

# HOUSE BILL 48

D3  
HB 816/06 – JUD

7lr1353  
CF 7lr0621

By: **Delegates Morhaim, Aumann, Barve, Frank, Minnick, Oaks, Shank, and Stein**

Introduced and read first time: January 19, 2007

Assigned to: Judiciary

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## 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 certain provisions of law and under the Maryland  
12 Rules for a certain period in certain circumstances; providing procedures for a  
13 chair to choose members of a board and for a party to strike a member from a  
14 board; requiring that board members meet certain criteria; requiring that  
15 certain board hearings be closed to the public; requiring that board  
16 deliberations and certain testimony are privileged and confidential; authorizing  
17 a chair to take certain action, with certain exceptions; requiring a board to  
18 make certain determinations about liability and proximate cause; providing  
19 that certain rules of evidence are not applicable in a certain board hearing;  
20 giving a board subpoena power; authorizing a board to appoint a certain  
21 impartial expert witness under certain circumstances; providing for  
22 admissibility of certain records under certain circumstances; authorizing parties  
23 to take certain actions in a hearing; requiring a board to issue a written decision  
24 answering certain questions; requiring a decision to be made within a certain  
25 time period; requiring a board to serve the decision on the parties and the court;

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 requiring a board's decision to be served in a certain manner and format to the  
2 Statewide Medical Care Data Base of the Maryland Health Care Commission  
3 and the Maryland Patient Safety Center, which may use certain data only for  
4 certain purposes; requiring the Maryland Health Care Commission to make  
5 board decisions available to the public in a certain manner and format;  
6 providing for the payment of board members and costs of proceedings equally  
7 between the parties under certain circumstances; authorizing a party to accept  
8 or reject a decision of a board; requiring the parties to take certain actions in  
9 either case; authorizing the admission of a board decision in a court proceeding;  
10 establishing a certain presumption about a unanimous panel decision in a  
11 subsequent trial; authorizing a party to call a member of a board as a witness in  
12 a subsequent trial; requiring a court to retain a certain neutral expert witness  
13 under certain circumstances; requiring a certain party that is the losing party  
14 under a board decision and the losing party in a subsequent trial to pay certain  
15 costs, including the other party's attorney's fees; exempting certain individuals  
16 serving on a certain board from civil liability under certain circumstances;  
17 defining a certain term; providing for the application of this Act; making the  
18 provisions of this Act severable; and generally relating to establishing medical  
19 malpractice administrative review boards in medical injury cases.

20 BY repealing and reenacting, without amendments,  
21 Article – Courts and Judicial Proceedings  
22 Section 3–2A–01(a), (c), (f), and (g), 3–2A–04(a) and (b)(1), (2), and (4), and  
23 3–2A–06D(a), (b), (c), and (d)  
24 Annotated Code of Maryland  
25 (2006 Replacement Volume)

26 BY adding to  
27 Article – Courts and Judicial Proceedings  
28 Section 3–2A–06E  
29 Annotated Code of Maryland  
30 (2006 Replacement Volume)

31 BY repealing and reenacting, with amendments,  
32 Article – Courts and Judicial Proceedings  
33 Section 5–615  
34 Annotated Code of Maryland  
35 (2006 Replacement Volume)

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

38 **Article – Courts and Judicial Proceedings**

1 3-2A-01.

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

4 (c) “Court” means a circuit court for a county.

5 (f) (1) “Health care provider” means a hospital, a related institution as  
6 defined in § 19-301 of the Health – General Article, a medical day care center, a  
7 hospice care program, an assisted living program, a freestanding ambulatory care  
8 facility as defined in § 19-3B-01 of the Health – General Article, a physician, an  
9 osteopath, an optometrist, a chiropractor, a registered or licensed practical nurse, a  
10 dentist, a podiatrist, a psychologist, a licensed certified social worker–clinical, and a  
11 physical therapist, licensed or authorized to provide one or more health care services  
12 in Maryland.

13 (2) “Health care provider” does not include any nursing institution  
14 conducted by and for those who rely upon treatment by spiritual means through  
15 prayer alone in accordance with the tenets and practices of a recognized church or  
16 religious denomination.

17 (g) “Medical injury” means injury arising or resulting from the rendering or  
18 failure to render health care.

19 3-2A-04.

