
By: **Delegates Zirkin, Minnick, and Morhaim**

Introduced and read first time: February 9, 2005

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Circuit Courts - Medical Malpractice Review Panel Pilot Program**

3 FOR the purpose of establishing a Medical Malpractice Review Panel Pilot Program
4 in the Circuit Court for Baltimore County; requiring certain medical injury
5 actions filed in Circuit Court for Baltimore County after a certain date to be
6 submitted to a Medical Malpractice Review Panel; requiring a court to refer a
7 certain action to the Baltimore County Administrative Judge; requiring the
8 Baltimore County Administrative Judge to appoint a certain judge to chair a
9 panel and notify certain parties of certain information; suspending statutory
10 time limits under a certain subtitle and under the Maryland Rules for a certain
11 period in certain circumstances; providing procedures for a chair to choose
12 members of a panel and for a party to strike a member from a panel; requiring
13 that panel members meet certain criteria; closing panel hearings to the public;
14 requiring that panel deliberations and certain testimony are privileged and
15 confidential; authorizing a chair to take certain action, with certain exceptions;
16 requiring a panel to make certain determinations about liability and proximate
17 cause; providing that certain rules of evidence are not applicable in a certain
18 panel hearing; giving a panel subpoena power; authorizing a panel to appoint a
19 certain impartial expert witness under certain circumstances; providing for
20 admissibility of certain records under certain circumstances; authorizing parties
21 to take certain actions in a hearing; requiring a panel to issue a written decision
22 answering certain questions; requiring a decision to be made within a certain
23 time period; requiring a panel to serve the decision on the parties and the court;
24 providing for the payment of panel members and costs of proceedings equally
25 between the parties, under certain circumstances; authorizing a party to accept
26 or reject a decision of a panel; requiring the parties to take certain actions in
27 either case; authorizing the admission of a panel decision in a court proceeding;
28 authorizing the use of a certain presumption about a unanimous panel decision
29 in a subsequent trial; authorizing either party to call a member of a panel as a
30 witness in a subsequent trial; requiring a certain party that is the losing party
31 under a panel decision and the losing party in a subsequent trial to pay certain
32 costs including the other party's attorney's fees; exempting certain individuals
33 serving on a certain panel from civil liability under certain circumstances;
34 defining a certain term; providing for the application of this Act; making the
35 provisions of this Act severable; requiring the Administrative Judge of

1 Baltimore County to submit a certain report on the Pilot Program; providing for
2 the termination of this Act; and generally relating to the Medical Malpractice
3 Review Panel Pilot Program.

4 BY repealing and reenacting, without amendments,
5 Article - Courts and Judicial Proceedings
6 Section 3-2A-01(a), (c), (f), and (g), 3-2A-04(a) and (b)(1), (2), and (4), and
7 3-2A-06D(a), (b), and (c)
8 Annotated Code of Maryland
9 (2002 Replacement Volume and 2004 Supplement)
10 (As enacted by Chapter 5 of the Acts of the General Assembly of the 2004 Special
11 Session)

12 BY adding to
13 Article - Courts and Judicial Proceedings
14 Section 3-2A-06E
15 Annotated Code of Maryland
16 (2002 Replacement Volume and 2004 Supplement)

17 BY repealing and reenacting, with amendments,
18 Article - Courts and Judicial Proceedings
19 Section 5-615
20 Annotated Code of Maryland
21 (2002 Replacement Volume and 2004 Supplement)
22 (As enacted by Chapter 5 of the Acts of the General Assembly of the 2004 Special
23 Session)

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

26 **Article - Courts and Judicial Proceedings**

27 3-2A-01.

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

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

31 (f) (1) "Health care provider" means a hospital, a related institution as
32 defined in § 19-301 of the Health - General Article, a medical day care center, a
33 hospice care program, an assisted living program, a freestanding ambulatory care
34 facility as defined in § 19-3B-01 of the Health - General Article, a physician, an
35 osteopath, an optometrist, a chiropractor, a registered or licensed practical nurse, a
36 dentist, a podiatrist, a psychologist, a licensed certified social worker-clinical, and a

1 physical therapist, licensed or authorized to provide one or more health care services
2 in Maryland.

