

HB1300\_L.001

## HOUSE COMMITTEE OF REFERENCE AMENDMENT

Committee on Judiciary.HB12-1300 be amended as follows:

1 Amend printed bill, strike everything below the enacting clause and  
2 substitute:

3 "SECTION 1. In Colorado Revised Statutes, **amend** 12-36.5-107  
4 as follows:

5 **12-36.5-107. Repeal of article.** This article is repealed, effective  
6 ~~July 1, 2012~~ SEPTEMBER 1, 2019. Prior to such repeal, THE DEPARTMENT  
7 OF REGULATORY AGENCIES SHALL REVIEW the functions of professional  
8 review committees and the committee on anticompetitive conduct ~~shall~~  
9 ~~be reviewed~~ in accordance with section 24-34-104, C.R.S.

10 **SECTION 2.** In Colorado Revised Statutes, 24-34-104, **amend**  
11 (43) introductory portion and (50.5) introductory portion; **repeal** (43) (g);  
12 and **add** (50.5) (e) as follows:

13 **24-34-104. General assembly review of regulatory agencies**  
14 **and functions for termination, continuation, or reestablishment.**  
15 (43) The following agencies, functions, or both, ~~shall~~ terminate on July  
16 1, 2012:

17 (g) ~~The functions of professional review committees pursuant to~~  
18 ~~article 36.5 of title 12, C.R.S.;~~

19 (50.5) The following agencies, functions, or both, ~~shall~~ terminate  
20 on September 1, 2019:

21 (e) THE FUNCTIONS OF PROFESSIONAL REVIEW COMMITTEES  
22 PURSUANT TO ARTICLE 36.5 OF TITLE 12, C.R.S.

23 **SECTION 3.** In Colorado Revised Statutes, **amend** 12-36.5-101  
24 as follows:

25 **12-36.5-101. Legislative declaration.** (1) The general assembly  
26 hereby finds, determines, and declares that the Colorado medical board  
27 created ~~pursuant to~~ IN article 36 of this title ~~acts~~ AND THE STATE BOARD  
28 OF NURSING CREATED IN ARTICLE 38 OF THIS TITLE ACT for the state in its  
29 sovereign capacity to govern licensure, discipline, and professional  
30 review of persons licensed to practice medicine, LICENSED AS PHYSICIAN  
31 ASSISTANTS, AND LICENSED TO PRACTICE NURSING AND GRANTED AN  
32 AUTHORITY AS ADVANCED PRACTICE NURSES, RESPECTIVELY, in this state.  
33 The general assembly further finds, determines, and declares that:

34 (a) ~~The authority to practice medicine~~ PROVIDE HEALTH CARE in  
35 this state is a privilege granted by the legislative authority of the state; and  
36 ~~that~~

37 (b) It is necessary for the health, safety, and welfare of the people



1 of this state that the ~~Colorado medical board~~ APPROPRIATE REGULATORY  
2 BOARDS exercise ~~its~~ THEIR authority to protect the people of this state  
3 from ~~the~~ unauthorized practice of ~~medicine~~ and from unprofessional  
4 conduct by persons licensed to ~~practice medicine~~ PROVIDE HEALTH CARE  
5 under ~~article 36~~ ARTICLES 36 AND 38 of this title.

6 (2) The general assembly recognizes that:

7 (a) Many patients of persons licensed to ~~practice medicine~~  
8 PROVIDE HEALTH CARE in this state have restricted choices of ~~physicians~~  
9 HEALTH CARE PROVIDERS under a variety of circumstances and  
10 conditions;

11 (b) Many patients lack the knowledge, experience, or education  
12 to properly evaluate the quality of medical OR NURSING practice or the  
13 professional conduct of those licensed to practice medicine, LICENSED TO  
14 ACT AS PHYSICIAN ASSISTANTS, AND LICENSED TO PRACTICE NURSING AND  
15 GRANTED AN AUTHORITY AS ADVANCED PRACTICE NURSES; and

16 (c) It is necessary and proper that the ~~Colorado medical board~~  
17 RESPECTIVE REGULATORY BOARDS exercise ~~its~~ THEIR regulatory authority  
18 to protect the health, safety, and welfare of the people of this state.

