

HOUSE BILL 547

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5lr1803

By: **Delegates Dumais, Flanagan, Hammen, Krebs, McComas, and Morhaim**

Introduced and read first time: February 11, 2015

Assigned to: Judiciary and Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Medical Liability Efficiency Act of 2015**

3 FOR the purpose of repealing provisions of law relating to the Health Care Alternative
4 Dispute Resolution Office; prohibiting a person from bringing an action against a
5 health care provider for a certain medical injury unless the person provides to the
6 health care provider a certain notice, medical records, and releases; terminating the
7 Health Claims Arbitration Fund; altering the content of certain certificates of a
8 qualified expert; providing that a health care provider who attests in certain
9 certificates or who testifies in relation to a proceeding before a court concerning
10 certain matters shall devote at least a certain percentage of the expert's professional
11 activities to activities that directly involve patient care; requiring the clerk of a court
12 to forward to the Department of Health and Mental Hygiene copies of certain
13 certificates of a qualified expert; requiring the Department to forward to the State
14 Board of Physicians copies of certain certificates of a qualified expert; requiring the
15 clerk of a court to forward a copy of a final disposition of a certain case to the
16 Department of Health and Mental Hygiene rather than the Director of the Health
17 Care Alternative Dispute Resolution Office; requiring the Department to forward to
18 the State Board of Physicians a copy of a final disposition of a certain case; providing
19 that, if a judgment is not more favorable to the adverse party than a certain offer,
20 the adverse party shall pay certain expert witness fees; repealing a certain exception
21 to the provision of law that a certain expression of regret or apology made by a health
22 care provider is inadmissible for certain purposes in certain actions; repealing
23 certain obsolete provisions; making certain conforming changes; providing for the
24 application of this Act; and generally relating to an action against a health care
25 provider for a certain medical injury.

26 BY repealing and reenacting, with amendments,
27 Article – Courts and Judicial Proceedings
28 Section 3-2A-01, 3-2A-02, 3-2A-04, 3-2A-06, 3-2A-06C, 3-2A-06D, 3-2A-08,
29 3-2A-08A, 3-2A-09, 3-2A-10, and 10-920
30 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2013 Replacement Volume and 2014 Supplement)

2 BY adding to

3 Article – Courts and Judicial Proceedings

4 Section 3–2A–02

5 Annotated Code of Maryland

6 (2013 Replacement Volume and 2014 Supplement)

7 BY repealing

8 Article – Courts and Judicial Proceedings

9 Section 3–2A–03, 3–2A–03A, 3–2A–05, 3–2A–06A, 3–2A–06B, and 3–2A–07

10 Annotated Code of Maryland

11 (2013 Replacement Volume and 2014 Supplement)

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

14 **Article – Courts and Judicial Proceedings**

15 3–2A–01.

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

18 (b) [“Arbitration panel” means the arbitrators selected to determine a health care
19 malpractice claim in accordance with this subtitle.

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

21 [(d) “Director” means the Director of the Health Care Alternative Dispute
22 Resolution Office.

23 (e) (C) “Economic damages” retains its judicially determined meaning.

24 [(f) (D) (1) “Health care provider” means a hospital, a related institution as
25 defined in § 19–301 of the Health – General Article, a medical day care center, a hospice
26 care program, an assisted living program, a freestanding ambulatory care facility as
27 defined in § 19–3B–01 of the Health – General Article, a physician, an osteopath, an
28 optometrist, a chiropractor, a registered or licensed practical nurse, a dentist, a podiatrist,
29 a psychologist, a licensed certified social worker–clinical, and a physical therapist, licensed
30 or authorized to provide one or more health care services in Maryland.

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

1 [(g)] (E) “Medical injury” means injury arising or resulting from the rendering
2 or failure to render health care.

3 [(h)] (F) “Noneconomic damages” means:

4 (1) In a claim for personal injury, pain, suffering, inconvenience, physical
5 impairment, disfigurement, loss of consortium, or other nonpecuniary injury; or

6 (2) In a claim for wrongful death, mental anguish, emotional pain and
7 suffering, loss of society, companionship, comfort, protection, care, marital care, parental
8 care, filial care, attention, advice, counsel, training, guidance, or education, or other
9 noneconomic damages authorized under Subtitle 9 of this title.

10 **3-2A-02.**

11 (A) A PERSON MAY NOT BRING AN ACTION AGAINST A HEALTH CARE
12 PROVIDER FOR A MEDICAL INJURY ARISING FROM OR RESULTING FROM THE
13 RENDERING OF OR FAILURE TO RENDER HEALTH CARE SERVICES UNLESS THE
14 PERSON PROVIDES TO THE HEALTH CARE PROVIDER, NOT LESS THAN 90 DAYS
15 BEFORE THE ACTION IS COMMENCED, THE WRITTEN NOTICE, THE MEDICAL
16 RECORDS, AND THE RELEASES REQUIRED UNDER THIS SECTION.

17 (B) THE NOTICE SHALL CONTAIN:

18 (1) THE FACTUAL BASIS FOR THE CLAIM, INCLUDING THE INJURY
19 CLAIMED;

20 (2) THE APPLICABLE STANDARD OF CARE ALLEGED BY THE
21 PLAINTIFF;

22 (3) THE MANNER IN WHICH IT IS CLAIMED THAT THE APPLICABLE
23 STANDARD OF CARE WAS BREACHED BY THE HEALTH CARE PROVIDER;

24 (4) THE ALLEGED ACTION THAT SHOULD HAVE BEEN TAKEN TO
25 ACHIEVE COMPLIANCE WITH THE ALLEGED APPLICABLE STANDARD OF CARE;

26 (5) THE MANNER IN WHICH IT IS ALLEGED THAT THE BREACH OF THE
27 ALLEGED APPLICABLE STANDARD OF CARE WAS THE PROXIMATE CAUSE OF THE
28 INJURY CLAIMED IN THE NOTICE; AND

29 (6) THE NAME OF EACH HEALTH CARE PROVIDER THAT THE PERSON
30 IS NOTIFYING UNDER THIS SECTION IN RELATION TO THE CLAIM.

1 (C) NOT LATER THAN 30 DAYS AFTER THE PERSON GIVES THE NOTICE, THE
2 PERSON SHALL:

3 (1) ALLOW EACH HEALTH CARE PROVIDER RECEIVING THE NOTICE
4 ACCESS TO EACH MEDICAL RECORD RELATED TO THE CLAIM THAT IS IN THE
5 PERSON'S CONTROL; AND

6 (2) FURNISH A RELEASE FOR EACH MEDICAL RECORD RELATED TO
7 THE CLAIM THAT IS NOT IN THE PERSON'S CONTROL, BUT OF WHICH THE PERSON
8 HAS KNOWLEDGE.

9 [3-2A-02.] **3-2A-03.**

10 (a) (1) All claims, suits, and actions, including cross claims, third-party
11 claims, and actions under Subtitle 9 of this title, by a person against a health care provider
12 for medical injury allegedly suffered by the person in which damages of more than the limit
13 of the concurrent jurisdiction of the District Court are sought are subject to and shall be
14 governed by the provisions of this subtitle.

15 (2) An action or suit of that type may not be brought or pursued in any
16 court of this State except in accordance with this subtitle.

17 (3) Except for the procedures stated in [§ 3-2A-06(f)] **§ 3-2A-05(A)** of this
18 subtitle, an action within the concurrent jurisdiction of the District Court is not subject to
19 the provisions of this subtitle.

20 (b) [A claim filed under this subtitle and an] **AN** initial pleading [filed in any
21 subsequent] **IN AN** action **FILED UNDER THIS SUBTITLE** may not contain a statement of
22 the amount of damages sought other than that [they are] **THE AMOUNT IS** more than a
23 required jurisdictional amount.