3 (2) "Health care provider" does not include any nursing institution
4 conducted by and for those who rely upon treatment by spiritual means through
5 prayer alone in accordance with the tenets and practices of a recognized church or
6 religious denomination.

7 (g) "Medical injury" means injury arising or resulting from the rendering or
8 failure to render health care.

9 3-2A-04.

10 (a) (1) (i) A person having a claim against a health care provider for
11 damage due to a medical injury shall file the claim with the Director and, if the claim
12 is against a physician, the Director shall forward copies of the claim to the State
13 Board of Physicians.

14 (ii) The Director shall cause a copy of the claim to be served upon
15 the health care provider by the appropriate sheriff in accordance with the Maryland
16 Rules.

17 (iii) The health care provider shall file a response with the Director
18 and serve a copy on the claimant and all other health care providers named therein
19 within the time provided in the Maryland Rules for filing a responsive pleading to a
20 complaint.

21 (iv) The claim and the response may include a statement that the
22 matter in controversy falls within one or more particular recognized specialties.

23 (2) A third-party claim shall be filed within 30 days of the response of
24 the third-party claimant to the original claim unless the parties consent to a later
25 filing or a later filing is allowed by the panel chairman or the court, as the case may
26 be, for good cause shown.

27 (3) A claimant may not add a new defendant after the arbitration panel
28 has been selected, or 10 days after the preferring conference has been held, whichever
29 is later.

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

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 or action filed after July 1, 1986, shall be dismissed, without prejudice, if the
36 claimant or plaintiff fails to file a certificate of a qualified expert with the Director
37 attesting to departure from standards of care, and that the departure from standards

1 of care is the proximate cause of the alleged injury, within 90 days from the date of
2 the complaint;

3 2. The claimant or plaintiff shall serve a copy of the
4 certificate on all other parties to the claim or action or their attorneys of record in
5 accordance with the Maryland Rules; and

6 (ii) In lieu of dismissing the claim or action, the panel chairman or
7 the court shall grant an extension of no more than 90 days for filing the certificate
8 required by this paragraph, if:

9 1. The limitations period applicable to the claim or action has
10 expired; and

11 2. The failure to file the certificate was neither willful nor
12 the result of gross negligence.

13 (2) (i) A claim or action filed after July 1, 1986, may be adjudicated in
14 favor of the claimant or plaintiff on the issue of liability, if the defendant disputes
15 liability and fails to file a certificate of a qualified expert attesting to compliance with
16 standards of care, or that the departure from standards of care is not the proximate
17 cause of the alleged injury, within 120 days from the date the claimant or plaintiff
18 served the certificate of a qualified expert set forth in paragraph (1) of this subsection
19 on the defendant.

20 (ii) If the defendant does not dispute liability, a certificate of a
21 qualified expert is not required under this subsection.

22 (iii) The defendant shall serve a copy of the certificate on all other
23 parties to the claim or action or their attorneys of record in accordance with the
24 Maryland Rules.

25 (4) A health care provider who attests in a certificate of a qualified
26 expert or who testifies in relation to a proceeding before an arbitration panel or a
27 court concerning compliance with or departure from standards of care may not devote
28 annually more than 20 percent of the expert's professional activities to activities that
29 directly involve testimony in personal injury claims.

30 3-2A-06D.

31 (a) (1) This section applies only to an initial complaint filed on or after
32 January 1, 2005, for which a certificate of a qualified expert is required to be filed in
33 accordance with § 3-2A-04 of this subtitle.

34 (2) This section does not apply if the defendant admits liability.

