
By: **Delegates Barve, Jones, Kach, Donoghue, Arnick, Boschert, Bozman, Branch, Burns, Cadden, G. Clagett, V. Clagett, Conway, Costa, D. Davis, DeBoy, Glassman, Hamm, Hixson, Howard, Hubbard, Hurson, James, Kirk, Kullen, Love, Madaleno, Mandel, McDonough, Menes, Morhaim, Petzold, Rudolph, Stern, Trueschler, Weir, and Zirkin**

Introduced and read first time: February 11, 2005

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Civil Proceedings and Medical Injury Claims - Venue, Witnesses, and**
3 **Evidence**

4 FOR the purpose of requiring a court to employ a certain neutral expert witness
5 under certain circumstances; limiting the venue for certain medical injury
6 actions and proceedings; requiring that proposed expert testimony in a civil
7 action meet certain criteria; removing a certain exception so an admission of
8 liability or fault that is part of a communication of regret or apology is
9 inadmissible as evidence of liability or as an admission against interest in
10 certain actions and proceedings; altering a certain definition to provide that
11 practice of medicine includes engaging in testimony or offering an opinion as a
12 medical expert witness under certain circumstances; providing certain
13 exemptions from license requirements for practicing medicine; providing that
14 certain medical expert witnesses are subject to certain proceedings of the Board
15 of Physicians under certain circumstances; providing for the application of this
16 Act; and generally relating to venue, expert witnesses, and admissibility of
17 evidence in certain civil actions and proceedings.

18 BY repealing and reenacting, with amendments,
19 Article - Courts and Judicial Proceedings
20 Section 3-2A-09(d) and 10-920
21 Annotated Code of Maryland
22 (2002 Replacement Volume and 2004 Supplement)
23 (As enacted by Chapter 5 of the Acts of the General Assembly of the 2004 Special
24 Session)

25 BY repealing and reenacting, without amendments,
26 Article - Courts and Judicial Proceedings
27 Section 6-201 and 6-203(a)
28 Annotated Code of Maryland

1 (2002 Replacement Volume and 2004 Supplement)

2 BY adding to
3 Article - Courts and Judicial Proceedings
4 Section 6-203(f) and 9-124

5 Annotated Code of Maryland
6 (2002 Replacement Volume and 2004 Supplement)

7 BY repealing and reenacting, without amendments,
8 Article - Health Occupations
9 Section 14-101(a)
10 Annotated Code of Maryland
11 (2000 Replacement Volume and 2004 Supplement)

12 BY repealing and reenacting, with amendments,
13 Article - Health Occupations
14 Section 14-101(l), 14-302, and 14-401(i)
15 Annotated Code of Maryland
16 (2000 Replacement Volume and 2004 Supplement)

17 BY adding to
18 Article - Health Occupations
19 Section 14-401.1
20 Annotated Code of Maryland
21 (2000 Replacement Volume and 2004 Supplement)

22 BY repealing and reenacting, without amendments,
23 Article - Health Occupations
24 Section 14-405
25 Annotated Code of Maryland
26 (2000 Replacement Volume and 2004 Supplement)
27 (As enacted by Chapter 5 of the Acts of the General Assembly of the 2004 Special
28 Session)

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

31 **Article - Courts and Judicial Proceedings**

32 3-2A-09.

33 (d) (1) A verdict for past medical expenses shall be limited to:

34 (i) The total amount of past medical expenses paid by or on behalf
35 of the plaintiff; and

(ii) The total amount of past medical expenses incurred but not paid by or on behalf of the plaintiff for which the plaintiff or another person on behalf of the plaintiff is obligated to pay.

7 (ii) Unless otherwise agreed to by the parties, the costs of a neutral
8 expert witness shall be divided equally among the parties.

9 (iii) [Nothing] EXCEPT AS PROVIDED IN SUBPARAGRAPH (I) OF THIS
10 PARAGRAPH, NOTHING contained in this subsection limits the authority of a court
11 concerning a court's witness.

12 6-201.

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

18 (b) If there is more than one defendant, and there is no single venue
19 applicable to all defendants, under subsection (a), all may be sued in a county in
20 which any one of them could be sued, or in the county where the cause of action arose.
21 6-203.

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

24 (F) THE VENUE OF A CLAIM, SUIT, OR ACTION FILED UNDER TITLE 3,
25 SUBTITLE 2A OF THIS ARTICLE IS IN THE COUNTY WHERE THE CAUSE OF ACTION
26 AROSE.

27 9-124.