19 (3) The general assembly recognizes that, in the proper exercise  
20 of ~~its~~ THEIR authority and responsibilities under this article, the Colorado  
21 medical board AND THE STATE BOARD OF NURSING must, to some extent,  
22 replace competition with regulation, and that ~~such~~ THE replacement of  
23 competition by regulation, particularly with regard to ~~physicians~~ PERSONS  
24 LICENSED UNDER ARTICLE 36 OF THIS TITLE OR LICENSED UNDER ARTICLE  
25 38 OF THIS TITLE AND GRANTED AN AUTHORITY AS ADVANCED PRACTICE  
26 NURSES, is related to a legitimate state interest in the protection of the  
27 health, safety, and welfare of the people of this state.

28 **SECTION 4.** In Colorado Revised Statutes, **amend** 12-36.5-102  
29 as follows:

30 **12-36.5-102. Definitions.** As used in this article, unless the  
31 context otherwise requires:

32 (1) ~~"Medical board" means the Colorado medical board created~~  
33 ~~pursuant to section 12-36-103.~~ "AUTHORIZED ENTITY" MEANS A  
34 CORPORATION, ORGANIZATION, OR ENTITY THAT IS AUTHORIZED TO  
35 ESTABLISH A PROFESSIONAL REVIEW COMMITTEE UNDER SECTION  
36 12-36.5-104 (3) OR (4) OR UNDER RULES OF THE MEDICAL BOARD OR  
37 NURSING BOARD ADOPTED PURSUANT TO SECTION 12-36.5-104 (5).

38 (2) "CMS" MEANS THE FEDERAL CENTERS FOR MEDICARE AND  
39 MEDICAID SERVICES.

40 ~~(2)~~ (3) "Governing board" means ~~any~~ A board, board of trustees,  
41 governing board, or other body, or duly authorized subcommittee thereof,

1 of any organization of health care providers AN AUTHORIZED ENTITY,  
2 which board or body has final authority pursuant to such organization's  
3 THE ENTITY'S written bylaws, policies, or procedures to take final action  
4 regarding the recommendations of any authorized A professional review  
5 committee.

6 (4) "JOINT COMMISSION" MEANS THE JOINT COMMISSION ON THE  
7 ACCREDITATION OF HEALTHCARE ORGANIZATIONS OR ITS SUCCESSOR  
8 ENTITY.

9 (5) "MEDICAL BOARD" MEANS THE COLORADO MEDICAL BOARD  
10 CREATED IN SECTION 12-36-103 (1).

11 (3) (6) "Professional review committee" means any committee  
12 authorized under the provisions of this article to review and evaluate the  
13 QUALIFICATIONS, COMPETENCE, AND professional conduct of, and the  
14 quality and appropriateness of patient care provided by, any physician  
15 PERSON licensed under article 36 of this title OR LICENSED UNDER ARTICLE  
16 38 OF THIS TITLE AND GRANTED AN AUTHORITY AS AN ADVANCED  
17 PRACTICE NURSE. "PROFESSIONAL REVIEW COMMITTEE" INCLUDES A  
18 GOVERNING BOARD, A HEARING PANEL APPOINTED BY A GOVERNING BODY  
19 TO CONDUCT A HEARING UNDER SECTION 12-36.5-104 (7) (a), AND AN  
20 INDEPENDENT THIRD PARTY DESIGNATED BY A GOVERNING BOARD UNDER  
21 SECTION 12-36.5-104 (8) (b).

22 (4) (7) (a) "Records" means any and all written, ELECTRONIC, or  
23 verbal ORAL communications by any person any member of an  
24 investigative body, or any professional review committee or governing  
25 board, or the staff thereof arising from any activities of a professional  
26 review committee, INCLUDING A GOVERNING BOARD, ESTABLISHED BY AN  
27 authorized by ENTITY UNDER this article OR BY THE AGENT OR STAFF  
28 THEREOF, including the ANY:

29 (I) REFERENCE;

30 (II) Complaint, response, OR correspondence related thereto TO  
31 THE COMPLAINT OR RESPONSE;

32 (III) INTERVIEWS OR STATEMENTS, REPORTS, MEMORANDA,  
33 ASSESSMENTS, AND PROGRESS REPORTS DEVELOPED TO ASSIST IN  
34 PROFESSIONAL REVIEW ACTIVITIES;

