
By: **Delegates Zirkin, Morhaim, Barve, and Jones**

Introduced and read first time: February 8, 2006

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Circuit Courts - Medical Injury - Medical Malpractice Administrative**
3 **Review Board**

4 FOR the purpose of requiring certain medical injury actions filed in court after a
5 certain date to be submitted to a medical malpractice administrative review
6 board; requiring a court to refer a certain action to a circuit administrative
7 judge; requiring a circuit administrative judge to appoint a certain judge to
8 chair a board and notify certain parties of certain information; requiring a
9 circuit administrative judge to consider certain matters in appointing a chair of
10 a board and provide specifications for a certain curriculum; suspending
11 statutory time limits under a certain subtitle and under the Maryland Rules for
12 a certain period in certain circumstances; providing procedures for a chair to
13 choose members of a board and for a party to strike a member from a board;
14 requiring that board members meet certain criteria; requiring that certain
15 board hearings be closed to the public; requiring that board deliberations and
16 certain testimony are privileged and confidential; authorizing a chair to take
17 certain action, with certain exceptions; requiring a board to make certain
18 determinations about liability and proximate cause; providing that certain rules
19 of evidence are not applicable in a certain board hearing; giving a board
20 subpoena power; authorizing a board to appoint a certain impartial expert
21 witness under certain circumstances; providing for admissibility of certain
22 records under certain circumstances; authorizing parties to take certain actions
23 in a hearing; requiring a board to issue a written decision answering certain
24 questions; requiring a decision to be made within a certain time period;
25 requiring a board to serve the decision on the parties and the court; requiring a
26 board's decision to be served in a certain manner and format to the Statewide
27 Medical Care Data Base of the Maryland Health Care Commission and the
28 Maryland Patient Safety Center which shall use certain data for certain
29 purposes; requiring the Maryland Health Care Commission to make board
30 decisions available to the public in a certain manner and format; providing for
31 the payment of board members and costs of proceedings equally between the
32 parties under certain circumstances; authorizing a party to accept or reject a
33 decision of a board; requiring the parties to take certain actions in either case;
34 authorizing the admission of a board decision in a court proceeding; authorizing
35 the use of a certain presumption about a unanimous panel decision in a

1 subsequent trial; authorizing a party to call a member of a board as a witness in
2 a subsequent trial; requiring a court to retain a certain neutral expert witness
3 under certain circumstances; requiring a certain party that is the losing party
4 under a board decision and the losing party in a subsequent trial to pay certain
5 costs, including the other party's attorney's fees; exempting certain individuals
6 serving on a certain board from civil liability under certain circumstances;
7 defining a certain term; providing for the application of this Act; making the
8 provisions of this Act severable; and generally relating to establishing medical
9 malpractice administrative review boards in medical injury cases.

10 BY repealing and reenacting, without amendments,
11 Article - Courts and Judicial Proceedings
12 Section 3-2A-01(a), (c), (f), and (g), 3-2A-04(a) and (b)(1), (2), and (4),
13 3-2A-06D(a), (b), (c), and (d)
14 Annotated Code of Maryland
15 (2002 Replacement Volume and 2005 Supplement)

16 BY adding to
17 Article - Courts and Judicial Proceedings
18 Section 3-2A-06E
19 Annotated Code of Maryland
20 (2002 Replacement Volume and 2005 Supplement)

21 BY repealing and reenacting, with amendments,
22 Article - Courts and Judicial Proceedings
23 Section 5-615
24 Annotated Code of Maryland
25 (2002 Replacement Volume and 2005 Supplement)

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

28 **Article - Courts and Judicial Proceedings**

29 3-2A-01.

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

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

33 (f) (1) "Health care provider" means a hospital, a related institution as
34 defined in § 19-301 of the Health - General Article, a medical day care center, a
35 hospice care program, an assisted living program, a freestanding ambulatory care
36 facility as defined in § 19-3B-01 of the Health - General Article, a physician, an
37 osteopath, an optometrist, a chiropractor, a registered or licensed practical nurse, a
38 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.
- 32 (d) (1) The Maryland Rules apply to filing and serving a copy of a certificate
33 required under this section and in motions relating to a violation of this section.

1 (2) Nothing contained in this section prohibits or limits a party from
2 moving for summary judgment in accordance with the Maryland Rules.

3 3-2A-06E.

