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By: **Delegates Shank, Donoghue, Kelly, McComas, McKee, Morhaim, Myers,  
Sophocleus, Weldon, and Zirkin**

Introduced and read first time: February 11, 2005

Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **Health Care Malpractice - Medical Experts - Maintaining or Defending**  
3 **Claim or Action in Bad Faith or Without Substantial Justification**

4 FOR the purpose of requiring that certain certificates and testimony of medical  
5 experts meet certain criteria in a health care malpractice claim or action under  
6 certain circumstances; requiring a panel chairman or court to order a party or  
7 an attorney of the party or both to pay certain costs and expenses of certain  
8 proceedings if the proceeding was maintained or defended under certain  
9 circumstances involving bad faith or a lack of substantial justification; altering  
10 the definition of the practice of medicine to include testifying as or offering an  
11 opinion as a medical expert under certain circumstances; providing certain  
12 exemptions from license requirements for practicing medicine; providing that  
13 certain medical experts are subject to certain proceedings by the Board of  
14 Physicians under certain circumstances; providing for the application of this  
15 Act; and generally relating to certain certificates and testimony of experts in  
16 health care malpractice claims or actions and requiring the payment of certain  
17 costs and expenses incurred by maintaining or defending a health care  
18 malpractice claim or action in a certain manner.

19 BY repealing and reenacting, with amendments,  
20 Article - Courts and Judicial Proceedings  
21 Section 3-2A-04(b)(1)(i)1 and (2)(i), 3-2A-06D(b)(1), and 3-2A-10  
22 Annotated Code of Maryland  
23 (2002 Replacement Volume and 2004 Supplement)  
24 (As enacted by Ch. 5 of the Acts of the General Assembly of the 2004 Special  
25 Session)

26 BY adding to  
27 Article - Courts and Judicial Proceedings  
28 Section 3-2A-10 and 9-124  
29 Annotated Code of Maryland  
30 (2002 Replacement Volume and 2004 Supplement)

1 BY repealing and reenacting, with amendments,  
2 Article - Health Occupations  
3 Section 14-101, 14-302, and 14-401(i)  
4 Annotated Code of Maryland  
5 (2000 Replacement Volume and 2004 Supplement)

6 BY adding to  
7 Article - Health Occupations  
8 Section 14-404.1  
9 Annotated Code of Maryland  
10 (2000 Replacement Volume and 2004 Supplement)

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

13 **Article - Courts and Judicial Proceedings**

14 3-2A-04.

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

16 (1) (i) 1. Except as provided in subparagraph (ii) of this paragraph,  
17 a claim or action filed after July 1, 1986, shall be dismissed, without prejudice, if the  
18 claimant or plaintiff fails to file, WITHIN 90 DAYS FROM THE DATE OF THE  
19 COMPLAINT, a certificate of a qualified expert with the Director attesting to  
20 departure from standards of care [, and], that the departure from standards of care is  
21 the proximate cause of the alleged injury, [within 90 days from the date of the  
22 complaint;] AND THAT THE EXPERT'S OPINION:

23 A. IS EXPRESSED TO A REASONABLE DEGREE OF MEDICAL  
24 CERTAINTY;

25 B. IS SCIENTIFICALLY VALID AND HAS BEEN TESTED FOR  
26 VALIDITY;

27 C. HAS BEEN OBJECTIVELY EXAMINED FOR ERROR; AND

28 D. HAS BEEN SUBJECT TO PEER REVIEW; AND

29 (2) (i) A claim or action filed after July 1, 1986, may be adjudicated in  
30 favor of the claimant or plaintiff on the issue of liability, if the defendant disputes  
31 liability and fails to file, WITHIN 120 DAYS FROM THE DATE THE CLAIMANT OR  
32 PLAINTIFF SERVED THE CERTIFICATE OF A QUALIFIED EXPERT SET FORTH IN  
33 PARAGRAPH (1) OF THIS SUBSECTION ON THE DEFENDANT, a certificate of a qualified  
34 expert attesting to compliance with standards of care, or that the departure from  
35 standards of care is not the proximate cause of the alleged injury[, within 120 days  
36 from the date the claimant or plaintiff served the certificate of a qualified expert set





- 1 (1) THE TESTIMONY IS BASED ON SUFFICIENT FACTS OR DATA;
- 2 (2) THE TESTIMONY IS THE PRODUCT OF RELIABLE PRINCIPLES AND  
3 METHODS;
- 4 (3) THE WITNESS HAS APPLIED THE PRINCIPLES AND METHODS  
5 RELIABLY TO THE FACTS OF THE CASE; AND
- 6 (4) IF THE EXPERT'S TESTIMONY IS IN THE FORM OF AN OPINION, THE  
7 OPINION:
- 8 (I) IS EXPRESSED TO A REASONABLE DEGREE OF MEDICAL  
9 CERTAINTY;
- 10 (II) IS SCIENTIFICALLY VALID AND HAS BEEN TESTED FOR  
11 VALIDITY;
- 12 (III) HAS BEEN OBJECTIVELY EXAMINED FOR ERROR; AND
- 13 (IV) HAS BEEN SUBJECT TO PEER REVIEW.
- 14 (B) (1) THE COURT, ON ITS OWN MOTION OR A MOTION BY A PARTY, MAY  
15 HEAR EVIDENCE REGARDING THE CRITERIA IN SUBSECTION (A) OF THIS SECTION,  
16 INCLUDING HEARING TESTIMONY FROM THE PROPOSED EXPERT WITNESS.