24 (c) (1) In any action for damages filed under this subtitle, the health care
25 provider is not liable for the payment of damages unless it is established that the care given
26 by the health care provider is not in accordance with the standards of practice among
27 members of the same health care profession with similar training and experience situated
28 in the same or similar communities at the time of the alleged act giving rise to the cause of
29 action.

30 (2) (i) This paragraph applies to a claim or action filed on or after
31 January 1, 2005.

32 (ii) 1. In addition to any other qualifications, **INCLUDING THE**
33 **REQUIREMENTS CONTAINED IN § 3-2A-04(D) OF THIS SUBTITLE**, a health care
34 provider who attests in a certificate of a qualified expert or testifies in relation to a

1 proceeding before a [panel or] court concerning a defendant's compliance with or departure
2 from standards of care:

3 A. Shall have had clinical experience, provided consultation
4 relating to clinical practice, or taught medicine in the defendant's specialty or a related
5 field of health care, or in the field of health care in which the defendant provided care or
6 treatment to the plaintiff, within 5 years of the date of the alleged act or omission giving
7 rise to the cause of action; and

8 B. Except as provided in subsubparagraph 2 of this
9 subparagraph, if the defendant is board certified in a specialty, shall be board certified in
10 the same or a related specialty as the defendant.

11 2. Subsubparagraph 1B of this subparagraph does not apply
12 if:

13 A. The defendant was providing care or treatment to the
14 plaintiff unrelated to the area in which the defendant is board certified; or

15 B. The health care provider taught medicine in the
16 defendant's specialty or a related field of health care.

17 (d) Except as otherwise provided, the Maryland Rules shall apply to all practice
18 and procedure issues arising under this subtitle.

19 [3-2A-03.

20 (a) The Health Care Alternative Dispute Resolution Office is created as a unit in
21 the Executive Department. It is headed by a Director appointed by the Governor with the
22 advice and consent of the Senate.

23 (b) (1) The Director shall receive the salary and may employ the staff provided
24 in the State budget. He shall have the powers and perform the duties set forth in this
25 subtitle.

26 (2) The Director shall have subpoena power in any claim for which a panel
27 chairman has not been appointed and in any claim for which a chairman is not performing
28 his duties in a timely fashion.

29 (3) The Director may adopt reasonable rules and regulations to govern
30 procedures under this subtitle.

31 (4) (i) After giving a panel member at least 15 days' notice of his
32 intention and the reason for his proposed action, the Director may remove the panel
33 member for good cause shown.

1 (ii) On receipt of a notice of the intention to remove him, the panel
2 member may submit a written statement of why he should not be removed. The Director
3 shall consider any such statement that is submitted prior to the date for which notice of the
4 intended action was given.

5 (iii) In any event, a removal is not effective unless and until the
6 Director submits to the panel member and the chairman a written confirmation of the
7 removal.

8 (c) (1) Except as otherwise provided in this subsection, the Director shall
9 prepare a list of qualified persons willing to serve as arbitrators of health care malpractice
10 claims.

11 (2) (i) The list shall be divided into three categories, one containing the
12 names of attorneys, one containing the names of individuals who are health care providers,
13 and one containing the names of individuals from the general public who are neither
14 attorneys, health care providers, or agents or employees of an insurance company or society.

15 (ii) The list of health care providers shall, if practicable, include at
16 least one health care provider from each recognized specialty, as requested by any party.

17 (iii) The individuals from the general public shall be selected at
18 random from existing or current jury lists, which a jury commissioner may make available
19 to the Director when requested by the Director, only as allowed by rule that the Court of
20 Appeals adopts.

21 (3) An attorney is qualified to serve:

22 (i) If the attorney has been in the practice of law in the State for 3
23 years; or

24 (ii) If before January 1, 1986, the attorney's name appeared on the
25 list of qualified persons willing to serve as arbitrators of health care malpractice claims.

26 (4) (i) The list of health care providers shall include the names of all
27 physicians licensed to practice medicine in the State, and who are residents of the State.

28 (ii) Every physician who is licensed to practice medicine in the State,
29 and who is a resident of the State, shall be available to serve as an arbitrator of health care
30 malpractice claims.

31 (d) The Director shall by regulation determine the fees that may be charged by
32 arbitrators for services rendered by them in proceedings conducted pursuant to this
33 subtitle.]

34 [3-2A-03A.

1 (a) There is a Health Claims Arbitration Fund.

2 (b) At the time of the filing of any claim or a response to a claim, the Director
3 shall collect a fee of:

4 (1) \$40 for the filing of the claim, including any third-party claim; and

5 (2) \$25 for the filing of the response to the claim.

6 (c) (1) The Director shall pay all filing fees collected under this subtitle to the
7 Comptroller of the State.

8 (2) The Comptroller shall distribute:

9 (i) 20% of the filing fees received from the Director to the General
10 Fund of the State; and

11 (ii) The balance of the filing fees to the Health Care Alternative
12 Dispute Resolution Office.

13 (d) (1) The Fund shall be used exclusively to pay the fees of arbitrators and
14 other operating expenses of the Health Care Alternative Dispute Resolution Office.

15 (2) In accordance with the assessment of costs under § 3-2A-05(f) of this
16 subtitle, the parties to an arbitration shall reimburse the Fund for all fees paid to the
17 arbitrators from the Fund.

18 (e) (1) The Fund is a continuing, nonlapsing fund and is not subject to § 7-302
19 of the State Finance and Procurement Article.

20 (2) (i) Subject to subparagraph (ii) of this paragraph, any unspent
21 portions of the Fund may not be transferred or revert to the General Fund of the State, but
22 shall remain in the Fund to be used for the purposes specified under this subtitle.

23 (ii) Unspent portions of the Fund that exceed \$100,000 at the end of
24 any fiscal year shall revert to the General Fund.

25 (f) (1) The Director shall administer the Fund.

26 (2) Moneys in the Fund may be expended only for any lawful purpose
27 authorized by this subtitle.

28 (g) The Legislative Auditor shall audit the accounts and transactions of the Fund
29 as provided in § 2-1220 of the State Government Article.]

30 3-2A-04.

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

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

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

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

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

16 (3) A claimant may not add a new defendant after the arbitration panel
17 has been selected, or 10 days after the prehearing conference has been held, whichever is
18 later.

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

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

23 (A) (1) (i) [1.] Except as provided in [item (ii) of this] paragraph [a claim
24 or] **(2) OF THIS SUBSECTION, UNLESS THE SOLE ISSUE IS A LACK OF INFORMED**
25 **CONSENT, AN** action [filed after July 1, 1986,] shall be dismissed, without prejudice, if the
26 [claimant or] plaintiff fails to file a certificate of a qualified expert with the [Director]
27 **COURT** attesting to, **WITHIN A REASONABLE DEGREE OF MEDICAL PROBABILITY,**
28 departure from standards of care, and that the departure from standards of care is the
29 proximate cause of the alleged injury, within 90 days from the date of the complaint[; and].

30 (II) [2.] The [claimant or] plaintiff shall serve a copy of the
31 certificate on all other parties to the [claim or] action or their attorneys of record in
32 accordance with the Maryland Rules[; and].

33 [(ii) (2) In lieu of dismissing the [claim or] action, [the panel
34 chairman or] the court shall grant an extension of no more than 90 days for filing the
35 certificate required by this paragraph, if:

1 [1.] (I) The limitations period applicable to the [claim or]
2 action has expired; and

3 [2.] (II) The failure to file the certificate was neither willful
4 nor the result of gross negligence.