4 (A) IN THIS SECTION, "BOARD" MEANS A MEDICAL MALPRACTICE REVIEW
5 BOARD SELECTED TO REVIEW A HEALTH CARE MALPRACTICE ACTION.

6 (B) (1) THIS SECTION APPLIES TO AN INITIAL COMPLAINT FILED ON OR
7 AFTER JUNE 1, 2006, FOR WHICH:

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

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

12 (2) THIS SECTION DOES NOT APPLY IF THE DEFENDANT ADMITS
13 LIABILITY.

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

20 (D) (1) THE CIRCUIT COURT OR THE UNITED STATES DISTRICT COURT IN
21 WHICH THE INITIAL COMPLAINT IS FILED SHALL REFER THE ACTION TO THE
22 CIRCUIT ADMINISTRATIVE JUDGE OF THE CIRCUIT.

23 (2) (I) THE CIRCUIT ADMINISTRATIVE JUDGE SHALL APPOINT A
24 CIRCUIT COURT JUDGE OR A RETIRED CIRCUIT COURT JUDGE OF THE CIRCUIT TO
25 CHAIR THE BOARD.

26 (II) IN APPOINTING A CIRCUIT COURT JUDGE TO CHAIR A BOARD, A
27 CIRCUIT ADMINISTRATIVE JUDGE SHALL CONSIDER THE APPOINTEE'S KNOWLEDGE
28 AND LEVEL OF EXPERTISE IN MEDICAL MALPRACTICE MATTERS, INCLUDING
29 MEDICINE, HEALTH CARE ISSUES, AND HEALTH LAW, AND PAST EXPERIENCE AS A
30 PRACTITIONER OF MEDICINE.

31 (III) THE CIRCUIT ADMINISTRATIVE JUDGE SHALL ESTABLISH
32 SPECIFICATIONS FOR AN ONGOING TRAINING CURRICULUM THAT PROVIDES AN
33 OVERVIEW OF MEDICAL AND LEGAL ISSUES THAT MAY ARISE IN BOARD
34 PROCEEDINGS.

35 (IV) EACH APPOINTEE SHALL HAVE A CONSISTENT RECORD OF
36 PARTICIPATION IN CONTINUING EDUCATION PROGRAMS SPECIFICALLY RELATING
37 TO MEDICAL MALPRACTICE, MEDICO-LEGAL ISSUES, HEALTH LAW, AND THE
38 FUNDAMENTALS OF CLINICAL PRACTICE.

1 (3) THE CIRCUIT ADMINISTRATIVE JUDGE SHALL SEND NOTICE, BY
2 CERTIFIED MAIL, TO EACH PLAINTIFF AND DEFENDANT NAMED IN THE ACTION OF:

3 (I) THE PROCEDURES OF THE MEDICAL MALPRACTICE REVIEW
4 BOARD; AND

5 (II) THE NAME OF THE CIRCUIT JUDGE OR RETIRED CIRCUIT
6 JUDGE APPOINTED TO CHAIR THE BOARD.

7 (E) (1) ALL TIME LIMITS UNDER THIS SUBTITLE OR THE MARYLAND RULES
8 APPLICABLE TO AN ACTION SHALL BE SUSPENDED FROM THE DATE ON WHICH THE
9 COMPLAINT IS REFERRED TO THE CIRCUIT ADMINISTRATIVE JUDGE UNDER
10 SUBSECTION (D) OF THIS SECTION UNTIL 30 DAYS FOLLOWING THE DAY THE PARTIES
11 AND THE COURT RECEIVE THE DECISION OF THE BOARD.

12 (F) (1) (I) WITHIN 20 DAYS AFTER THE REFERRAL OF THE COMPLAINT
13 UNDER SUBSECTION (D) OF THIS SECTION, THE CHAIR SHALL:

14 1. CHOOSE 5 INDIVIDUALS FROM THE HEALTH CARE
15 PROVIDER LIST IN ACCORDANCE WITH § 3-2A-03(C) OF THIS SUBTITLE, TOGETHER
16 WITH A BRIEF BIOGRAPHICAL STATEMENT FOR EACH INDIVIDUAL; AND

17 2. SEND THE LIST, BY CERTIFIED MAIL, TO EACH PARTY.

