAYS
25 AFTER BEING SERVED WITH THE MOTION TO DISMISS.

26 (G) A PARTY DESIRING A HEARING ON A MOTION TO DISMISS UNDER THIS
27 SECTION SHALL REQUEST THE HEARING IN THE MOTION OR RESPONSE.

28 3-2A-09.

29 [The] EXCEPT AS OTHERWISE PROVIDED, THE provisions of this subtitle shall
30 be deemed procedural in nature and shall not be construed to create, enlarge, or
31 diminish any cause of action not heretofore existing, except the defense of failure to
32 comply with the procedures required under this subtitle.

33 5-615.

34 In the absence of an affirmative showing of malice or bad faith, each arbitrator
35 OR MEDIATOR in a health care malpractice claim under Title 3, Subtitle 2A of this

1 article from the time of acceptance of appointment has immunity from suit for any act
 2 or decision made during tenure and within the scope of designated authority.

3 6-201.

4 (a) Subject to the provisions of §§ 6-202 and 6-203 and unless otherwise
 5 provided by law, a civil action shall be brought in a county where the defendant
 6 resides, carries on a regular business, is employed, or habitually engages in a
 7 vocation. In addition, a corporation also may be sued where it maintains its principal
 8 offices in the State.

9 (b) If there is more than one defendant, and there is no single venue
 10 applicable to all defendants, under subsection (a), all may be sued in a county in
 11 which any one of them could be sued, or in the county where the cause of action arose.

12 6-203.

13 (a) The general rule of § 6-201 does not apply to actions enumerated in this
 14 section.

15 (F) (1) THIS SUBSECTION APPLIES ONLY TO AN ACTION TO RECOVER
 16 DAMAGES AGAINST AN INSURER BASED ON THE INSURER'S FAILURE TO SETTLE A
 17 HEALTH CARE MALPRACTICE ACTION BROUGHT AGAINST A HEALTH CARE PROVIDER
 18 INSURED BY THE INSURER.

19 (2) THE ONLY VENUE FOR AN ACTION DESCRIBED IN PARAGRAPH (1) OF
 20 THIS SUBSECTION IS IN THE COUNTY IN WHICH THE HEALTH CARE MALPRACTICE
 21 ACTION WAS BROUGHT AGAINST THE HEALTH CARE PROVIDER INSURED BY THE
 22 INSURER.

23 SECTION 2. AND BE IT FURTHER ENACTED, That:

24 (a) (1) Every insurer providing professional liability insurance to a health
 25 care provider in the State shall submit to the Maryland Insurance Commissioner
 26 information on:

27 (i) the nature and cost of reinsurance;

28 (ii) the claims experience by category of health care providers;

29 (iii) the amount of claims settlements and claims awards;

30 (iv) the amount of reserves for claims incurred and incurred but
 31 unreported claims;

32 (v) the number of structured settlements used in payment of
 33 claims; and

34 (vi) any other information relating to health care malpractice claims
 35 as prescribed by the Commissioner in regulations.

1 (2) The Commissioner shall adopt regulations on the submission of
 2 information under paragraph (1) of this subsection.

3 (b) The Commissioner may require by regulation insurers of other lines of
 4 liability insurance to submit reports.

5 (c) The Commissioner shall report, in accordance with § 2-1246 of the State
 6 Government Article, the Commissioner's findings as to the impact of §§ 3-2A-05(h),
 7 3-2A-06(f), 3-2A-06C, 3-2A-06D, 6-203(f), 10-913, 11-108, and 11-109 of the
 8 Courts and Judicial Proceedings Article and Chapter 477 of the Acts of the General
 9 Assembly of 1994 on the availability of health care malpractice and other liability
 10 insurance in the State to the House Economic Matters Committee, House Judiciary
 11 Committee, and Senate Finance Committee, and Senate Judicial Proceedings
 12 Committee on or before September 1 of each year.

13 SECTION 4. 3. ~~BE IT ENACTED BY THE GENERAL ASSEMBLY OF~~
 14 ~~MARYLAND AND BE IT FURTHER ENACTED,~~ That:

15 (a) There is a Task Force on Medical Malpractice.