5 (B) [(2)] (1) (i) [A claim or] AN action [filed after July 1, 1986,] may be
6 adjudicated in favor of the [claimant or] plaintiff on the issue of liability, if the defendant
7 disputes liability and fails to file a certificate of a qualified expert attesting to compliance
8 with standards of care, or that the departure from standards of care is not the proximate
9 cause of the alleged injury, within 120 days from the date the [claimant or] plaintiff served
10 the certificate of a qualified expert set forth in [paragraph (1) of this] subsection (A) OF
11 THIS SECTION on the defendant.

12 [(ii)] (2) If the defendant does not dispute liability, a certificate of
13 a qualified expert is not required under this subsection.

14 [(iii)] (3) The defendant shall serve a copy of the certificate on all
15 other parties to the [claim or] action or their attorneys of record in accordance with the
16 Maryland Rules.

17 (C) [(3) (i)] (1) The attorney representing each party, or the party proceeding
18 pro se, shall file the appropriate certificate with a report of the attesting expert attached.

19 [(ii)] (2) Discovery is available as to the basis of the certificate.

20 [(4)] (D) A health care provider who attests in a certificate of a qualified
21 expert or who testifies in relation to a proceeding before [an arbitration panel or] a court
22 concerning compliance with or departure from standards of care [may not devote annually
23 more than 20 percent of the expert's professional activities to activities that directly involve
24 testimony in personal injury claims] **SHALL DEVOTE ANNUALLY AT LEAST 80 PERCENT**
25 **OF THE EXPERT'S PROFESSIONAL ACTIVITIES TO ACTIVITIES THAT DIRECTLY**
26 **INVOLVE PATIENT CARE.**

27 [(5)] (E) An extension of the time allowed for filing a certificate of a
28 qualified expert under [this] subsection (A) OR SUBSECTION (B) OF THIS SECTION shall
29 be granted for good cause shown.

30 (F) [(6)] (1) [In the case of a claim or action against a physician, the Director]
31 **THE CLERK OF THE COURT shall forward TO THE DEPARTMENT OF HEALTH AND**
32 **MENTAL HYGIENE copies of the certificates OF QUALIFIED EXPERTS filed under**
33 **[paragraphs (1) and (2) of this subsection to the State Board of Physicians] THIS SECTION.**

34 (2) **IF THE ACTION IS AGAINST A PHYSICIAN, THE DEPARTMENT OF**
35 **HEALTH AND MENTAL HYGIENE SHALL FORWARD TO THE STATE BOARD OF**

1 **PHYSICIANS COPIES OF THE CERTIFICATES OF QUALIFIED EXPERTS FILED UNDER**
2 **THIS SECTION.**

3 **[(7)](G)** For purposes of the certification requirements of this subsection
4 for any [claim or] action [filed on or after July 1, 1989]:

5 **[(i)] (1)** A party may not serve as a party's expert; and

6 **[(ii)] (2)** The certificate may not be signed by:

7 **[1.] (I)** A party;

8 **[2.] (II)** An employee or partner of a party; or

9 **[3.] (III)** An employee or stockholder of any professional
10 corporation of which the party is a stockholder.

11 **[(c)] (1)** Within 20 days after the filing of the claimant's certificate of a qualified
12 expert, or, in a case in which lack of informed consent is the sole issue, within 20 days after
13 the filing of the defendant's response, the Director shall deliver to each party the names of
14 6 persons chosen at random from the attorney categorical list prepared by him pursuant to
15 § 3-2A-03(c) of this subtitle, together with a brief biographical statement as to each of these
16 persons.

17 **(2)** No later than 20 days after receiving notice of the scheduled hearing,
18 the Director shall deliver to each party the names of 6 persons chosen at random from each
19 of the remaining categorical lists prepared by him pursuant to § 3-2A-03(c) of this subtitle,
20 together with a brief biographical statement as to each of these persons. If the claim or the
21 response states that the matter falls within one or more recognized specialties, the Director,
22 if practicable, shall include persons in the specialty on the list from the health care provider
23 category. Before delivering each list, the Director shall inquire of the persons selected and
24 assure himself that they do not have a personal or economic relationship with any of the
25 parties or their counsel, or any cases in which they are a party before the arbitration office,
26 that can form the basis of any partiality on their part. If, in the judgment of the Director, a
27 person selected has such a relationship with a party, his name shall be replaced by another
28 chosen at random.

29 **(3)** The biographical statements sent to the parties under this subsection
30 shall have been updated within 2 years.

31 **(d) (1)** Within 15 days after delivery of the list, a party may object in writing
32 stating the reasons therefor to the inclusion of any arbitrator on the list. If the Director
33 finds a reasonable basis for the objection, he shall replace the name of the arbitrator with
34 the name of another arbitrator. Within 30 days after delivery of the initial list or, if an
35 arbitrator is replaced, within 30 days after delivery of the replacement list, each party shall
36 strike from the list in each category any name or names that are unacceptable and return

1 a copy of the list with his strikes to the Director. Upon motion of either party, the panel
2 chairman, for good cause shown and in conjunction with the Director, shall require that
3 subsequent strikes be made in a lesser period of time. A party may not strike more than
4 two names in any category.

5 (2) If:

6 (i) The claim is against more than one health care provider, whether
7 directly by a claimant or as a result of a third-party claim, the health care providers
8 claimed against shall be treated as a single party and shall exercise their strikes jointly;

9 (ii) There is more than one claimant, the claimants shall be treated
10 as a single party and shall exercise their strikes jointly;

11 (iii) Within the time period specified in paragraph (1) of this
12 subsection, multiple claimants or multiple health care providers fail to agree on their
13 strikes in any category, they shall notify the Director of their disagreement, and the
14 Director may make the strikes on their behalf with respect to that category; and

15 (iv) Any party fails to return a copy of the list with his strikes within
16 the time period specified in paragraph (1) of this subsection, the Director may make the
17 strikes for that party.

18 (e) (1) The Director shall compare the lists returned to him and the lists from
19 which he has stricken names pursuant to subsection (d) of this section, and shall select the
20 first mutually agreeable person in each category as the arbitrators.

21 (2) The Director shall establish by regulation procedures for selection of
22 alternates to serve in place of arbitrators unable to serve after appointment. Procedures for
23 the selection of alternate arbitrators shall provide that alternate arbitrators are chosen at
24 random from the categorical lists prepared by the Director under § 3-2A-03(c) of this
25 subtitle, and may not be confined to time limitations in subsection (d)(1) of this section. The
26 Director may require the attendance of an appropriate alternate at any proceeding under
27 this subtitle.

28 (f) (1) The parties may, within the time for returning their lists to the
29 Director, agree in writing upon a single arbitrator. In that event, they shall advise the
30 Director in writing of their choice, and the one arbitrator shall constitute the arbitration
31 panel.

32 (2) The Director shall prepare a separate list of qualified attorneys willing
33 to serve as single arbitrators.

34 (g) An arbitrator shall have the immunity from suit described under § 5-615 of
35 this article.]

36 [3-2A-05.

1 (a) (1) Except as provided under paragraph (2) of this subsection, all issues of
2 law shall be referred by the Director to the panel chairman. All issues of fact shall be
3 referred by the Director to the arbitration panel.

4 (2) Where a panel chairman has not been appointed or is temporarily
5 unable to serve, and the Director is admitted to the Maryland Bar, the Director may rule
6 on all issues of law arising prior to hearing that are not dispositive of the case and shall
7 include the assessment of costs.

8 (b) (1) The provisions of §§ 3–212 through 3–217 of this title are applicable to
9 proceedings under this subtitle.