35 (b) (1) Within 15 days after the date that discovery is required to be
36 completed, a party shall file with the court a supplemental certificate of a qualified
37 expert, for each defendant, that attests to:

- 1 (i) The certifying expert's basis for alleging what is the specific
2 standard of care;
- 3 (ii) The certifying expert's qualifications to testify to the specific
4 standard of care;
- 5 (iii) The specific standard of care;
- 6 (iv) For the plaintiff:
- 7 1. The specific injury complained of;
- 8 2. How the specific standard of care was breached;
- 9 3. What specifically the defendant should have done to meet
10 the specific standard of care; and
- 11 4. The inference that the breach of the standard of care
12 proximately caused the plaintiff's injury; and
- 13 (v) For the defendant:
- 14 1. How the defendant complied with the specific standard of
15 care;
- 16 2. What the defendant did to meet the specific standard of
17 care; and
- 18 3. If applicable, that the breach of the standard of care did
19 not proximately cause the plaintiff's injury.
- 20 (2) An extension of the time allowed for filing a supplemental certificate
21 under this section shall be granted for good cause shown.
- 22 (3) The facts required to be included in the supplemental certificate of a
23 qualified expert shall be considered necessary to show entitlement to relief sought by
24 a plaintiff or to raise a defense by a defendant.
- 25 (c) Subject to the provisions of this section:
- 26 (1) If a plaintiff fails to file a supplemental certificate of a qualified
27 expert for a defendant, on motion of the defendant the court may dismiss, without
28 prejudice, the action as to that defendant; or
- 29 (2) If the defendant fails to file a supplemental certificate of a qualified
30 expert, on motion of the plaintiff the court may adjudicate in favor of the plaintiff on
31 the issue of liability as to that defendant.

1 3-2A-06E.

2 (A) THIS SECTION APPLIES ONLY IN THE CIRCUIT COURT FOR BALTIMORE
3 COUNTY.

4 (B) THE COURT OF APPEALS SHALL ESTABLISH A MEDICAL MALPRACTICE
5 REVIEW PANEL PILOT PROGRAM IN THE CIRCUIT COURT FOR BALTIMORE COUNTY.

6 (C) IN THIS SECTION, "PANEL" MEANS A MEDICAL MALPRACTICE REVIEW
7 PANEL SELECTED TO REVIEW A HEALTH CARE MALPRACTICE ACTION.

8 (D) (1) IN BALTIMORE COUNTY, THIS SECTION APPLIES TO AN INITIAL
9 COMPLAINT FILED ON OR AFTER JUNE 1, 2005, FOR WHICH:

10 (I) A CERTIFICATE OF A QUALIFIED EXPERT IS REQUIRED TO BE
11 FILED IN ACCORDANCE WITH § 3-2A-04 OF THIS SUBTITLE; AND

12 (II) A SUPPLEMENTAL CERTIFICATE OF A QUALIFIED EXPERT IS
13 REQUIRED TO BE FILED IN ACCORDANCE WITH § 3-2A-06D OF THIS SUBTITLE.

14 (2) THIS SECTION DOES NOT APPLY IF THE DEFENDANT ADMITS
15 LIABILITY.

16 (E) SUBJECT TO SUBSECTION (D) OF THIS SECTION AND NOTWITHSTANDING
17 ANY OTHER PROVISION OF LAW OR THE MARYLAND RULES, WITHIN 15 DAYS AFTER
18 ALL PARTIES HAVE FILED WITH THE COURT THE SUPPLEMENTAL CERTIFICATE OF A
19 QUALIFIED EXPERT IN ACCORDANCE WITH § 3-2A-06D OF THIS SUBTITLE, AN ACTION
20 FILED UNDER THIS SUBTITLE IN BALTIMORE COUNTY SHALL BE SUBMITTED TO A
21 MEDICAL MALPRACTICE REVIEW PANEL FOR ITS REVIEW AND DECISION IN
22 ACCORDANCE WITH THIS SECTION.