20 (a) (1) (i) A person having a claim against a health care provider for  
21 damage due to a medical injury shall file the claim with the Director and, if the claim  
22 is against a physician, the Director shall forward copies of the claim to the State Board  
23 of Physicians.

24 (ii) The Director shall cause a copy of the claim to be served  
25 upon the health care provider by the appropriate sheriff in accordance with the  
26 Maryland Rules.

27 (iii) The health care provider shall file a response with the  
28 Director and serve a copy on the claimant and all other health care providers named  
29 therein within the time provided in the Maryland Rules for filing a responsive  
30 pleading to a complaint.

31 (iv) The claim and the response may include a statement that  
32 the matter in controversy falls within one or more particular recognized specialties.

1           (2) A third-party claim shall be filed within 30 days of the response of  
2 the third-party claimant to the original claim unless the parties consent to a later  
3 filing or a later filing is allowed by the panel chairman or the court, as the case may  
4 be, for good cause shown.

5           (3) A claimant may not add a new defendant after the arbitration  
6 panel has been selected, or 10 days after the preferring conference has been held,  
7 whichever is later.

8           (4) Until all costs attributable to the first filing have been satisfied, a  
9 claimant may not file a second claim on the same or substantially the same grounds  
10 against any of the same parties.

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

12           (1) (i) 1. Except as provided in subparagraph (ii) of this  
13 paragraph, a claim or action filed after July 1, 1986, shall be dismissed, without  
14 prejudice, if the claimant or plaintiff fails to file a certificate of a qualified expert with  
15 the Director attesting to departure from standards of care, and that the departure  
16 from standards of care is the proximate cause of the alleged injury, within 90 days  
17 from the date of the complaint;

18                               2. The claimant or plaintiff shall serve a copy of the  
19 certificate on all other parties to the claim or action or their attorneys of record in  
20 accordance with the Maryland Rules; and

21           (ii) In lieu of dismissing the claim or action, the panel chairman  
22 or the court shall grant an extension of no more than 90 days for filing the certificate  
23 required by this paragraph, if:

24                               1. The limitations period applicable to the claim or  
25 action has expired; and

26                               2. The failure to file the certificate was neither willful  
27 nor the result of gross negligence.

28           (2) (i) A claim or action filed after July 1, 1986, may be adjudicated  
29 in favor of the claimant or plaintiff on the issue of liability, if the defendant disputes  
30 liability and fails to file a certificate of a qualified expert attesting to compliance with  
31 standards of care, or that the departure from standards of care is not the proximate  
32 cause of the alleged injury, within 120 days from the date the claimant or plaintiff

1 served the certificate of a qualified expert set forth in paragraph (1) of this subsection  
2 on the defendant.

3 (ii) If the defendant does not dispute liability, a certificate of a  
4 qualified expert is not required under this subsection.

5 (iii) The defendant shall serve a copy of the certificate on all  
6 other parties to the claim or action or their attorneys of record in accordance with the  
7 Maryland Rules.

8 (4) A health care provider who attests in a certificate of a qualified  
9 expert or who testifies in relation to a proceeding before an arbitration panel or a court  
10 concerning compliance with or departure from standards of care may not devote  
11 annually more than 20 percent of the expert's professional activities to activities that  
12 directly involve testimony in personal injury claims.

13 3-2A-06D.

14 (a) (1) This section applies only to an initial complaint filed on or after  
15 January 1, 2005, for which a certificate of a qualified expert is required to be filed in  
16 accordance with § 3-2A-04 of this subtitle.

17 (2) This section does not apply if the defendant admits liability.

18 (b) (1) Within 15 days after the date that discovery is required to be  
19 completed, a party shall file with the court a supplemental certificate of a qualified  
20 expert, for each defendant, that attests to:

21 (i) The certifying expert's basis for alleging what is the specific  
22 standard of care;

23 (ii) The certifying expert's qualifications to testify to the specific  
24 standard of care;

25 (iii) The specific standard of care;

26 (iv) For the plaintiff:

27 1. The specific injury complained of;

28 2. How the specific standard of care was breached;

1                               3.     What specifically the defendant should have done to  
2 meet the specific standard of care; and

3                               4.     The inference that the breach of the standard of care  
4 proximately caused the plaintiff's injury; and

5                               (v)    For the defendant:

6                               1.     How the defendant complied with the specific  
7 standard of care;

8                               2.     What the defendant did to meet the specific standard  
9 of care; and

10                              3.     If applicable, that the breach of the standard of care  
11 did not proximately cause the plaintiff's injury.