10 (2) Except for the provisions of the Maryland Rules relating to time for the
11 completion of discovery, the provisions of the Maryland Rules relating to discovery are
12 applicable to proceedings under this subtitle. All discovery in any action under this subtitle
13 shall be completed within 270 days from the date on which all defendants have been served,
14 unless extended by the panel chairman for good cause shown.

15 (3) Properly authenticated hospital records and the records of treating
16 health care providers are admissible without the necessity of calling the physician, subject
17 to reasonable notice and the right of the opposing party to depose.

18 (c) The attorney member of the panel shall be chairman and he shall decide all
19 prehearing procedures including issues relating to discovery and motions in limine. The
20 chairman shall rule in camera on any motion in limine.

21 (d) A party may not present testimony from more than 2 experts in a designated
22 specialty before an arbitration panel unless the panel chairman, for good cause shown,
23 permits additional experts.

24 (e) (1) The arbitration panel shall first determine the issue of liability with
25 respect to a claim referred to it.

26 (2) If the arbitration panel determines that the health care provider is not
27 liable to the claimant or claimants the award shall be in favor of the health care provider.

28 (3) If the arbitration panel determines that a health care provider is liable
29 to the claimant or claimants, it shall then consider, itemize, assess, and apportion
30 appropriate damages against one or more of the health care providers that it has found to
31 be liable.

32 (4) The award shall itemize by category and amount any damages assessed
33 for incurred medical expenses, rehabilitation costs, and loss of earnings. Damages assessed
34 for any future expenses, costs, and losses shall be itemized separately.

1 (f) (1) The award shall include an assessment of costs, including the
2 arbitrators' fees.

3 (2) If there is no panel determination, the panel chairman shall assess
4 costs.

5 (3) The party who pays the costs shall receive a credit for the filing fee the
6 party pays under § 3-2A-03A(b) of this subtitle.

7 (g) (1) The arbitration panel shall make its award and deliver it to the Director
8 in writing within 1 year from the date on which all defendants have been served and within
9 10 days after the close of the hearing.

10 (2) The Director shall cause a copy of it to be served on each party within
11 15 days of having received it from the arbitration panel.

12 (h) (1) A party may apply to the arbitration panel to modify or correct an
13 award as to liability, damages, or costs in accordance with § 3-222 of this title.

14 (2) (i) The application may include a request that damages be reduced
15 to the extent that the claimant has been or will be paid, reimbursed, or indemnified under
16 statute, insurance, or contract for all or part of the damages assessed.

17 (ii) The panel chairman shall receive such evidence in support and
18 opposition to a request for reduction, including evidence of the cost to obtain such payment,
19 reimbursement, or indemnity.

20 (iii) After hearing the evidence in support and opposition to the
21 request, the panel chairman may modify the award if satisfied that modification is
22 supported by the evidence.

23 (iv) The award may not be modified as to any sums paid or payable
24 to a claimant under any workers' compensation act, criminal injuries compensation act,
25 employee benefit plan established under a collective bargaining agreement between an
26 employer and an employee or a group of employers and a group of employees that is subject
27 to the provisions of the federal Employee Retirement Income Security Act of 1974, program
28 of the Department of Health and Mental Hygiene for which a right of subrogation exists
29 under §§ 15-120 and 15-121.1 of the Health - General Article, or as a benefit under any
30 contract or policy of life insurance or Social Security Act of the United States.

31 (v) An award may not be modified as to any damages assessed for
32 any future expenses, costs, and losses unless:

33 1. The panel chairman orders the defendant or the
34 defendant's insurer to provide adequate security; or

1 2. The insurer is authorized to do business in this State and
2 maintains reserves in compliance with rules of the Insurance Commissioner to assure the
3 payment of all such future damages up to the amount by which the award has been modified
4 as to such future damages in the event of termination.

5 (vi) Except as expressly provided by federal law, no person may
6 recover from the claimant or assert a claim of subrogation against a defendant for any sum
7 included in the modification of an award.

8 (i) Subject to § 3–2A–06 of this subtitle, the award of the panel shall be final and
9 binding on the parties. After the time for either rejecting or modifying the award has
10 expired the Director may, or, when requested by any party, shall file a copy of the award
11 with the circuit court having proper venue, as provided in Title 6, Subtitle 2 of this article
12 and the court shall confirm the award. Upon confirmation the award shall constitute a final
13 judgment.

14 (j) Except for time limitations pertaining to the filing of a claim or response, the
15 Director or the panel chairman, for good cause shown, may lengthen or shorten the time
16 limitations prescribed in subsections (b) and (g) of this section and § 3–2A–04 of this
17 subtitle.]

18 **[3–2A–06.] 3–2A–05.**

19 [(a) A party may reject an award or the assessment of costs under an award for
20 any reason. A notice of rejection must be filed with the Director and the arbitration panel
21 and served on the other parties or their counsel within 30 days after the award is served
22 upon the rejecting party, or, if a timely application for modification or correction has been
23 filed within 10 days after a disposition of the application by the panel, whichever is greater.

24 (b) (1) At or before the time specified in subsection (a) of this section for filing
25 and serving a notice of rejection, the party rejecting the award shall file an action in court
26 to nullify the award or the assessment of costs under the award and shall file a copy of the
27 action with the Director. Failure to file this action timely in court shall constitute a
28 withdrawal of the notice of rejection. Subject to the provisions of subsection (c) of this
29 section, the procedures applicable to the action including the form and necessary
30 allegations in the initial pleading shall be governed by the Maryland Rules. The Director
31 need not be named a party to any action under this section.

32 (2) If any party to the proceeding elects to have the case tried by a jury in
33 accordance with the Maryland Rules, it shall be tried by a jury. Otherwise, the case shall
34 be tried by a judge.

35 (3) The trial date for each rejection of a panel determination shall have
36 precedence over all cases except criminal matters and workers' compensation appeals.

37 (4) The clerk of the court in which an action is filed under this subtitle shall
38 forward a copy of the action to the State Board of Physicians.

1 (c) An allegation by any party that an award or the assessment of costs under an
2 award is improper because of any ground stated in § 3–223(b) or § 3–224(b)(1), (2), (3), or
3 (4) of this title or § 3–2A–05(h) of this subtitle shall be made by preliminary motion, and
4 shall be determined by the court without a jury prior to trial. Failure to raise such a defense
5 by pretrial preliminary motion shall constitute a waiver of it. If the court finds that a
6 condition stated in § 3–223(b) of this title exists, or that the award or the assessment of
7 costs under an award was not appropriately modified in accordance with § 3–2A–05(h) of
8 this subtitle, it shall modify or correct the award or the assessment of costs under an award.
9 If the rejecting party still desires to proceed with judicial review, the modified or corrected
10 award shall be substituted for the original award. If the court finds that a condition stated
11 in § 3–224(b)(1), (2), (3), or (4) of this title exists, it shall vacate the award, and trial of the
12 case shall proceed as if there had been no award.

13 (d) Unless vacated by the court pursuant to subsection (c) of this section, the
14 unmodified arbitration award is admissible as evidence in the judicial proceeding. The
15 award shall be presumed to be correct, and the burden is on the party rejecting it to prove
16 that it is not correct.

17 (e) (1) Depositions taken in the arbitration proceedings shall be as fully
18 admissible as if noticed in court proceedings. Interrogatories and requests for admissions
19 and production of documents in the arbitration proceedings remain binding in the court
20 proceedings, subject to a duty of supplementation.

21 (2) The provisions of paragraph (1) of this subsection do not affect any
22 rights to discovery on appeal.]

23 [(f)] (A) (1) (I) Upon timely request, the trier of fact shall by special
24 verdict or specific findings itemize by category and amount any damages assessed for
25 incurred medical expenses, rehabilitation costs, and loss of earnings.