23 (F) (1) THE CIRCUIT COURT FOR BALTIMORE COUNTY OR THE UNITED
24 STATES DISTRICT COURT IN WHICH THE INITIAL COMPLAINT IS FILED SHALL REFER
25 THE ACTION TO THE COUNTY ADMINISTRATIVE JUDGE.

26 (2) THE COUNTY ADMINISTRATIVE JUDGE SHALL APPOINT A CIRCUIT
27 COURT JUDGE OR A RETIRED CIRCUIT COURT JUDGE OF THE THIRD JUDICIAL
28 CIRCUIT TO CHAIR THE PANEL.

29 (3) THE COUNTY ADMINISTRATIVE JUDGE SHALL SEND NOTICE, BY
30 CERTIFIED MAIL, TO THE PLAINTIFF AND THE DEFENDANTS NAMED IN THE ACTION
31 OF:

32 (I) THE PROCEDURES OF THE MEDICAL MALPRACTICE REVIEW
33 PANEL; AND

34 (II) THE NAME OF THE CIRCUIT COURT JUDGE OR RETIRED
35 CIRCUIT COURT JUDGE APPOINTED TO CHAIR THE PANEL.

1 (G) ALL TIME LIMITS UNDER THIS SUBTITLE OR THE MARYLAND RULES
2 APPLICABLE TO AN ACTION SHALL BE SUSPENDED FROM THE DATE ON WHICH THE
3 COMPLAINT IS REFERRED TO THE COUNTY ADMINISTRATIVE JUDGE UNDER
4 SUBSECTION (F) OF THIS SECTION UNTIL 30 DAYS FOLLOWING THE DAY THE PARTIES
5 AND THE COURT RECEIVE THE DECISION OF THE PANEL.

6 (H) (1) (I) WITHIN 20 DAYS AFTER THE REFERRAL OF THE COMPLAINT
7 UNDER SUBSECTION (F) OF THIS SECTION, THE CHAIR SHALL:

8 1. CHOOSE FIVE INDIVIDUALS FROM THE HEALTH CARE
9 PROVIDER LIST IN ACCORDANCE WITH § 3-2A-03(C) OF THIS TITLE; AND

10 2. SEND THE LIST TOGETHER WITH A BRIEF BIOGRAPHICAL
11 STATEMENT FOR EACH INDIVIDUAL, BY CERTIFIED MAIL, TO EACH PARTY.

12 (II) THE BIOGRAPHICAL STATEMENTS SENT TO THE PARTIES
13 UNDER THIS SUBSECTION SHALL HAVE BEEN UPDATED WITHIN 2 YEARS.

14 (III) EACH INDIVIDUAL CHOSEN BY THE CHAIR SHALL HAVE
15 CLINICAL EXPERIENCE OR ACADEMIC EXPERIENCE IN THE SAME OR RELATED
16 SPECIALTY AS THE DEFENDANT, OR IN THE FIELD OF HEALTH CARE IN WHICH THE
17 DEFENDANT PROVIDED CARE OR TREATMENT TO THE PLAINTIFF.

18 (2) (I) BEFORE NAMING AN INDIVIDUAL, THE CHAIR SHALL INQUIRE
19 OF THE INDIVIDUAL AND BE ASSURED THAT THE INDIVIDUAL DOES NOT HAVE A
20 PERSONAL OR ECONOMIC RELATIONSHIP WITH ANY OF THE PARTIES OR THEIR
21 COUNSEL, OR IN ANY CASES THAT CAN FORM THE BASIS OF ANY PARTIALITY ON
22 THEIR PART.

23 (II) IF, IN THE JUDGMENT OF THE CHAIR, AN INDIVIDUAL HAS
24 SUCH A RELATIONSHIP WITH A PARTY, THE CHAIR SHALL REPLACE THAT
25 INDIVIDUAL'S NAME WITH ANOTHER INDIVIDUAL FROM THE LIST UNDER §
26 3-2A-03(C) OF THIS TITLE.