16 (b) The Task Force consists of the following members:

17 (1) ~~three~~ six members of the Senate of Maryland, appointed by the
 18 President of the Senate; and

19 (2) ~~three~~ six members of the House of Delegates, appointed by the
 20 Speaker of the House;

21 (3) ~~the Attorney General, or the Attorney General's designee;~~

22 (4) ~~the Secretary of Health and Mental Hygiene, or the Secretary's~~
 23 ~~designee;~~

24 (5) ~~the Maryland Insurance Commissioner, or the Commissioner's~~
 25 ~~designee;~~

26 (6) ~~the Director of the Health Claims Arbitration Office, or the Director's~~
 27 ~~designee;~~

28 (7) ~~the Chairman of the State Board of Physicians, or the Chairman's~~
 29 ~~designee;~~

30 (8) ~~three circuit court judges appointed by the Chief Judge of the Court~~
 31 ~~of Appeals, in consultation with the President of the Senate and the Speaker of the~~
 32 ~~House;~~

33 (9) ~~two health care consumers, one of whom shall be appointed by the~~
 34 ~~President of the Senate and one of whom shall be appointed by the Speaker of the~~
 35 ~~House; and~~

1 (10) the following members appointed by the Governor, in consultation
2 with the President of the Senate and the Speaker of the House:

3 (i) one representative of the Medical and Chirurgical Faculty of
4 Maryland;

5 (ii) one representative of the Medical Mutual Liability Insurance
6 Society of Maryland;

7 (iii) one representative of the Maryland Hospital Association;

8 (iv) one representative of the Maryland State Bar Association;

9 (v) one representative of the Maryland Defense Counsel;

10 (vi) one representative of the Maryland Trial Lawyers Association;
11 and

12 (vii) one representative of the health insurance industry.

13 (c) The President of the Senate and the Speaker of the House, ~~in consultation~~
14 ~~with the Governor~~, shall designate the ~~chairman~~ co-chairmen of the Task Force.

15 (d) The Department of Legislative Services shall provide staff for the Task
16 Force.

17 (e) A member of the Task Force may not receive compensation, but is entitled
18 to reimbursement for expenses under the Standard State Travel Regulations, as
19 provided in the State budget.

20 (f) (e) The Task Force shall:

21 (1) assess the extent to which the cost of medical malpractice liability
22 coverage for health care providers, including health care providers in high-risk
23 specialties, increased in recent years;

24 (2) determine the causes of the increased cost of medical malpractice
25 liability coverage for those health care providers;

26 (3) study any aspect of the health care, insurance, or legal systems
27 related to medical malpractice liability; and

28 (4) make recommendations to address the increased costs of medical
29 malpractice liability coverage.

30 (g) (f) The Task Force shall report its findings and recommendations to the
31 Governor, and in accordance with § 2-1246 of the State Government Article, to the
32 General Assembly on or before December 15, 2004.

33 SECTION 4. AND BE IT FURTHER ENACTED, That §§ 3-2A-01, 3-2A-05,
34 3-2A-06, and 5-615 of the Courts Article, as enacted by Section 1 of this Act, shall be

1 construed to apply only prospectively and may not be applied or interpreted to have
2 any effect on or application to any cause of action arising before the effective date of
3 this Act.

4 SECTION 5. AND BE IT FURTHER ENACTED, That §§ 3-2A-06C, 3-2A-06D,
5 and 6-203 of the Courts Article, as enacted by Section 1 of this Act, shall be construed
6 to apply only prospectively and may not be applied or interpreted to have any effect
7 on or application to any case filed before the effective date of this Act.

8 SECTION 6. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall
9 take effect June 1, 2004. It shall remain effective for a period of 5 years and, at the
10 end of May 31, 2009, with no further action required by the General Assembly, Section
11 2 of this Act shall be abrogated and of no further force and effect.

12 SECTION ~~2~~ 7. AND BE IT FURTHER ENACTED, That Section 3 of this Act
13 shall take effect June 1, 2004. It shall remain effective for a period of 7 months and,
14 at the end of December 31, 2004, with no further action required by the General
15 Assembly, Section 3 of this Act shall be abrogated and of no further force and effect.

16 SECTION 8. AND BE IT FURTHER ENACTED, That this Act shall take effect
17 on June 1, 2004.