26 (II) Damages assessed for any future expenses, costs, and losses shall
27 be itemized separately.

28 (III) If the verdict or findings include any amount for such expenses,
29 costs, and losses, a party filing a motion for a new trial may object to the damages as
30 excessive on the ground that the plaintiff has been or will be paid, reimbursed, or
31 indemnified to the extent and subject to the limits stated in [§ 3–2A–05(h) of this subtitle]
32 **THIS SUBSECTION.**

33 (2) (I) The court shall hold a hearing and receive evidence on the
34 objection, **INCLUDING EVIDENCE OF THE COST TO OBTAIN THE PAYMENT,**
35 **REIMBURSEMENT, OR INDEMNITY.**

36 (II) **THE VERDICT OR FINDINGS MAY NOT BE FOUND TO BE**
37 **EXCESSIVE AS TO SUMS PAID OR PAYABLE TO THE PLAINTIFF UNDER:**

1 1. **A WORKERS' COMPENSATION ACT;**

2 2. **A CRIMINAL INJURIES COMPENSATION ACT;**

3 3. **AN EMPLOYEE BENEFIT PLAN ESTABLISHED UNDER A**
4 **COLLECTIVE BARGAINING AGREEMENT BETWEEN AN EMPLOYER AND AN EMPLOYEE**
5 **OR GROUP OF EMPLOYERS AND A GROUP OF EMPLOYEES THAT IS SUBJECT TO THE**
6 **PROVISIONS OF THE FEDERAL EMPLOYEE RETIREMENT INCOME SECURITY ACT OF**
7 **1974;**

8 4. **A PROGRAM OF THE DEPARTMENT OF HEALTH AND**
9 **MENTAL HYGIENE FOR WHICH A RIGHT OF SUBROGATION EXISTS UNDER §§ 15-120**
10 **AND 15-121.1 OF THE HEALTH - GENERAL ARTICLE; OR**

11 5. **A CONTRACT OR POLICY OF LIFE INSURANCE OR THE**
12 **SOCIAL SECURITY ACT OF THE UNITED STATES.**

13 **(III) A VERDICT OR FINDINGS MAY NOT BE FOUND TO BE**
14 **EXCESSIVE AS TO DAMAGES ASSESSED FOR FUTURE EXPENSES, COSTS, AND LOSSES**
15 **UNLESS:**

16 1. **THE COURT ORDERS THE DEFENDANT OR THE**
17 **DEFENDANT'S INSURER TO PROVIDE ADEQUATE SECURITY; OR**

18 2. **THE INSURER IS AUTHORIZED TO DO BUSINESS IN**
19 **THE STATE AND MAINTAINS RESERVES, IN THE EVENT OF TERMINATION, IN**
20 **COMPLIANCE WITH RULES OF THE INSURANCE COMMISSIONER TO ASSURE THE**
21 **PAYMENT OF THE FUTURE DAMAGES.**

22 (3) (i) If the court finds from the evidence that the damages are
23 excessive on the grounds stated in [§ 3-2A-05(h) of this subtitle] **THIS SUBSECTION,**
24 subject to the limits and conditions stated in [§ 3-2A-05(h) of this subtitle] **THIS**
25 **SUBSECTION,** it may grant a new trial as to such damages or may deny a new trial if the
26 plaintiff agrees to a remittitur of the excess and the order required adequate security when
27 warranted by the conditions stated in [§ 3-2A-05(h) of this subtitle] **THIS SUBSECTION.**

28 (ii) In the event of a new trial granted under this subsection,
29 evidence considered by the court in granting the remittitur shall be admissible if offered at
30 the new trial and the jury shall be instructed to consider such evidence in reaching its
31 verdict as to damages.

32 (iii) Upon a determination of those damages at the new trial, no
33 further objection to damages may be made exclusive of any party's right of appeal.

1 (4) Except as expressly provided by federal law, no person may recover
2 from the plaintiff or assert a claim of subrogation against a defendant for any sum included
3 in a remittitur or awarded in a new trial on damages granted under this subsection.

4 (5) Nothing in this subsection shall be construed to otherwise limit the
5 common law grounds for remittitur.

6 [(g) If the verdict of the trier of fact is not more favorable to the party that rejected
7 the arbitration panel's award, than was the award, the costs of the judicial proceedings
8 shall be assessed against the rejecting party. Otherwise, the court may determine the
9 assessment of such costs. If the court vacates an assessment of arbitration costs, it shall
10 reassess those costs as justice requires.

11 (h)] **(B)** Venue shall be determined in accordance with the provisions of § 6–201
12 of this article.

13 [(i)] **(C)** **(1)** The clerk of the court shall [file] **FORWARD** a copy of the verdict
14 or any other final disposition [with] **TO** the [Director] **DEPARTMENT OF HEALTH AND**
15 **MENTAL HYGIENE.**

16 **(2)** **IF THE ACTION IS AGAINST A PHYSICIAN, THE DEPARTMENT OF**
17 **HEALTH AND MENTAL HYGIENE SHALL FORWARD TO THE STATE BOARD OF**
18 **PHYSICIANS A COPY OF THE VERDICT OR ANY OTHER FINAL DISPOSITION.**

19 [3–2A–06A.

20 (a) At any time before the hearing of a claim with the Health Care Alternative
21 Dispute Resolution Office, the parties may agree mutually to waive arbitration of the claim,
22 and the provisions of this section then shall govern all further proceedings on the claim.

23 (b) (1) The claimant shall file with the Director a written election to waive
24 arbitration which must be signed by all parties or their attorneys of record in the
25 arbitration proceeding.

26 (2) After filing, the written election shall be mutually binding upon all
27 parties.

28 (c) (1) Within 60 days after filing the election to waive arbitration, the plaintiff
29 shall file a complaint and a copy of the election to waive arbitration with the circuit court
30 or United States District Court.

31 (2) After filing the complaint, the plaintiff shall serve a summons and a
32 copy of the complaint upon the attorney of record for all parties in the health claims
33 arbitration proceeding.

1 (3) Failure to file a complaint within 60 days of filing the election to waive
2 arbitration may constitute grounds for dismissal of the complaint upon motion by an
3 adverse party and upon a finding of prejudice to that party due to the delay in the filing of
4 the complaint.

5 (d) After filing the election to waive arbitration, the plaintiff may not join an
6 additional health care provider as a defendant in any action brought under subsection (c)
7 of this section unless a written election to waive arbitration has been filed by that health
8 care provider under subsection (b) of this section.

9 (e) In any case subject to this section, the procedures of § 3-2A-06(f) of this
10 subtitle shall apply.

11 (f) (1) If the parties mutually agree to a neutral case evaluation, the circuit
12 court or United States District Court, to which the case has been transferred after the
13 waiver of arbitration, may refer the case to the Health Care Alternative Dispute Resolution
14 Office not later than 6 months after a complaint is filed under subsection (c) of this section.

15 (2) (i) On receipt of the case, the Director shall send to the parties a list
16 of six attorneys who:

17 1. Meet the qualifications listed in § 3-2A-03(c)(3) of this
18 subtitle; and

19 2. Have tried at least three health care malpractice cases.

20 (ii) Each party may strike two names from the list.

21 (iii) If the claim is against more than one health care provider,
22 whether directly by a claimant or as a result of a third-party claim, the health care
23 providers claimed against shall be treated as a single party and shall exercise their strikes
24 jointly.

25 (iv) If there is more than one claimant, the claimants shall be treated
26 as a single party and shall exercise their strikes jointly.

27 (v) If multiple claimants or multiple health care providers fail to
28 agree on their strikes or fail to return their strike list to the Director within the time
29 specified in paragraph (vi) of this subsection, the Director shall make the strikes on their
30 behalf.