27 (III) AN INDIVIDUAL CHOSEN BY THE CHAIR MAY NOT RESIDE IN
28 BALTIMORE COUNTY.

29 (3) (I) WITHIN 15 DAYS AFTER RECEIVING THE LIST UNDER
30 PARAGRAPH (1) OF THIS SUBSECTION, EACH PARTY MAY STRIKE ONE NAME FROM
31 THE LIST AND RETURN THE LIST TO THE CHAIR.

32 (II) 1. IF THE COMPLAINT IS AGAINST MORE THAN ONE
33 DEFENDANT, WHETHER DIRECTLY BY A PLAINTIFF OR AS A RESULT OF A
34 THIRD-PARTY CLAIM, THE DEFENDANTS CLAIMED AGAINST SHALL BE TREATED AS A
35 SINGLE PARTY AND SHALL EXERCISE THEIR STRIKE JOINTLY;

36 2. IF THERE IS MORE THAN ONE PLAINTIFF, THE PLAINTIFFS
37 SHALL BE TREATED AS A SINGLE PARTY AND SHALL EXERCISE THEIR STRIKE
38 JOINTLY;

1 3. IF WITHIN THE TIME PERIOD SPECIFIED IN PARAGRAPH
2 (1) OF THIS SUBSECTION, MULTIPLE PLAINTIFFS OR MULTIPLE DEFENDANTS FAIL TO
3 AGREE ON THEIR STRIKE, THEY SHALL NOTIFY THE CHAIR OF THEIR
4 DISAGREEMENT, AND THE CHAIR MAY MAKE THE STRIKE ON THEIR BEHALF; AND

5 4. IF ANY PARTY FAILS TO RETURN A COPY OF THE LIST
6 WITH THE STRIKE MADE WITHIN THE TIME PERIOD SPECIFIED IN PARAGRAPH (1) OF
7 THIS SUBSECTION, THE CHAIR MAY MAKE THE STRIKE FOR THAT PARTY.

8 (4) THE CHAIR SHALL APPOINT THE MEMBERSHIP OF THE PANEL AFTER
9 RECEIVING THE STRIKES OF THE PLAINTIFF AND DEFENDANT.

10 (5) SERVICE BY A HEALTH CARE PROVIDER ON A PANEL UNDER THIS
11 SECTION MAY NOT BE CONSIDERED A PROFESSIONAL ACTIVITY THAT DIRECTLY
12 INVOLVES TESTIMONY IN PERSONAL INJURY CLAIMS UNDER § 3-2A-04(B)(4) OF THIS
13 SUBTITLE.

14 (I) (1) WITHIN 15 DAYS OF THE APPOINTMENT OF THE PANEL, A CHAIR
15 SHALL NOTIFY THE PARTIES OF THE MEMBERSHIP OF THE PANEL AND CONVENE
16 THE PANEL IN AN INITIAL CONFERENCE.

17 (2) AT THE INITIAL CONFERENCE, THE CHAIR SHALL ESTABLISH A
18 SCHEDULE FOR THE FILING OF ALL RELEVANT RECORDS AND REASONABLE
19 DISCOVERY WHICH SHALL BE FILED AT LEAST 30 DAYS BEFORE THE HEARING DATE.

20 (3) A HEARING ON THE ACTION SHALL BE HELD NO LATER THAN 60
21 DAYS FROM THE DATE OF INITIAL CONFERENCE.

22 (J) THE MARYLAND RULES DO NOT APPLY TO THE ADMISSION OF EVIDENCE
23 UNDER THIS SECTION.

24 (K) (1) THE HEARING SHALL BE CLOSED TO THE PUBLIC.

25 (2) THE DELIBERATIONS AND DISCUSSION OF A PANEL AND THE
26 TESTIMONY OF AN EXPERT, WHETHER CALLED BY A PARTY OR THE PANEL, SHALL BE
27 PRIVILEGED AND CONFIDENTIAL.