35 (IV) ASSESSMENTS AND PROGRESS REPORTS TO ASSIST IN  
36 PROFESSIONAL REVIEW ACTIVITIES, INCLUDING REPORTS AND  
37 ASSESSMENTS DEVELOPED BY INDEPENDENT CONSULTANTS IN  
38 CONNECTION WITH PROFESSIONAL REVIEW ACTIVITIES; AND

39 (V) Recordings or transcripts of proceedings, minutes, formal  
40 recommendations, decisions, exhibits, and other similar items or  
41 documents RELATED TO PROFESSIONAL REVIEW ACTIVITIES AND typically

1 constituting the records of administrative proceedings.

2 (b) "RECORDS" DOES NOT INCLUDE ANY WRITTEN, ELECTRONIC, OR  
3 ORAL COMMUNICATIONS BY ANY PERSON THAT ARE OTHERWISE  
4 AVAILABLE FROM AN ORIGINAL SOURCE OUTSIDE THE SCOPE OF  
5 PROFESSIONAL REVIEW ACTIVITIES, INCLUDING MEDICAL RECORDS AND  
6 OTHER HEALTH INFORMATION.

7 (8) "STATE BOARD OF NURSING" OR "NURSING BOARD" MEANS THE  
8 STATE BOARD OF NURSING CREATED IN SECTION 12-38-104.

9 **SECTION 5.** In Colorado Revised Statutes, **amend** 12-36.5-103  
10 as follows:

11 **12-36.5-103. Use of professional review committees.**

12 (1) (a) The general assembly recognizes that:

13 (I) The medical board AND THE NURSING BOARD, while assuming  
14 and retaining ultimate authority for licensure and discipline in accordance  
15 with ~~article~~ ARTICLES 36 AND 38 of this title, RESPECTIVELY, and in  
16 accordance with this article, cannot practically and economically assume  
17 responsibility over every single allegation or instance of purported  
18 deviation from the standards of quality for the practice of medicine OR  
19 NURSING, from the standards of professional conduct, or from the  
20 standards of appropriate care; and ~~that~~

21 (II) An attempt to exercise such oversight would result in  
22 extraordinary delays in the determination of the legitimacy of ~~such~~ THE  
23 allegations and would result in the inappropriate and unequal exercise of  
24 ~~its~~ THEIR authority to license and discipline ~~physicians~~ PERSONS LICENSED  
25 UNDER ARTICLE 36 OF THIS TITLE OR LICENSED UNDER ARTICLE 38 OF THIS  
26 TITLE AND GRANTED AUTHORITY AS ADVANCED PRACTICE NURSES.

27 (b) It is therefore the intent of the general assembly that the  
28 medical board AND THE NURSING BOARD utilize and allow professional  
29 review committees and governing boards to assist ~~it~~ THEM in meeting ~~its~~  
30 THEIR responsibilities under ~~article~~ ARTICLES 36 AND 38 of this title,  
31 RESPECTIVELY, and under this article.

32 (2) All ~~physicians~~ PERSONS LICENSED UNDER ARTICLE 36 OF THIS  
33 TITLE OR LICENSED UNDER ARTICLE 38 OF THIS TITLE AND GRANTED  
34 AUTHORITY AS ADVANCED PRACTICE NURSES are encouraged to serve  
35 upon ~~such~~ professional review committees when called to do so and to  
36 study and review in ~~good faith~~ AN OBJECTIVELY REASONABLE MANNER the  
37 professional conduct of ~~physicians~~ PERSONS LICENSED UNDER ARTICLE 36  
38 OF THIS TITLE OR LICENSED UNDER ARTICLE 38 OF THIS TITLE AND  
39 GRANTED AUTHORITY AS ADVANCED PRACTICE NURSES, including the  
40 QUALIFICATIONS, COMPETENCE, AND PROFESSIONAL CONDUCT OF, AND  
41 THE quality and appropriateness of patient care PROVIDED BY, THOSE

1 PERSONS.

2 (3) (a) The use of professional review committees is ~~declared to~~  
3 ~~be~~ an extension of the authority of the medical board AND NURSING  
4 BOARD. However, except as otherwise provided in this article, nothing in  
5 this article ~~shall limit~~ LIMITS the authority of professional review  
6 committees properly constituted under this article.

