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By: **Delegates Barve, Jones, Kach, Donoghue, Arnick, Boschert, Bozman, Branch, Burns, Cadden, G. Clagett, V. Clagett, Conway, Costa, D. Davis, DeBoy, Glassman, Hammen, 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

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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

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

4 (2) (i) A court [may] on its own motion, or on motion of a party, SHALL  
5 employ a neutral expert witness to testify on the issue of a plaintiff's future medical  
6 expenses or future loss of earnings.

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

1 (3) THE WITNESS HAS APPLIED THE PRINCIPLES AND METHODS  
2 RELIABLY TO THE FACTS OF THE CASE.

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.]

20

#### Article - Health Occupations

21 14-101.

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

23 (l) (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; or

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:

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

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

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 of this  
29 State by the adjoining state; [and]

30 (5) An individual while under the supervision of a licensed physician  
31 who has specialty training in psychiatry, and whose specialty training in psychiatry  
32 has been approved by the Board, if the individual submits an application to the Board  
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.

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.