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

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

24 (2) (I) BEFORE NAMING AN INDIVIDUAL, THE CHAIR SHALL INQUIRE
25 OF THE INDIVIDUAL AND BE ASSURED THAT THE INDIVIDUAL DOES NOT HAVE A
26 PERSONAL OR ECONOMIC RELATIONSHIP WITH ANY OF THE PARTIES OR THEIR
27 COUNSEL, OR IN ANY CASES THAT MAY FORM THE BASIS OF ANY PARTIALITY ON
28 THEIR PART.

29 (II) IF, IN THE JUDGMENT OF THE CHAIR, AN INDIVIDUAL HAS A
30 RELATIONSHIP DESCRIBED UNDER ITEM (I) OF THIS PARAGRAPH, THE CHAIR SHALL
31 REPLACE THAT INDIVIDUAL'S NAME WITH ANOTHER INDIVIDUAL FROM THE LIST
32 UNDER § 3-2A-03(C) OF THIS SUBTITLE.

33 (III) AN INDIVIDUAL CHOSEN BY THE CHAIR MAY NOT RESIDE IN
34 THE COUNTY IN WHICH THE COMPLAINT IS FILED.

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

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

5 2. IF THERE IS MORE THAN ONE PLAINTIFF, THE PLAINTIFFS
6 SHALL BE TREATED AS A SINGLE PARTY AND SHALL EXERCISE THEIR STRIKE
7 JOINTLY.

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

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

15 (4) THE CHAIR SHALL APPOINT THE MEMBERSHIP OF THE BOARD
16 AFTER MAKING THE STRIKES DESCRIBED IN PARAGRAPH (3) OF THIS SUBSECTION.

17 (5) SERVICE BY A HEALTH CARE PROVIDER ON A BOARD UNDER THIS
18 SECTION MAY NOT BE CONSIDERED A PROFESSIONAL ACTIVITY THAT DIRECTLY
19 INVOLVES TESTIMONY IN PERSONAL INJURY CLAIMS UNDER § 3-2A-04(B)(4) OF THIS
20 SUBTITLE.

21 (G) (1) WITHIN 15 DAYS OF THE APPOINTMENT OF THE BOARD, A CHAIR
22 SHALL NOTIFY THE PARTIES OF THE MEMBERSHIP OF THE BOARD AND CONVENE
23 THE BOARD IN AN INITIAL CONFERENCE.

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

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

29 (H) THE MARYLAND RULES DO NOT APPLY TO THE ADMISSION OF EVIDENCE
30 UNDER THIS SECTION.

31 (I) (1) THE HEARING SHALL BE CLOSED TO THE PUBLIC.

32 (2) THE DELIBERATIONS AND DISCUSSION OF A BOARD AND THE
33 TESTIMONY OF AN EXPERT, WHETHER CALLED BY A PARTY OR THE BOARD, SHALL BE
34 PRIVILEGED AND CONFIDENTIAL.

35 (J) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A CHAIR:

36 (I) SHALL CONVENE THE BOARD, SCHEDULE HEARINGS, AND
37 PRESIDE OVER THE BOARD'S MEETINGS;

1 (II) SHALL ESTABLISH A SCHEDULE FOR SUBMISSION OF
2 EVIDENCE TO THE BOARD;

3 (III) MAY ADJOURN THE HEARING FROM TIME TO TIME, AS
4 NECESSARY;

5 (IV) SHALL EXPEDITE THE BOARD'S REVIEW OF THE MEDICAL
6 EVIDENCE;

7 (V) SHALL DECIDE ISSUES RELATING TO DISCOVERY AND MOTIONS
8 IN LIMINE;

9 (VI) SHALL ADVISE THE BOARD ON ISSUES OF LAW THAT ARISE
10 DURING THE REVIEW; AND

11 (VII) SHALL PREPARE THE DECISION OF THE BOARD IN
12 ACCORDANCE WITH SUBSECTION (M) OF THIS SECTION.

13 (2) A CHAIR MAY NOT VOTE IN THE DELIBERATIONS OF THE BOARD.

14 (K) A BOARD SHALL DETERMINE, AFTER A HEARING HELD IN ACCORDANCE
15 WITH SUBSECTION (G) OF THIS SECTION, IF THE EVIDENCE PRESENTED, IF
16 PROPERLY SUBSTANTIATED, IS SUFFICIENT TO RAISE A LEGITIMATE QUESTION
17 THAT:

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

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

23 (L) (1) AT THE HEARING, THE PLAINTIFF SHALL PRESENT THE COMPLAINT
24 TO THE BOARD AND THE DEFENDANT MAY MAKE A PRESENTATION IN RESPONSE.