7 (b) Professional review committees, the members who constitute  
8 ~~such~~ THE committees, governing boards, AUTHORIZED ENTITIES, and  
9 persons who participate directly or indirectly in professional review  
10 ~~proceedings~~ ACTIVITIES are granted certain immunities from SUIT AND  
11 liability FOR DAMAGES arising from actions ~~which~~ THAT are within the  
12 scope of their activities ~~and taken in good faith~~ as provided in section  
13 12-36.5-105. ~~Such~~ THESE grants of immunity from SUIT AND liability FOR  
14 DAMAGES are ~~declared to be~~ necessary to ensure that professional review  
15 committees and governing boards can exercise their professional  
16 knowledge and judgment.

17 **SECTION 6.** In Colorado Revised Statutes, **amend** 12-36.5-104  
18 as follows:

19 **12-36.5-104. Establishment of professional review committees**  
20 **- function - rules.** (1) A professional review committee may be  
21 established pursuant to this section to review and evaluate the  
22 QUALIFICATIONS AND COMPETENCE OF, THE quality and appropriateness  
23 of patient care provided by, and the professional conduct of, any  
24 ~~physician licensed under article 36 of this title~~ PERSON LICENSED UNDER  
25 ARTICLE 36 OF THIS TITLE OR LICENSED UNDER ARTICLE 38 OF THIS TITLE  
26 AND GRANTED AN AUTHORITY AS AN ADVANCED PRACTICE NURSE.

27 (2) ~~Persons Licensed to practice medicine under article 36 of this~~  
28 ~~title~~ PHYSICIANS who are actively engaged in the practice of medicine in  
29 this state ~~shall~~ MUST constitute a majority of THE VOTING MEMBERS OF any  
30 professional review committee established pursuant to this section FOR  
31 PHYSICIANS AND PHYSICIAN ASSISTANTS; ~~except for those boards~~ THAT  
32 PHYSICIANS NEED NOT CONSTITUTE THE MAJORITY OF THE VOTING  
33 MEMBERS OF A BOARD authorized by paragraph (g) of subsection (4) of  
34 this section OR AN INDEPENDENT THIRD PARTY DESIGNATED BY A  
35 GOVERNING BOARD UNDER PARAGRAPH (b) OF SUBSECTION (8) OF THIS  
36 SECTION.

37 (3) A utilization and quality control peer review organization, as  
38 defined pursuant to 42 U.S.C. sec. 1320c-1, or any other organization  
39 performing similar review services under federal or state law ~~shall be~~ IS  
40 an approved professional review committee under this article.

41 (4) ~~Any~~ A professional review committee established by any of



1 the following ~~organizations, entities, or professional societies shall be~~  
2 AUTHORIZED ENTITIES IS an approved professional review committee  
3 under this article if it operates pursuant to IN SUBSTANTIAL COMPLIANCE  
4 WITH written bylaws, policies, or procedures that are in compliance with  
5 this article and that have been approved by its THE AUTHORIZED ENTITY'S  
6 governing board:

7 (a) The medical OR NURSING staff of a hospital licensed pursuant  
8 to part 1 of article 3 of title 25, C.R.S., or certified pursuant to section  
9 25-1.5-103 (1) (a) (II), C.R.S.;

10 (b) The medical OR NURSING staff of a hospital-related  
11 corporation. For the purposes of this paragraph (b), ~~a corporation~~ AN  
12 ENTITY IS A "hospital-related CORPORATION" if the licensed or certified  
13 hospital or holding company of ~~such~~ THE LICENSED OR CERTIFIED hospital  
14 has ownership or control of ~~such corporation~~ THE ENTITY;

15 (c) A society or association of physicians whose membership  
16 includes not less than one-third of the doctors of medicine or doctors of  
17 osteopathy licensed to practice and residing in this state, if the physician  
18 whose services are the subject of the review is a member of ~~such~~ THE  
19 society or association;