28 (L) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A CHAIR:

29 (I) SHALL CONVENE THE PANEL, SCHEDULE HEARINGS, AND
30 PRESIDE OVER THE PANEL'S MEETINGS;

31 (II) SHALL ESTABLISH A SCHEDULE FOR SUBMISSION OF
32 EVIDENCE TO THE PANEL;

33 (III) MAY ADJOURN THE HEARING FROM TIME TO TIME, AS
34 NECESSARY;

35 (IV) SHALL EXPEDITE THE PANEL'S REVIEW OF THE MEDICAL
36 EVIDENCE;

1 (V) SHALL DECIDE ISSUES RELATING TO DISCOVERY AND MOTIONS
2 IN LIMINE;

3 (VI) SHALL ADVISE THE PANEL ON ISSUES OF LAW THAT ARISE
4 DURING THE REVIEW; AND

5 (VII) SHALL PREPARE THE DECISION OF THE PANEL IN
6 ACCORDANCE WITH SUBSECTION (O) OF THIS SECTION.

7 (2) A CHAIR MAY NOT VOTE IN THE DELIBERATIONS OF THE PANEL.

8 (M) A PANEL SHALL DETERMINE, AFTER A HEARING HELD IN ACCORDANCE
9 WITH SUBSECTION (I) OF THIS SECTION, IF THE EVIDENCE PRESENTED AND
10 PROPERLY SUBSTANTIATED IS SUFFICIENT TO RAISE A LEGITIMATE QUESTION
11 THAT:

12 (1) THE DEFENDANT'S ACTIONS OR OMISSIONS WERE A DEPARTURE
13 FROM THE APPROPRIATE STANDARD OF CARE AS CHARGED IN THE PLAINTIFF'S
14 COMPLAINT; AND

15 (2) THE DEFENDANT'S ACTIONS OR OMISSIONS PROXIMATELY CAUSED
16 THE PLAINTIFF'S ALLEGED INJURY.

17 (N) (1) AT THE HEARING, THE PLAINTIFF SHALL PRESENT THE COMPLAINT
18 TO THE PANEL AND THE DEFENDANT MAY MAKE A PRESENTATION IN RESPONSE.

19 (2) AFTER THE PRESENTATIONS BY THE PARTIES, THE PANEL MAY
20 REQUEST FROM EITHER PARTY ADDITIONAL FACTS, RECORDS, OR OTHER
21 INFORMATION TO BE SUBMITTED IN WRITING.

22 (3) (I) THE PANEL MAY SUBPOENA ANY RECORDS OR ANY EXPERT
23 NECESSARY TO SUBSTANTIATE OR CLARIFY EVIDENCE PRESENTED IN THE
24 HEARING.

25 (II) THE PANEL MAY APPOINT AN IMPARTIAL AND QUALIFIED
26 HEALTH CARE PROVIDER TO CONDUCT NECESSARY PROFESSIONAL OR EXPERT
27 TESTIMONY OF THE PARTIES OR THE PARTIES' WITNESSES.

28 (III) PROPERLY AUTHENTICATED HOSPITAL RECORDS AND THE
29 RECORDS OF A TREATING HEALTH CARE PROVIDER ARE ADMISSIBLE WITHOUT THE
30 NECESSITY OF CALLING THE HEALTH CARE PROVIDER, SUBJECT TO REASONABLE
31 NOTICE AND THE RIGHT OF THE OPPOSING PARTY TO DEPOSE THE HEALTH CARE
32 PROVIDER.

33 (4) AT THE PANEL HEARING, THE PARTIES HAVE THE RIGHT:

34 (I) TO BE HEARD;

35 (II) TO PRESENT EVIDENCE MATERIAL TO THE COMPLAINT; AND

1 (III) TO CROSS-EXAMINE WITNESSES WHO APPEAR AT THE
2 HEARING.