31 (vi) The strikes shall be submitted to the Director within 10 days
32 after delivery of the list.

33 (vii) The Director shall appoint an evaluator from the unstricken
34 names on the list.

1 (3) Upon appointment, the evaluator shall schedule a neutral case
2 evaluation session to be held within 45 days after the appointment to pursue the neutral
3 case evaluation of the claim or to resolve any issues to which the parties agree to stipulate
4 before trial.

5 (4) Within 10 days after the neutral case evaluation session, the evaluator
6 shall notify, in writing, the Director and the circuit court or United States District Court of
7 the results of the neutral case evaluation.

8 (5) (i) During the neutral case evaluation period, the circuit court or
9 United States District Court shall continue to have jurisdiction to rule on any motions or
10 discovery matters.

11 (ii) The neutral case evaluation may not interfere with the scheduled
12 trial.

13 (6) (i) The evaluator shall be paid in accordance with § 3–2A–03(d) of
14 this subtitle.

15 (ii) Unless otherwise agreed by the parties, the cost of neutral case
16 evaluation, which may not exceed \$300 per case, shall be divided equally between the
17 parties.

18 (g) The provisions of this section apply only if no party waives arbitration of the
19 claim under the provisions of § 3–2A–06B of this subtitle.]

20 [3–2A–06B.

21 (a) Arbitration of a claim with the Health Care Alternative Dispute Resolution
22 Office may be waived by the claimant or any defendant in accordance with this section, and
23 the provisions of this section shall govern all further proceedings on any claim for which
24 arbitration has been waived under this section.

25 (b) (1) Subject to the time limitation under subsection (d) of this section, any
26 claimant may waive arbitration at any time after filing the certificate of qualified expert
27 required by § 3–2A–04(b) of this subtitle by filing with the Director a written election to
28 waive arbitration signed by the claimant or the claimant's attorney of record in the
29 arbitration proceeding.

30 (2) The claimant shall serve the written election on all other parties to the
31 claim in accordance with the Maryland Rules.

32 (3) If the claimant waives arbitration under this subsection, all defendants
33 shall comply with the requirements of § 3–2A–04(b) of this subtitle by filing their
34 certificates at the Health Care Alternative Dispute Resolution Office or, after the election,
35 in the appropriate circuit court or United States District Court.

1 (c) (1) Subject to the time limitation under subsection (d) of this section, any
2 defendant may waive arbitration at any time after the claimant has filed the certificate of
3 qualified expert required by § 3-2A-04(b) of this subtitle by filing with the Director a
4 written election to waive arbitration signed by the defendant or the defendant's attorney of
5 record in the arbitration proceeding.

6 (2) The defendant shall serve the written election on all other parties to
7 the claim in accordance with the Maryland Rules.

8 (3) If a defendant waives arbitration under this subsection, the defendant
9 shall comply with the requirements of § 3-2A-04(b) of this subtitle by filing the certificate
10 at the Health Care Alternative Dispute Resolution Office, or, after the election, in the
11 appropriate circuit court or United States District Court.

12 (d) (1) A waiver of arbitration by any party under this section may be filed not
13 later than 60 days after all defendants have filed a certificate of qualified expert under §
14 3-2A-04(b) of this subtitle.

15 (2) Any waiver of arbitration after the date specified in paragraph (1) of
16 this subsection shall be in accordance with the provisions of § 3-2A-06A of this subtitle.

17 (e) After filing, the written election shall be binding upon all parties.

18 (f) (1) Within 60 days after the filing of an election to waive arbitration by any
19 party, the plaintiff shall file a complaint and a copy of the election to waive arbitration in
20 the appropriate circuit court or the United States District Court.

21 (2) After filing the complaint, the plaintiff shall serve a summons and a
22 copy of the complaint upon all defendants or the attorney of record for all parties in the
23 health claims arbitration proceeding.

24 (3) Failure to file a complaint within 60 days of filing the election to waive
25 arbitration may constitute grounds for dismissal of the complaint upon:

26 (i) A motion by an adverse party; and

27 (ii) A finding of prejudice to the adverse party due to the delay in the
28 filing of the complaint.

29 (g) After the filing of an election to waive arbitration under this section, if a party
30 joins an additional health care provider as a defendant in an action, the party shall file a
31 certificate of qualified expert required by § 3-2A-04(b) of this subtitle with respect to the
32 additional health care provider.

33 (h) In any case subject to this section, the procedures of § 3-2A-06(f) of this
34 subtitle shall apply.

1 (i) (1) If the parties mutually agree to a neutral case evaluation, the circuit
2 court or United States District Court, to which the case has been transferred after the
3 waiver of arbitration, may refer the case to the Health Care Alternative Dispute Resolution
4 Office not later than 6 months after a complaint is filed under subsection (c) of this section.

5 (2) (i) On receipt of the case, the Director shall send to the parties a list
6 of six attorneys who:

7 1. Meet the qualifications listed in § 3-2A-03(c)(3) of this
8 subtitle; and

9 2. Have tried at least three health care malpractice cases.

10 (ii) Each party may strike two names from the list.

11 (iii) If the claim is against more than one health care provider,
12 whether directly by a claimant or as a result of a third-party claim, the health care
13 providers claimed against shall be treated as a single party and shall exercise their strikes
14 jointly.

15 (iv) If there is more than one claimant, the claimants shall be treated
16 as a single party and shall exercise their strikes jointly.

17 (v) If multiple claimants or multiple health care providers fail to
18 agree on their strikes or fail to return their strike list to the Director within the time
19 specified in paragraph (vi) of this subsection, the Director shall make the strikes on their
20 behalf.

21 (vi) The strikes shall be submitted to the Director within 10 days
22 after delivery of the list.

23 (vii) The Director shall appoint an evaluator from the unstricken
24 names on the list.

25 (3) Upon appointment, the evaluator shall schedule a neutral case
26 evaluation session to be held within 45 days after the appointment to pursue the neutral
27 case evaluation of the claim or to resolve any issues to which the parties agree to stipulate
28 before trial.

29 (4) Within 10 days after the neutral case evaluation session, the evaluator
30 shall notify, in writing, the Director and the circuit court or United States District Court of
31 the results of the neutral case evaluation.

32 (5) (i) During the neutral case evaluation period, the circuit court or
33 United States District Court shall continue to have jurisdiction to rule on any motions or
34 discovery matters.

1 (ii) The neutral case evaluation may not interfere with the scheduled
2 trial.

3 (6) (i) The evaluator shall be paid in accordance with § 3-2A-03(d) of
4 this subtitle.

5 (ii) Unless otherwise agreed by the parties, the cost of neutral case
6 evaluation, which may not exceed \$300 per case, shall be divided equally between the
7 parties.]

8 [3-2A-06C.] **3-2A-06.**

9 (a) (1) In this section the following words have the meanings indicated.

10 (2) “Alternative dispute resolution” means mediation, neutral case
11 evaluation, neutral fact-finding, or a settlement conference.

12 (3) “Mediation” has the meaning stated in Title 17 of the Maryland Rules.

13 (4) “Mediator” means an individual who conducts mediation.

14 (5) “Neutral case evaluation” has the meaning stated in Title 17 of the
15 Maryland Rules.

16 (6) “Neutral fact-finding” has the meaning stated in Title 17 of the
17 Maryland Rules.

18 (7) “Neutral provider” means an individual who conducts neutral case
19 evaluation or neutral fact-finding.

20 (8) “Settlement conference” has the meaning stated in Title 17 of the
21 Maryland Rules.

22 (b) (1) This section does not apply if:

23 (i) All parties file with the court an agreement not to engage in
24 alternative dispute resolution; and

25 (ii) The court finds that alternative dispute resolution under this
26 section would not be productive.