12                              (2)    An extension of the time allowed for filing a supplemental  
13 certificate under this section shall be granted for good cause shown.

14                              (3)    The facts required to be included in the supplemental certificate of  
15 a qualified expert shall be considered necessary to show entitlement to relief sought by  
16 a plaintiff or to raise a defense by a defendant.

17                              (c)    Subject to the provisions of this section:

18                              (1)    If a plaintiff fails to file a supplemental certificate of a qualified  
19 expert for a defendant, on motion of the defendant the court may dismiss, without  
20 prejudice, the action as to that defendant; or

21                              (2)    If the defendant fails to file a supplemental certificate of a  
22 qualified expert, on motion of the plaintiff the court may adjudicate in favor of the  
23 plaintiff on the issue of liability as to that defendant.

24                              (d)    (1)    The Maryland Rules apply to filing and serving a copy of a  
25 certificate required under this section and in motions relating to a violation of this  
26 section.

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

29     **3-2A-06E.**

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

3           (B)    (1)   THIS SECTION APPLIES TO AN INITIAL COMPLAINT FILED ON  
4 OR AFTER JUNE 1, 2007, FOR WHICH:

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

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

10           (2)    THIS SECTION DOES NOT APPLY IF THE DEFENDANT ADMITS  
11 LIABILITY.

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

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

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

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

1                   (III) THE CIRCUIT ADMINISTRATIVE JUDGE SHALL  
2 ESTABLISH SPECIFICATIONS FOR AN ONGOING TRAINING CURRICULUM THAT  
3 PROVIDES AN OVERVIEW OF MEDICAL AND LEGAL ISSUES THAT MAY ARISE IN  
4 BOARD PROCEEDINGS.

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

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

12                   (I) THE PROCEDURES OF THE MEDICAL MALPRACTICE  
13 REVIEW BOARD; AND

14                   (II) THE NAME OF THE CIRCUIT JUDGE OR RETIRED  
15 CIRCUIT JUDGE APPOINTED TO CHAIR THE BOARD.

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

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

23                                 1. CHOOSE FIVE INDIVIDUALS FROM THE HEALTH  
24 CARE PROVIDER LIST IN ACCORDANCE WITH § 3-2A-03(C) OF THIS SUBTITLE,  
25 TOGETHER WITH A BRIEF BIOGRAPHICAL STATEMENT FOR EACH INDIVIDUAL;  
26 AND

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



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

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

8                   (2) (I) BEFORE NAMING AN INDIVIDUAL, THE CHAIR SHALL  
9 INQUIRE OF THE INDIVIDUAL AND BE ASSURED THAT THE INDIVIDUAL DOES  
10 NOT HAVE A PERSONAL OR ECONOMIC RELATIONSHIP WITH ANY OF THE  
11 PARTIES OR THEIR COUNSEL, OR IN ANY CASES THAT MAY FORM THE BASIS OF  
12 ANY PARTIALITY BY THE INDIVIDUAL.

13                   (II) IF, IN THE JUDGMENT OF THE CHAIR, AN INDIVIDUAL  
14 HAS A RELATIONSHIP DESCRIBED UNDER SUBPARAGRAPH (I) OF THIS  
15 PARAGRAPH, THE CHAIR SHALL REPLACE THAT INDIVIDUAL'S NAME WITH  
16 ANOTHER INDIVIDUAL FROM THE LIST UNDER § 3-2A-03(C) OF THIS SUBTITLE.

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

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

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

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

29                               3. IF WITHIN THE TIME PERIOD SPECIFIED IN  
30 PARAGRAPH (1) OF THIS SUBSECTION, MULTIPLE PLAINTIFFS OR MULTIPLE  
31 DEFENDANTS FAIL TO AGREE ON THEIR STRIKE, THEY SHALL NOTIFY THE

1 CHAIR OF THEIR DISAGREEMENT, AND THE CHAIR MAY MAKE THE STRIKE ON  
2 THEIR BEHALF.

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

7 (4) THE CHAIR SHALL APPOINT THE MEMBERSHIP OF THE BOARD  
8 AFTER THE STRIKES DESCRIBED IN PARAGRAPH (3) OF THIS SUBSECTION HAVE  
9 BEEN MADE.