3 (O) (1) A PANEL SHALL ISSUE ITS WRITTEN DECISION WITHIN 30 DAYS OF
4 THE HEARING.

5 (2) THE DECISION SHALL ANSWER THE FOLLOWING QUESTIONS:

6 (I) WHETHER THERE IS A REASONABLE MEDICAL OR
7 PROFESSIONAL PROBABILITY THAT THE ACTS OR OMISSIONS COMPLAINED OF OR
8 FOUND BY THE PANEL TO EXIST CONSTITUTE A DEPARTURE FROM THE APPLICABLE
9 STANDARD OF CARE BY THE HEALTH CARE PROVIDER CHARGED WITH THAT CARE;
10 AND

11 (II) WHETHER THERE IS A REASONABLE MEDICAL OR
12 PROFESSIONAL PROBABILITY THAT THE ACTS OR OMISSIONS COMPLAINED OF
13 PROXIMATELY CAUSED THE INJURY COMPLAINED OF OR AS FOUND BY THE PANEL.

14 (P) THE PANEL'S DECISION, SIGNED BY THE PANEL MEMBERS, SHALL BE
15 SERVED BY CERTIFIED MAIL ON THE COURT AND THE PARTIES WITHIN 5 DAYS OF
16 THE DATE OF ISSUANCE OF THE DECISION.

17 (Q) (1) EXCEPT FOR THE CHAIR, EACH MEMBER OF THE PANEL IS ENTITLED
18 TO BE REIMBURSED:

19 (I) UP TO \$350 FOR ALL WORK PERFORMED AS A MEMBER OF THE
20 PANEL, EXCLUSIVE OF THE TIME INVOLVED IF CALLED AS A WITNESS TO TESTIFY IN
21 COURT; AND

22 (II) REASONABLE TRAVEL EXPENSES.

23 (2) (I) THE CHAIR SHALL KEEP AN ACCURATE RECORD OF THE TIME
24 AND EXPENSES OF THE MEMBERS OF THE PANEL.

25 (II) THE RECORD SHALL BE SUBMITTED TO THE PARTIES FOR
26 PAYMENT WITH THE PANEL'S DECISION.

27 (3) UNLESS OTHERWISE AGREED BY THE PARTIES, THE COSTS OF THE
28 HEARING AND REASONABLE EXPENSES OF REVIEW UNDER THIS SECTION SHALL BE
29 DIVIDED EQUALLY BETWEEN THE PARTIES.

30 (R) (1) (I) A PARTY MAY REJECT THE DECISION OF THE PANEL ISSUED
31 UNDER SUBSECTION (O) OF THIS SECTION FOR ANY REASON.

32 (II) THE PARTY REJECTING THE DECISION SHALL FILE A NOTICE
33 OF REJECTION WITH THE CHAIR AND THE ADMINISTRATIVE JUDGE OF BALTIMORE
34 COUNTY OR THE UNITED STATES DISTRICT COURT AND SERVE THE NOTICE ON THE
35 OTHER PARTY WITHIN 30 DAYS OF RECEIVING THE DECISION.

1 (III) ON RECEIVING THE NOTICE OF REJECTION, THE COURT SHALL
2 REINSTATE THE COMPLAINT TO THE ACTIVE TRIAL LIST AND LIFT THE SUSPENSION
3 OF TIME LIMITS UNDER SUBSECTION (G) OF THIS SECTION.

4 (2) (I) BOTH PARTIES MAY ACCEPT THE DECISION OF THE PANEL
5 ISSUED UNDER SUBSECTION (O) OF THIS SECTION.

6 (II) IF BOTH PARTIES ACCEPT THE DECISION, BOTH PARTIES SHALL
7 MOVE TO DISMISS THE COMPLAINT FILED IN COURT WITHIN 30 DAYS OF RECEIVING
8 THE DECISION.

9 (S) (1) THE PANEL'S DECISION UNDER SUBSECTION (O) OF THIS SECTION IS
10 ADMISSIBLE AS EVIDENCE IN A SUBSEQUENT TRIAL.