27 (2) In determining whether alternative dispute resolution would not be
28 productive under paragraph (1)(ii) of this subsection, the court may consider whether the
29 parties have already engaged in alternative dispute resolution.

30 (c) In addition to the qualifications and requirements of Title 17 of the Maryland
31 Rules, the Court of Appeals may adopt rules requiring a mediator, neutral provider, or

1 individual conducting a settlement conference to have experience with health care
2 malpractice claims.

3 (d) Within 30 days of the later of the filing of the defendant's answer to the
4 complaint or the defendant's certificate of a qualified expert under § 3-2A-04 of this
5 subtitle, the court shall order the parties to engage in alternative dispute resolution at the
6 earliest possible date.

7 (e) (1) Within 30 days of the later of the filing of the defendant's answer to the
8 complaint or the defendant's certificate of a qualified expert under § 3-2A-04 of this
9 subtitle, the parties may choose a mediator, neutral provider, or individual to conduct a
10 settlement conference.

11 (2) If the parties choose a mediator, neutral provider, or individual to
12 conduct a settlement conference, the parties shall notify the court of the name of the
13 individual.

14 (f) (1) If the parties do not notify the court that they have chosen a mediator,
15 neutral provider, or individual to conduct a settlement conference within the time required
16 under subsection (e) of this section, the court shall assign a mediator, neutral provider, or
17 individual to conduct a settlement conference to the claim within 30 days.

18 (2) (i) Within 15 days after the parties are notified of the identity of the
19 mediator, neutral provider, or individual conducting a settlement conference, a party may
20 object in writing to the selection, stating the reasons for the objection.

21 (ii) If the court sustains the objection, the court shall appoint a
22 different mediator, neutral provider, or individual to conduct a settlement conference.

23 (3) A mediator, neutral provider, or individual conducting a settlement
24 conference shall follow the "Maryland Standards of Practice for Mediators, Arbitrators, and
25 Other ADR Practitioners" adopted by the Court of Appeals.

26 (g) The mediator, neutral provider, or individual conducting a settlement
27 conference shall schedule an initial conference with the parties as soon as practicable.

28 (h) (1) At least 15 days before the initial conference, the parties shall send to
29 the mediator, neutral provider, or individual conducting a settlement conference a brief
30 written outline of the strengths and weaknesses of the party's case.

31 (2) A party may not be required to provide to another party the written
32 outline described in paragraph (1) of this subsection.

33 (i) (1) Alternative dispute resolution under this section may not operate to
34 delay discovery in the action.

1 (2) If the mediator, neutral provider, or individual conducting a settlement
2 conference finds that the parties need to engage in discovery for a limited period of time in
3 order to facilitate the alternative dispute resolution, the mediator, neutral provider, or
4 individual conducting a settlement conference may mediate the scope and schedule of
5 discovery needed to proceed with the alternative dispute resolution, adjourn the initial
6 conference, and reschedule an additional conference for a later date.

7 (j) A neutral expert may be employed in alternative dispute resolution under this
8 section as provided in Title 17 of the Maryland Rules.

9 (k) In accordance with Maryland Rule 17–109, the outline described in subsection
10 (h) of this section and any written or oral communication made in the course of a conference
11 under this section:

12 (1) Are confidential;

13 (2) Do not constitute an admission; and

14 (3) Are not discoverable.

15 (l) Unless excused by the mediator, neutral provider, or individual conducting a
16 settlement conference, the parties and the claims representative for each defendant shall
17 appear at all conferences held under this section.

18 (m) A party who fails to comply with the provisions of subsection (h), (k), or (l) of
19 this section is subject to the sanctions provided in Maryland Rule 2–433.

20 (n) (1) If a case is settled, the parties shall notify the court that the case has
21 been settled.

22 (2) If the parties agree to settle some but not all of the issues in dispute,
23 the mediator, neutral provider, or individual conducting a settlement conference shall file
24 a written notice of partial settlement with the court.

25 (3) If the parties have not agreed to a settlement the mediator, neutral
26 provider, or individual conducting a settlement conference shall file a written notice with
27 the court that the case was not settled.

28 (o) Unless otherwise agreed by the parties, the costs of alternative dispute
29 resolution shall be divided equally between the parties.

30 (p) An individual who conducts alternative dispute resolution shall have the
31 immunity from suit described under § 5–615 of this article.

32 **[3–2A–06D.] 3–2A–07.**

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

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

5 (b) (1) Within 15 days after the date that discovery is required to be completed,
6 a party shall file with the court a supplemental certificate of a qualified expert, for each
7 defendant, that attests to, **WITHIN A REASONABLE DEGREE OF MEDICAL PROBABILITY:**

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

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

12 (iii) The specific standard of care;

13 (iv) For the plaintiff:

14 1. The specific injury complained of;

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

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

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

20 (v) For the defendant:

21 1. How the defendant complied with the specific standard of
22 care;

23 2. What the defendant did to meet the specific standard of
24 care; and

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

27 (2) **A HEALTH CARE PROVIDER WHO ATTESTS IN A SUPPLEMENTAL**
28 **CERTIFICATE OF A QUALIFIED EXPERT CONCERNING COMPLIANCE WITH OR**
29 **DEPARTURE FROM STANDARDS OF CARE SHALL DEVOTE ANNUALLY AT LEAST 80**
30 **PERCENT OF THE EXPERT'S PROFESSIONAL ACTIVITIES TO ACTIVITIES THAT**
31 **DIRECTLY INVOLVE PATIENT CARE.**

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

3 ~~[(3)]~~ **(4)** The facts required to be included in the supplemental certificate
4 of a qualified expert shall be considered necessary to show entitlement to relief sought by
5 a plaintiff or to raise a defense by a defendant.

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

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

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

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

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

17 (e) For purposes of the certification requirements of this section:

18 (1) A party may not serve as a party's expert; and

19 (2) The certificate may not be signed by:

20 (i) A party;

21 (ii) An employee or partner of a party; or

22 (iii) An employee or stockholder of any professional corporation of
23 which the party is a stockholder.

24 (f) (1) The clerk of the court shall forward to the Department of Health and
25 Mental Hygiene copies of the **SUPPLEMENTAL** certificates **OF QUALIFIED EXPERTS** filed
26 under this section.

27 (2) In the case of a complaint against a physician, the Department of
28 Health and Mental Hygiene shall forward to the State Board of Physicians copies of the
29 supplemental certificate of a qualified expert filed under this section.

30 [3-2A-07.

1 (a) If the arbitration panel finds that the conduct of any party in maintaining or
2 defending any action is in bad faith or without substantial justification, the panel may
3 require the offending party, the attorney advising the conduct, or both, to pay to the adverse
4 party the costs of the proceeding and reasonable expenses, including reasonable attorney's
5 fees, incurred by the adverse party in opposing it. A determination made under this
6 subsection shall become part of the panel award and subject to judicial review.

7 (b) If a legal fee is in dispute, an attorney may not charge or collect compensation
8 for services rendered in connection with an arbitration claim unless it is approved by the
9 arbitration panel, or by the court in the event an action to nullify a panel determination
10 has been filed therein.]

11 3-2A-08.

12 (a) (1) Evidence of advanced payments made pursuant to § 19-104(b) of the
13 Insurance Article is not admissible in any [arbitration or] judicial proceeding for damages
14 due to medical injury until there is [an award, in the case of arbitration proceedings, or] a
15 verdict[, in the case of judicial proceedings,] in favor of the claimant and against the person
16 who made the advanced payments.