25 (2) AFTER THE PRESENTATIONS BY THE PARTIES, THE BOARD MAY
26 REQUEST FROM EACH PARTY ADDITIONAL FACTS, RECORDS, OR OTHER
27 INFORMATION TO BE SUBMITTED IN WRITING.

28 (3) (I) THE BOARD MAY SUBPOENA ANY RECORDS OR ANY EXPERT
29 NECESSARY TO SUBSTANTIATE OR CLARIFY EVIDENCE PRESENTED IN THE
30 HEARING.

31 (II) THE BOARD MAY APPOINT AN IMPARTIAL AND QUALIFIED
32 HEALTH CARE PROVIDER TO PROVIDE NECESSARY PROFESSIONAL OR EXPERT
33 TESTIMONY.

34 (III) PROPERLY AUTHENTICATED HOSPITAL RECORDS AND THE
35 RECORDS OF A TREATING HEALTH CARE PROVIDER ARE ADMISSIBLE WITHOUT THE
36 NECESSITY OF CALLING THE HEALTH CARE PROVIDER, SUBJECT TO REASONABLE

1 NOTICE AND THE RIGHT OF THE OPPOSING PARTY TO DEPOSE THE HEALTH CARE
2 PROVIDER.

3 (4) AT THE BOARD HEARING, THE PARTIES HAVE THE RIGHT:

4 (I) TO BE HEARD;

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

6 (III) TO CROSS-EXAMINE WITNESSES WHO APPEAR AT THE
7 HEARING.

8 (M) (1) A BOARD SHALL ISSUE ITS WRITTEN DECISION WITHIN 30 DAYS OF
9 THE HEARING.

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

11 (I) WHETHER THERE IS A REASONABLE MEDICAL OR
12 PROFESSIONAL PROBABILITY THAT THE ACTS OR OMISSIONS COMPLAINED OF OR
13 FOUND BY THE BOARD TO EXIST CONSTITUTE A DEPARTURE FROM THE APPLICABLE
14 STANDARD OF CARE BY THE HEALTH CARE PROVIDER CHARGED WITH THAT CARE;
15 AND

16 (II) WHETHER THERE IS A REASONABLE MEDICAL OR
17 PROFESSIONAL PROBABILITY THAT THE ACTS OR OMISSIONS COMPLAINED OF
18 PROXIMATELY CAUSED THE INJURY COMPLAINED OF OR AS FOUND BY THE BOARD.

19 (N) (1) THE BOARD'S DECISION, SIGNED BY THE BOARD MEMBERS, SHALL
20 BE SERVED BY CERTIFIED MAIL ON THE COURT AND THE PARTIES WITHIN 5 DAYS OF
21 THE DATE OF ISSUANCE OF THE DECISION.

22 (2) WITHIN 30 DAYS OF THE DATE OF ISSUANCE OF A BOARD'S DECISION,
23 THE BOARD'S DECISION SHALL BE SERVED BY MAIL IN A DE-IDENTIFIED FORMAT,
24 CONSISTENT WITH APPLICABLE STATE AND FEDERAL LAW, TO THE STATEWIDE
25 MEDICAL CARE DATA BASE OF THE MARYLAND HEALTH CARE COMMISSION AND THE
26 MARYLAND PATIENT SAFETY CENTER WHICH SHALL USE THE DATA ON BOARD
27 DECISIONS FOR PURPOSES RELATING TO PATIENT SAFETY ENHANCEMENT
28 ACTIVITIES.

29 (3) WITHIN 30 DAYS OF THE DATE OF ISSUANCE OF A BOARD'S DECISION,
30 THE MARYLAND HEALTH CARE COMMISSION SHALL MAKE DECISION BY A BOARD
31 AVAILABLE AND READILY ACCESSIBLE TO THE PUBLIC IN A DE-IDENTIFIED FORMAT,
32 CONSISTENT WITH APPLICABLE STATE AND FEDERAL LAW.

33 (O) (1) EXCEPT FOR THE CHAIR, EACH MEMBER OF THE BOARD IS ENTITLED
34 TO BE REIMBURSED:

35 (I) UP TO \$350 FOR ALL WORK PERFORMED AS A MEMBER OF THE
36 BOARD, EXCLUSIVE OF THE TIME INVOLVED IF CALLED AS A WITNESS TO TESTIFY IN
37 COURT; AND

1 (II) REASONABLE TRAVEL EXPENSES.