28 (A) IN A CIVIL ACTION, IF A COURT DETERMINES THAT SCIENTIFIC,
29 TECHNICAL, OR OTHER SPECIALIZED KNOWLEDGE WILL ASSIST THE TRIER OF FACT
30 TO UNDERSTAND THE EVIDENCE OR TO DETERMINE A FACT IN ISSUE, A WITNESS
31 DETERMINED BY THE COURT TO BE QUALIFIED AS AN EXPERT BY KNOWLEDGE,
32 SKILL, EXPERIENCE, TRAINING, OR EDUCATION MAY TESTIFY CONCERNING THE
33 EVIDENCE OR FACT IN ISSUE IN THE FORM OF AN OPINION OR OTHERWISE ONLY IF
34 THE FOLLOWING CRITERIA ARE MET:

35 (1) THE TESTIMONY IS BASED ON SUFFICIENT FACTS OR DATA;

36 (2) THE TESTIMONY IS THE PRODUCT OF RELIABLE PRINCIPLES AND
37 METHODS; AND

3 (B) IF A COURT CONSIDERS IT NECESSARY OR ON MOTION BY A PARTY, THE
4 COURT MAY, AS A PRELIMINARY MATTER AND OUT OF THE PRESENCE OF A JURY,
5 HEAR EVIDENCE REGARDING THE CRITERIA IN SUBSECTION (A) OF THIS SECTION,
6 INCLUDING HEARING TESTIMONY FROM THE PROPOSED EXPERT WITNESS.

7 10-920.

8 (a) In this section, "health care provider" has the meaning stated in § 3-2A-01
9 of this article.

10 (b) [1] Except as provided in paragraph (2) of this subsection, in] IN a
11 proceeding subject to Title 3, Subtitle 2A of this article or a civil action against a
12 health care provider, an expression of regret or apology made by or on behalf of the
13 health care provider, including an expression of regret or apology made in writing,
14 orally, or by conduct, is inadmissible as evidence of an admission of liability or as
15 evidence of an admission against interest.

16 [(2) An admission of liability or fault that is part of or in addition to a
17 communication made under paragraph (1) of this subsection is admissible as evidence
18 of an admission of liability or as evidence of an admission against interest in an action
19 described under paragraph (1) of this subsection.]

Article - Health Occupations

21 14-101.

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

23 (I) (1) "Practice medicine" means to engage, with or without compensation,
24 [in medical:]

25 (i) IN MEDICAL:

26 1. Diagnosis;

27 [(ii)] 2. Healing;

28 [(iii)] 3. Treatment

29 [(iv)] 4. Surgery; OR

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

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

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

7 (ii) Ending of a human pregnancy; and

8 (iii) Performing acupuncture.

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

10 (i) Selling any nonprescription drug or medicine;

11 (ii) Practicing as an optician; or

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

14 14-302.

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

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

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

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

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

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

28 (ii) The same privileges are extended to licensed physicians

30 (5) An individual while
31 who has specialty training in psychiatry,
32 has been approved by the Board, if the in
33 on or before October 1, 1993, and either:

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

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

6 (ii) 1. Has a baccalaureate degree from an accredited college or
7 university; and

8 2. Has 4,000 hours of supervised clinical experience that is
9 approved by the Board; AND

10 (6) A PHYSICIAN LICENSED BY AND RESIDING IN ANOTHER
11 JURISDICTION, WHILE TESTIFYING IN A CIVIL ACTION OR ATTESTING TO
12 COMPLIANCE WITH OR DEPARTURES FROM STANDARDS OF CARE FOR PURPOSES OF
13 A CERTIFICATE OF QUALIFIED EXPERT UNDER TITLE 3, SUBTITLE 2A OF THE COURTS
14 ARTICLE.

15 14-401.

16 (i) Those individuals not licensed under this title but covered under §
17 14-302(6) OF THIS TITLE OR § 14-413(a)(1)(ii)3 and 4 of this subtitle are subject to the
18 hearing provisions of § 14-405 of this subtitle.

19 14-401.1.

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

26 14-405.

27 (a) Except as otherwise provided in the Administrative Procedure Act, before
28 the Board takes any action under § 14-404(a) of this subtitle or § 14-5A-17(a) of this
29 title, it shall give the individual against whom the action is contemplated an
30 opportunity for a hearing before a hearing officer.

31 (b) (1) The hearing officer shall give notice and hold the hearing in
32 accordance with the Administrative Procedure Act.

33 (2) Factual findings shall be supported by a preponderance of the
34 evidence.

35 (c) The individual may be represented at the hearing by counsel.

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1 (d) If after due notice the individual against whom the action is contemplated
2 fails or refuses to appear, nevertheless the hearing officer may hear and refer the
3 matter to the Board for disposition.

4 (e) After performing any necessary hearing under this section, the hearing
5 officer shall refer proposed factual findings to the Board for the Board's disposition.

6 (f) The Board may adopt regulations to govern the taking of depositions and
7 discovery in the hearing of charges.

8 (g) The hearing of charges may not be stayed or challenged by any procedural
9 defects alleged to have occurred prior to the filing of charges.

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
11 construed to apply only prospectively and may not be applied or interpreted to have
12 any effect on or application to any cause of action arising before the effective date of
13 this Act.

14 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take
15 effect June 1, 2005.