17 (2) Upon the finding of such [an award or] A verdict, the [arbitration panel,
18 or the] trier of fact[,] shall make a finding of total damages, and shall then deduct whatever
19 amounts it finds were paid by or on behalf of the defendants pursuant to § 19-104(b) of the
20 Insurance Article.

21 (3) The net amount, after this deduction, shall be entered as its [award or]
22 verdict.

23 (b) (1) If the [award or] verdict exceeds the amount of advanced payments and
24 [the arbitration panel or] the court finds that the advanced payments were reasonable, [the
25 panel or] the court may:

26 [(1)] (I) [order] **ORDER** that the amount by which the [award or] verdict
27 exceeds the amount of advanced payments be paid over a period of time consistent with the
28 needs of the [claimant] **PLAINTIFF**, rather than in a lump sum[,]; and

29 [(2)] (II) [authorize] **AUTHORIZE**, as part of its order, the creation of a
30 trust or other mechanism to assure the periodic payments.

31 (2) The [panel or] court shall provide to the [claimant] **PLAINTIFF** the
32 option to choose either a lump sum or payments paid over a period of time.

33 (c) (1) If the advanced payment exceeds the liability of the person making it,
34 the [arbitration panel or the] court on appeal may order such adjustments as justice may

1 require under the [award or] verdict, including, where appropriate, contribution by other
2 parties found to be liable.

3 (2) In no event shall an advance payment in excess of the liability of the
4 person making it be repayable by the person receiving it.

5 [~~3-2A-08A.~~] ~~3-2A-09.~~

6 (a) In this section, “costs” means the costs described under Maryland Rule 2-603.

7 (b) This section does not apply to cases dismissed following a settlement.

8 (c) (1) At any time not less than 45 days before the trial begins, a party to an
9 action for a medical injury may serve on the adverse party an offer of judgment to be taken
10 for the amount of money specified in the offer, with costs then accrued.

11 (2) When the liability of one party to another has been determined by
12 verdict or order or judgment, but the amount or extent of the liability remains to be
13 determined by further proceedings, a party adjudged liable or a party in whose favor
14 liability was determined may make an offer of judgment not less than 45 days before the
15 commencement of hearings to determine the amount or extent of liability.

16 (d) (1) If within 15 days after the service of the offer of judgment, the adverse
17 party serves written notice that the offer is accepted, either party may then file with the
18 court the offer and notice of acceptance together with an affidavit of service notifying the
19 other parties of the filing of the offer and acceptance.

20 (2) If the court receives the filings specified in paragraph (1) of this
21 subsection, the court shall enter judgment.

22 (e) (1) If an adverse party does not accept an offer of judgment within the time
23 specified in subsection (d)(1) of this section, the offer shall be deemed withdrawn and
24 evidence of the offer is not admissible except in a proceeding to determine costs.

25 (2) An offer of judgment that is not accepted does not preclude a party from
26 making a subsequent offer of judgment in the time specified in this section.

27 (f) If the judgment finally obtained is not more favorable to the adverse party
28 than the offer, the adverse party who received the offer shall pay the **EXPERT WITNESS**
29 **FEES AND** costs of the party making the offer incurred after the making of the offer.

30 [~~3-2A-09.~~] ~~3-2A-10.~~

31 (a) This section applies to [an award under § 3-2A-05 of this subtitle or] a verdict
32 under § [~~3-2A-06~~] ~~3-2A-05~~ of this subtitle for a cause of action arising on or after January
33 1, 2005.

1 (b) (1) (i) Except as provided in paragraph (2)(ii) of this subsection, an
2 award or verdict under this subtitle for noneconomic damages for a cause of action arising
3 between January 1, 2005, and December 31, 2008, inclusive, may not exceed \$650,000.

4 (ii) The limitation on noneconomic damages provided under
5 subparagraph (i) of this paragraph shall increase by \$15,000 on January 1 of each year
6 beginning January 1, 2009. The increased amount shall apply to causes of action arising
7 between January 1 and December 31 of that year, inclusive.

8 (2) (i) Except as provided in subparagraph (ii) of this paragraph, the
9 limitation under paragraph (1) of this subsection shall apply in the aggregate to all claims
10 for personal injury and wrongful death arising from the same medical injury, regardless of
11 the number of claims, claimants, plaintiffs, beneficiaries, or defendants.

12 (ii) If there is a wrongful death action in which there are two or more
13 claimants or beneficiaries, whether or not there is a personal injury action arising from the
14 same medical injury, the total amount awarded for noneconomic damages for all actions
15 may not exceed 125% of the limitation established under paragraph (1) of this subsection,
16 regardless of the number of claims, claimants, plaintiffs, beneficiaries, or defendants.

17 (c) (1) In a jury trial, the jury may not be informed of the limitation under
18 subsection (b) of this section.

19 (2) If the jury awards an amount for noneconomic damages that exceeds
20 the limitation established under subsection (b) of this section, the court shall reduce the
21 amount to conform to the limitation.

22 (3) In a wrongful death action in which there are two or more claimants or
23 beneficiaries, if the jury awards an amount for noneconomic damages that exceeds the
24 limitation under subsection (b) of this section or a reduction under paragraph (4) of this
25 subsection, the court shall:

26 (i) If the amount of noneconomic damages for the primary
27 claimants, as described under § 3-904(d) of this title, equals or exceeds the limitation under
28 subsection (b) of this section or a reduction under paragraph (4) of this subsection:

29 1. Reduce each individual award of a primary claimant
30 proportionately to the total award of all primary claimants so that the total award to all
31 claimants or beneficiaries conforms to the limitation or reduction; and

32 2. Reduce each award, if any, to a secondary claimant as
33 described under § 3-904(e) of this title to zero dollars; or

34 (ii) If the amount of noneconomic damages for the primary claimants
35 does not exceed the limitation under subsection (b) of this section or a reduction under
36 paragraph (4) of this subsection or if there is no award to a primary claimant:

1 1. Enter an award to each primary claimant, if any, as
2 directed by the verdict; and

3 2. Reduce each individual award of a secondary claimant
4 proportionately to the total award of all of the secondary claimants so that the total award
5 to all claimants or beneficiaries conforms to the limitation or reduction.

6 (4) In a case in which there is a personal injury action and a wrongful death
7 action, if the total amount awarded by the jury for noneconomic damages for both actions
8 exceeds the limitation under subsection (b) of this section, the court shall reduce the award
9 in each action proportionately so that the total award for noneconomic damages for both
10 actions conforms to the limitation.

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

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

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

17 (2) (i) A court may on its own motion, or on motion of a party, employ a
18 neutral expert witness to testify on the issue of a plaintiff's future medical expenses or
19 future loss of earnings.

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

22 (iii) Nothing contained in this subsection limits the authority of a
23 court concerning a court's witness.

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 this
26 subtitle, the provisions of this subtitle shall be deemed procedural in nature and may not
27 be construed to create, enlarge, or diminish any cause of action not heretofore existing,
28 except the defense of failure to comply with the procedures required under this subtitle.

29 10-920.

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

32 (b) **[(1) Except as provided in paragraph (2) of this subsection, in a proceeding**
33 **subject to Title 3, Subtitle 2A of this article or] IN** a civil action against a health care

1 provider, an expression of regret or apology made by or on behalf of the health care provider,
2 including an expression of regret or apology made in writing, orally, or by conduct, is
3 inadmissible as evidence of an admission of liability or as evidence of an admission against
4 interest.

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

9 SECTION 2. AND BE IT FURTHER ENACTED, That at the end of fiscal year 2015
10 any unspent portions of the Health Claims Arbitration Fund shall revert to the General
11 Fund.

12 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall be construed to
13 apply only prospectively and may not be applied or interpreted to have any effect on or
14 application to any case filed before the effective date of this Act.

15 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect July
16 1, 2015.