
By: **Delegates Shank, Bartlett, Elliott, Frank, Hogan, Kelly, McComas,
McKee, McMillan, Myers, and Weldon**

Introduced and read first time: February 9, 2006

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Civil Action Reform Act of 2006**

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

17 BY adding to
18 Article - Courts and Judicial Proceedings
19 Section 3-2A-10 and 9-124
20 Annotated Code of Maryland
21 (2002 Replacement Volume and 2005 Supplement)

22 BY repealing and reenacting, with amendments,
23 Article - Courts and Judicial Proceedings
24 Section 3-2A-10
25 Annotated Code of Maryland
26 (2002 Replacement Volume and 2005 Supplement)

27 BY repealing and reenacting, without amendments,
28 Article - Health Occupations
29 Section 14-101(a)
30 Annotated Code of Maryland

1 (2005 Replacement Volume)

2 BY repealing and reenacting, with amendments,
3 Article - Health Occupations
4 Section 14-101(l)(1), 14-302, and 14-401(i)
5 Annotated Code of Maryland
6 (2005 Replacement Volume)

7 BY adding to
8 Article - Health Occupations
9 Section 14-404.1
10 Annotated Code of Maryland
11 (2005 Replacement Volume)

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

14 **Article - Courts and Judicial Proceedings**

15 3-2A-10.

16 IN A CLAIM OR ACTION UNDER THIS SUBTITLE, IF A PANEL CHAIRMAN OR
17 COURT FINDS THAT THE CONDUCT OF A PARTY IN MAINTAINING OR DEFENDING A
18 PROCEEDING WAS IN BAD FAITH OR WITHOUT SUBSTANTIAL JUSTIFICATION, THE
19 PANEL CHAIRMAN OR COURT SHALL ORDER THE OFFENDING PARTY OR THE
20 ATTORNEY ADVISING THE CONDUCT OR BOTH TO PAY TO THE ADVERSE PARTY THE
21 COSTS OF THE PROCEEDING AND THE REASONABLE EXPENSES, INCLUDING
22 REASONABLE ATTORNEY'S FEES, INCURRED BY THE ADVERSE PARTY IN OPPOSING
23 IT.

24 [3-2A-10.] 3-2A-11.

25 Except as otherwise provided in §§ 3-2A-08A [and], 3-2A-09, AND 3-2A-10 of
26 this subtitle, the provisions of this subtitle shall be deemed procedural in nature and
27 may not be construed to create, enlarge, or diminish any cause of action not heretofore
28 existing, except the defense of failure to comply with the procedures required under
29 this subtitle.

30 9-124.

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

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

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

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

6 (B) THE COURT ON ITS OWN MOTION OR A MOTION BY A PARTY, AS A
7 PRELIMINARY MATTER AND OUT OF THE PRESENCE OF A JURY, MAY HEAR EVIDENCE
8 REGARDING THE CRITERIA IN SUBSECTION (A) OF THIS SECTION, INCLUDING
9 HEARING TESTIMONY FROM THE PROPOSED EXPERT WITNESS.

10 **Article - Health Occupations**

11 14-101.

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

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

15 (i) IN MEDICAL:

16 1. Diagnosis;

17 [(ii)] 2. Healing;

18 [(iii)] 3. Treatment; or

19 [(iv)] 4. Surgery; OR

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

23 14-302.

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

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

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

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

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

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

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

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

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

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

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

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

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

25 14-401.

26 (i) Those individuals not licensed under this title but covered under §
27 14-302(6) OF THIS TITLE OR § 14-413(a)(1)(ii)3 and 4 of this subtitle are subject to the
28 hearing provisions of § 14-405 of this subtitle.

29 14-404.1.

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

36 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
37 construed to apply only prospectively and may not be applied or interpreted to have

1 any effect on or application to any claim or action filed before the effective date of this
2 Act.

3 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2006.