11 (2) A UNANIMOUS DECISION OF THE PANEL ON EITHER OR BOTH
12 QUESTIONS UNDER SUBSECTION (O) OF THIS SECTION SHALL BE ACCORDED A
13 PRESUMPTION OF CORRECTNESS IN A SUBSEQUENT TRIAL OF THE CASE.

14 (T) EITHER PARTY HAS THE RIGHT TO CALL A MEMBER OF THE PANEL AS A
15 WITNESS IN A SUBSEQUENT TRIAL.

16 (U) (1) A PARTY THAT IS THE LOSING PARTY IN A DECISION BEFORE A
17 PANEL UNDER THIS SECTION AND IN A SUBSEQUENT TRIAL IS RESPONSIBLE FOR:

18 (I) COSTS IN ACCORDANCE WITH MARYLAND RULE 2-603; AND

19 (II) PAYING THE REASONABLE ATTORNEY FEES OF THE
20 PREVAILING PARTY.

21 (2) A PARTY THAT IS THE PREVAILING PARTY IN A DECISION BEFORE A
22 PANEL UNDER THIS SECTION BUT IS THE LOSING PARTY IN A SUBSEQUENT TRIAL IS
23 RESPONSIBLE FOR COSTS IN ACCORDANCE WITH MARYLAND RULE 2-603.

24 (V) AN INDIVIDUAL WHO SERVES AS A MEMBER OF A PANEL UNDER THIS
25 SECTION SHALL HAVE THE IMMUNITY FROM SUIT DESCRIBED UNDER § 5-615(B) OF
26 THIS ARTICLE.

27 5-615.

28 (A) In the absence of an affirmative showing of malice or bad faith, each
29 arbitrator or individual conducting alternative dispute resolution in a health care
30 malpractice claim or action under Title 3, Subtitle 2A of this article from the time of
31 acceptance of appointment has immunity from suit for any act or decision made
32 during tenure and within the scope of designated authority.

33 (B) (1) THIS SUBSECTION APPLIES ONLY IN BALTIMORE COUNTY.

34 (2) IN THE ABSENCE OF AN AFFIRMATIVE SHOWING OF MALICE OR BAD
35 FAITH, EACH MEMBER OF A MEDICAL MALPRACTICE REVIEW PANEL CONDUCTING A
36 REVIEW IN A HEALTH CARE MALPRACTICE CLAIM OR ACTION UNDER TITLE 3,

1 SUBTITLE 2A OF THIS ARTICLE FROM THE TIME OF ACCEPTANCE OF APPOINTMENT
2 HAS IMMUNITY FROM SUIT FOR ANY ACT OR DECISION MADE DURING TENURE AND
3 WITHIN THE SCOPE OF DESIGNATED AUTHORITY.

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
5 construed to apply only prospectively and may not be applied or interpreted to have
6 any effect on or application to any action filed before the effective date of this Act.

7 SECTION 3. AND BE IT FURTHER ENACTED, That if any provision of this
8 Act or the application thereof to any person or circumstance is held invalid for any
9 reason in a court of competent jurisdiction, the invalidity does not affect other
10 provisions or any other application of this Act which can be given effect without the
11 invalid provision or application, and for this purpose the provisions of this Act are
12 declared severable.

13 SECTION 4. AND BE IT FURTHER ENACTED, That on or before May 31,
14 2008, the Baltimore County Administrative Judge for the Third Judicial Circuit shall
15 submit a report to the General Assembly, in accordance with § 2-1246 of the State
16 Government Article, that evaluates the Medical Malpractice Review Panel Pilot
17 Program established by this Act.

18 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take
19 effect June 1, 2005. It shall remain effective for a period of 3 years and, at the end of
20 May 31, 2008, with no further action required by the General Assembly, this Act shall
21 be abrogated and of no further force and effect.