17 (2) IF THE COURT DECIDES TO HEAR EVIDENCE REGARDING THE  
18 CRITERIA IN SUBSECTION (A) OF THIS SECTION, THE COURT SHALL HEAR THE  
19 EVIDENCE OUT OF THE PRESENCE OF A JURY BEFORE DECIDING WHETHER THE  
20 TESTIMONY IS ADMISSIBLE OR INADMISSIBLE.

21 **Article - Health Occupations**

22 14-101.

- 23 (a) In this title the following words have the meanings indicated.
- 24 (b) "Board" means the State Board of Physicians.
- 25 (c) "Civil action" includes a health care malpractice claim under Title 3,  
26 Subtitle 2A of the Courts Article.
- 27 (d) "Faculty" means the Medical and Chirurgical Faculty of the State of  
28 Maryland.
- 29 (e) "Hospital" has the meaning stated in § 19-301 of the Health - General  
30 Article.
- 31 (f) "License" means, unless the context requires otherwise, a license issued by  
32 the Board to practice medicine.

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

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

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

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

12 (k) "Physician Rehabilitation Committee" means the committee of the entity  
13 or entities with whom the Board contracts under § 14-401(e) of this title that  
14 evaluates and provides assistance to impaired physicians in need of treatment and  
15 rehabilitation for alcoholism, chemical dependency, or other physical, emotional, or  
16 mental conditions.

17 (l) (1) "Practice medicine" means to engage, with or without compensation[,  
18 in medical]:

19 (i) IN MEDICAL:

20 1. Diagnosis;

21 [(ii)] 2. Healing;

22 [(iii)] 3. Treatment; or

23 [(iv)] 4. Surgery; OR

24 (II) IN TESTIFYING AS OR OFFERING AN OPINION AS A MEDICAL  
25 EXPERT WITNESS REGARDING THE CONDUCT DESCRIBED IN ITEM (I) OF THIS  
26 PARAGRAPH IN THE COURSE OF A LEGAL PROCEEDING.

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

29 (i) Diagnosing, healing, treating, preventing, prescribing for, or  
30 removing any physical, mental, or emotional ailment or supposed ailment of an  
31 individual:

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

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

35 (ii) Ending of a human pregnancy; and

1 (iii) Performing acupuncture.

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

3 (i) Selling any nonprescription drug or medicine;

4 (ii) Practicing as an optician; or

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

7 (m) "Related institution" has the meaning stated in § 19-301 of the Health -  
8 General Article.

9 14-302.

10 Subject to the rules, regulations, and orders of the Board, the following  
11 individuals may practice medicine without a license:

12 (1) A medical student or an individual in a postgraduate medical  
13 training program that is approved by the Board, while doing the assigned duties at  
14 any office of a licensed physician, hospital, clinic, or similar facility;

15 (2) A physician licensed by and residing in another jurisdiction, while  
16 engaging in consultation with a physician licensed in this State;

17 (3) A physician employed in the service of the federal government while  
18 performing the duties incident to that employment;

19 (4) A physician who resides in and is authorized to practice medicine by  
20 any state adjoining this State and whose practice extends into this State, if:

21 (i) The physician does not have an office or other regularly  
22 appointed place in this State to meet patients; and

23 (ii) The same privileges are extended to licensed physicians of this  
24 State by the adjoining state; [and]

25 (5) An individual while under the supervision of a licensed physician  
26 who has specialty training in psychiatry, and whose specialty training in psychiatry  
27 has been approved by the Board, if the individual submits an application to the Board  
28 on or before October 1, 1993, and either:

29 (i) 1. Has a master's degree from an accredited college or  
30 university; and

31 2. Has completed a graduate program accepted by the Board  
32 in a behavioral science that includes 1,000 hours of supervised clinical psychotherapy  
33 experience; or

- 1 (ii) 1. Has a baccalaureate degree from an accredited college or  
2 university; and
- 3 2. Has 4,000 hours of supervised clinical experience that is  
4 approved by the Board; AND

5 (6) A PHYSICIAN LICENSED BY AND RESIDING IN ANOTHER  
6 JURISDICTION, WHILE TESTIFYING IN A CIVIL ACTION OR ATTESTING TO  
7 COMPLIANCE WITH OR DEPARTURE FROM STANDARDS OF CARE FOR PURPOSES OF A  
8 CERTIFICATE OF A QUALIFIED EXPERT UNDER TITLE 3, SUBTITLE 2A OF THE COURTS  
9 ARTICLE.

10 14-401.

11 (i) Those individuals not licensed under this title but covered under §  
12 14-302(6) OF THIS TITLE OR § 14-413(a)(1)(ii)3 and 4 of this subtitle are subject to the  
13 hearing provisions of § 14-405 of this subtitle.

14 14-404.1.

15 SUBJECT TO THE HEARING PROVISIONS OF § 14-405 OF THIS SUBTITLE AND  
16 APPROPRIATE PEER REVIEW, THE BOARD, ON THE AFFIRMATIVE VOTE OF A  
17 MAJORITY OF THE QUORUM, MAY ISSUE FINDINGS AND A REPORT CONCERNING AN  
18 INDIVIDUAL COVERED UNDER § 14-302(6) OF THIS TITLE WHO FALSELY TESTIFIES OR  
19 FALSELY OFFERS AN OPINION AS A MEDICAL EXPERT REGARDING MEDICAL  
20 DIAGNOSIS, HEALING, TREATMENT, OR SURGERY.

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

25 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
26 October 1, 2005.