10 (5) SERVICE BY A HEALTH CARE PROVIDER ON A BOARD UNDER  
11 THIS SECTION MAY NOT BE CONSIDERED A PROFESSIONAL ACTIVITY THAT  
12 DIRECTLY INVOLVES TESTIMONY IN PERSONAL INJURY CLAIMS UNDER §  
13 3-2A-04(B)(4) OF THIS SUBTITLE.

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

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

21 (3) A HEARING ON THE ACTION SHALL BE HELD NO LATER THAN  
22 60 DAYS FROM THE DATE OF INITIAL CONFERENCE.

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

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

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

1           **(J) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE**  
2 **CHAIR:**

3                       **(I) SHALL CONVENE THE BOARD, SCHEDULE HEARINGS,**  
4 **AND PRESIDE OVER THE BOARD'S MEETINGS;**

5                       **(II) SHALL ESTABLISH A SCHEDULE FOR SUBMISSION OF**  
6 **EVIDENCE TO THE BOARD;**

7                       **(III) MAY ADJOURN THE HEARING FROM TIME TO TIME, AS**  
8 **NECESSARY;**

9                       **(IV) SHALL EXPEDITE THE BOARD'S REVIEW OF THE**  
10 **MEDICAL EVIDENCE;**

11                       **(V) SHALL DECIDE ISSUES RELATING TO DISCOVERY AND**  
12 **MOTIONS IN LIMINE;**

13                       **(VI) SHALL ADVISE THE BOARD ON ISSUES OF LAW THAT**  
14 **ARISE DURING THE REVIEW; AND**

15                       **(VII) SHALL PREPARE THE DECISION OF THE BOARD IN**  
16 **ACCORDANCE WITH SUBSECTION (M) OF THIS SECTION.**

17                       **(2) THE CHAIR MAY NOT VOTE IN THE DELIBERATIONS OF THE**  
18 **BOARD.**

19           **(K) A BOARD SHALL DETERMINE, AFTER A HEARING HELD IN**  
20 **ACCORDANCE WITH SUBSECTION (G) OF THIS SECTION, WHETHER THE**  
21 **EVIDENCE PRESENTED, IF PROPERLY SUBSTANTIATED, IS SUFFICIENT TO RAISE**  
22 **A LEGITIMATE QUESTION THAT:**

23                       **(1) THE DEFENDANT'S ACTIONS OR OMISSIONS WERE A**  
24 **DEPARTURE FROM THE APPROPRIATE STANDARD OF CARE AS ALLEGED IN THE**  
25 **PLAINTIFF'S COMPLAINT; AND**

26                       **(2) THE DEFENDANT'S ACTIONS OR OMISSIONS PROXIMATELY**  
27 **CAUSED THE PLAINTIFF'S ALLEGED INJURY.**

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

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

7           (3) (I) THE BOARD MAY SUBPOENA ANY RECORDS OR ANY  
8 EXPERT NECESSARY TO SUBSTANTIATE OR CLARIFY EVIDENCE PRESENTED IN  
9 THE HEARING.

10           (II) THE BOARD MAY APPOINT AN IMPARTIAL AND  
11 QUALIFIED HEALTH CARE PROVIDER TO PROVIDE NECESSARY PROFESSIONAL  
12 OR EXPERT TESTIMONY.

13           (III) PROPERLY AUTHENTICATED HOSPITAL RECORDS AND  
14 THE RECORDS OF A TREATING HEALTH CARE PROVIDER ARE ADMISSIBLE  
15 WITHOUT THE NECESSITY OF CALLING THE HEALTH CARE PROVIDER, SUBJECT  
16 TO REASONABLE NOTICE AND THE RIGHT OF THE OPPOSING PARTY TO DEPOSE  
17 THE HEALTH CARE PROVIDER.

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

19           (I) TO BE HEARD;

20           (II) TO PRESENT EVIDENCE MATERIAL TO THE COMPLAINT;

21 AND

22           (III) TO CROSS-EXAMINE WITNESSES WHO APPEAR AT THE  
23 HEARING.

24           (M) (1) A BOARD SHALL ISSUE ITS WRITTEN DECISION WITHIN 30  
25 DAYS AFTER THE HEARING.