2 (2) (I) THE CHAIR SHALL KEEP AN ACCURATE RECORD OF THE TIME
3 AND EXPENSES OF THE MEMBERS OF THE BOARD.

4 (II) THE RECORD SHALL BE SUBMITTED TO THE PARTIES FOR
5 PAYMENT WITH THE BOARD'S DECISION.

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

9 (P) (1) (I) A PARTY MAY REJECT THE DECISION OF THE BOARD ISSUED
10 UNDER SUBSECTION (M) OF THIS SECTION FOR ANY REASON.

11 (II) THE PARTY REJECTING THE DECISION SHALL FILE A NOTICE
12 OF REJECTION WITH THE CHAIR AND THE CIRCUIT ADMINISTRATIVE JUDGE OF THE
13 CIRCUIT IN WHICH THE ACTION WAS FILED OR THE UNITED STATES DISTRICT COURT
14 AND SERVE THE NOTICE ON EACH OTHER PARTY WITHIN 30 DAYS OF RECEIVING THE
15 DECISION.

16 (III) ON RECEIVING THE NOTICE OF REJECTION, THE COURT SHALL
17 REINSTATE THE COMPLAINT TO THE ACTIVE TRIAL LIST AND LIFT THE SUSPENSION
18 OF TIME LIMITS UNDER SUBSECTION (E) OF THIS SECTION.

19 (2) (I) THE PARTIES MAY ACCEPT THE DECISION OF THE BOARD
20 ISSUED UNDER SUBSECTION (M) OF THIS SECTION.

21 (II) IF THE PARTIES ACCEPT THE DECISION, THE PARTIES SHALL
22 MOVE TO DISMISS THE COMPLAINT FILED IN COURT WITHIN 30 DAYS OF RECEIVING
23 THE DECISION.

24 (Q) (1) THE BOARD'S DECISION UNDER SUBSECTION (M) OF THIS SECTION IS
25 ADMISSIBLE AS EVIDENCE IN A SUBSEQUENT TRIAL.

26 (2) A UNANIMOUS DECISION OF THE BOARD ON EITHER OR BOTH
27 QUESTIONS UNDER SUBSECTION (M) OF THIS SECTION SHALL BE ACCORDED A
28 PRESUMPTION OF CORRECTNESS IN THE SUBSEQUENT TRIAL OF THE CASE.

29 (R) (1) EACH PARTY HAS THE RIGHT TO CALL A MEMBER OF THE BOARD AS
30 A WITNESS IN A SUBSEQUENT TRIAL.

31 (2) A COURT SHALL RETAIN A NEUTRAL EXPERT WITNESS TO TESTIFY
32 ON ISSUES OF LIABILITY AND DAMAGES IN A SUBSEQUENT TRIAL.

33 (S) (1) A PARTY THAT IS THE LOSING PARTY IN A DECISION BEFORE A
34 BOARD UNDER THIS SECTION AND IN A SUBSEQUENT TRIAL IS RESPONSIBLE FOR:

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

1 (II) PAYING THE REASONABLE ATTORNEY'S FEES OF THE
2 PREVAILING PARTY.

3 (2) A PARTY THAT IS THE PREVAILING PARTY IN A DECISION BEFORE A
4 BOARD UNDER THIS SECTION, BUT IS THE LOSING PARTY IN A SUBSEQUENT TRIAL,
5 IS RESPONSIBLE FOR COSTS IN ACCORDANCE WITH MARYLAND RULE 2-603.

6 (T) AN INDIVIDUAL WHO SERVES AS A MEMBER OF A BOARD UNDER THIS
7 SECTION SHALL HAVE THE IMMUNITY FROM SUIT DESCRIBED UNDER § 5-615 OF
8 THIS ARTICLE.

9 5-615.

10 In the absence of an affirmative showing of malice or bad faith, each arbitrator
11 or individual conducting alternative dispute resolution AND EACH MEMBER OF A
12 MEDICAL MALPRACTICE ADMINISTRATIVE REVIEW BOARD CONDUCTING A REVIEW
13 in a health care malpractice claim or action under Title 3, Subtitle 2A of this article
14 from the time of acceptance of appointment has immunity from suit for any act or
15 decision made during tenure and within the scope of designated authority.

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

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

25 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
26 June 1, 2006.