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

27           (I) WHETHER THERE IS A REASONABLE MEDICAL OR  
28 PROFESSIONAL PROBABILITY THAT THE ACTS OR OMISSIONS COMPLAINED OF

1 OR FOUND BY THE BOARD TO EXIST CONSTITUTE A DEPARTURE FROM THE  
2 APPLICABLE STANDARD OF CARE BY THE HEALTH CARE PROVIDER CHARGED  
3 WITH THAT CARE; AND

4 (II) WHETHER THERE IS A REASONABLE MEDICAL OR  
5 PROFESSIONAL PROBABILITY THAT THE ACTS OR OMISSIONS COMPLAINED OF  
6 PROXIMATELY CAUSED THE INJURY COMPLAINED OF OR AS FOUND BY THE  
7 BOARD.

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

11 (2) WITHIN 30 DAYS AFTER THE DATE OF ISSUANCE OF A BOARD'S  
12 DECISION, A COPY OF THE BOARD'S DECISION WITHOUT PERSONAL  
13 IDENTIFYING INFORMATION, CONSISTENT WITH APPLICABLE STATE AND  
14 FEDERAL LAW, SHALL BE SENT BY MAIL TO THE STATEWIDE MEDICAL CARE  
15 DATA BASE OF THE MARYLAND HEALTH CARE COMMISSION AND THE  
16 MARYLAND PATIENT SAFETY CENTER, WHICH MAY USE THE DATA ON BOARD  
17 DECISIONS ONLY FOR PURPOSES RELATING TO PATIENT SAFETY ENHANCEMENT  
18 ACTIVITIES.

19 (3) WITHIN 30 DAYS AFTER THE DATE OF ISSUANCE OF A BOARD'S  
20 DECISION, THE MARYLAND HEALTH CARE COMMISSION SHALL MAKE THE  
21 DECISION AVAILABLE AND READILY ACCESSIBLE TO THE PUBLIC WITHOUT  
22 PERSONAL IDENTIFYING INFORMATION, CONSISTENT WITH APPLICABLE STATE  
23 AND FEDERAL LAW.

24 (O) (1) EXCEPT FOR THE CHAIR, EACH MEMBER OF A BOARD IS  
25 ENTITLED TO BE REIMBURSED:

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

29 (II) REASONABLE TRAVEL EXPENSES.

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

1                   **(II) THE RECORD SHALL BE SUBMITTED TO THE PARTIES**  
2 **FOR PAYMENT WITH THE BOARD'S DECISION.**

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

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

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

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

16                   **(2) (I) THE PARTIES MAY ACCEPT THE DECISION OF THE**  
17 **BOARD ISSUED UNDER SUBSECTION (M) OF THIS SECTION.**

18                   **(II) IF THE PARTIES ACCEPT THE DECISION, THE PARTIES**  
19 **SHALL MOVE TO DISMISS THE COMPLAINT FILED IN COURT WITHIN 30 DAYS**  
20 **AFTER RECEIVING THE DECISION.**

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

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

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

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

3           (s)   (1)   **A PARTY THAT IS THE LOSING PARTY IN A DECISION BY A**  
4 **BOARD UNDER THIS SECTION AND IN A SUBSEQUENT TRIAL IS RESPONSIBLE**  
5 **FOR:**

6                   (I)    **COSTS IN ACCORDANCE WITH MARYLAND RULE 2-603;**  
7 **AND**

8                   (II)   **THE REASONABLE ATTORNEY'S FEES OF THE**  
9 **PREVAILING PARTY.**

10           (2)    **A PARTY THAT IS THE PREVAILING PARTY IN A DECISION BY A**  
11 **BOARD UNDER THIS SECTION, BUT IS THE LOSING PARTY IN A SUBSEQUENT**  
12 **TRIAL, IS RESPONSIBLE FOR COSTS IN ACCORDANCE WITH MARYLAND RULE**  
13 **2-603.**

14           (T)    **AN INDIVIDUAL WHO SERVES AS A MEMBER OF A BOARD UNDER**  
15 **THIS SECTION SHALL HAVE THE IMMUNITY FROM SUIT DESCRIBED UNDER §**  
16 **5-615 OF THIS ARTICLE.**

17 5-615.

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

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

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

1           SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect  
2   June 1, 2007.