20 (d) A society or association of physicians licensed to practice and  
21 residing in this state and specializing in a specific discipline of medicine,  
22 whose society or association has been designated by the medical board as  
23 ~~the~~ A specialty society or association representative of physicians  
24 practicing ~~such~~ THE specific discipline of medicine, if the physician  
25 whose services are the subject of the review is a member of ~~such~~ THE  
26 specialty society or association;

27 (e) An individual practice association or a preferred provider  
28 organization ~~comprised~~ CONSISTING OF ~~at least twenty-five~~ physicians or  
29 a medical group ~~which~~ THAT predominantly serves members of a health  
30 maintenance organization licensed pursuant to parts 1 and 4 of article 16  
31 of title 10, C.R.S. A professional review committee established pursuant  
32 to this paragraph (e) ~~shall have~~ HAS jurisdiction to review only physicians  
33 who are members of the association or organization creating and  
34 authorizing that committee; except that ~~such~~ THE professional review  
35 committee may review the care provided to a particular patient referred  
36 by a member of ~~such~~ THE association or organization to another physician  
37 who is not a member of ~~such~~ THE association or organization.

38 (f) A corporation authorized to insure ~~physicians~~ PERSONS  
39 LICENSED UNDER ARTICLE 36 OF THIS TITLE OR LICENSED UNDER ARTICLE  
40 38 OF THIS TITLE AND GRANTED AUTHORITY AS ADVANCED PRACTICE  
41 NURSES pursuant to article 3 of title 10, C.R.S., or any other ~~corporation~~

1 ORGANIZATION authorized to insure such ~~physicians~~ PERSONS in this state  
2 when designated by the medical board OR NURSING BOARD under  
3 subsection (5) of this section;

4 (g) THE governing ~~boards~~ BOARD of any AUTHORIZED entity which  
5 THAT has a professional review committee established pursuant to article  
6 36 OR ARTICLE 38 of this title;

7 (h) Any ~~peer~~ PROFESSIONAL review committee established or  
8 created by a combination or pooling of any ~~of the organizations~~  
9 authorized by ~~this section to have a professional review committee~~  
10 ENTITIES;

11 (i) (I) A nonprofit corporation or association ~~comprised~~  
12 CONSISTING of representatives from a statewide ~~medical~~ PROFESSIONAL  
13 society and a statewide hospital association. ~~Such~~ THE association ~~shall~~  
14 ~~be comprised~~ MUST CONSIST of ~~physicians~~ PERSONS LICENSED UNDER  
15 ARTICLE 36 OF THIS TITLE OR LICENSED UNDER ARTICLE 38 OF THIS TITLE  
16 AND GRANTED AUTHORITY AS ADVANCED PRACTICE NURSES, hospital  
17 administrators, and hospital trustees, with a majority of ~~such~~ THE  
18 representatives being ~~physicians~~ PERSONS LICENSED UNDER ARTICLE 36 OF  
19 THIS TITLE OR LICENSED UNDER ARTICLE 38 OF THIS TITLE AND GRANTED  
20 AUTHORITY AS ADVANCED PRACTICE NURSES. The association may  
21 establish, or contract for, one or more ~~peer~~ PROFESSIONAL review  
22 committees to review the care by hospital staff ~~physicians~~ HEALTH CARE  
23 PROVIDERS, with priority given to small rural ~~medical~~ HOSPITAL staffs.  
24 ~~Such peer~~ THESE PROFESSIONAL review services ~~shall~~ MUST be available  
25 statewide on a fee-for-service basis to licensed or certified hospitals at the  
26 joint request of the governing ~~body~~ BOARD and the medical OR NURSING  
27 staff of the hospital or at the sole request of the governing ~~body~~ BOARD  
28 of the hospital. If a ~~physician~~ MEMBER being reviewed specializes in a  
29 generally recognized specialty of medicine OR NURSING, at least one of  
30 the ~~physicians~~ HEALTH CARE PROVIDERS on the ~~peer~~ PROFESSIONAL  
31 review committee ~~shall~~ MUST be a ~~physician practicing~~ PERSON LICENSED  
32 UNDER ARTICLE 36 OF THIS TITLE, OR LICENSED UNDER ARTICLE 38 OF THIS  
33 TITLE AND GRANTED AUTHORITY AS AN ADVANCED PRACTICE NURSE, WHO  
34 PRACTICES such specialty.

35 (II) For purposes of the introductory portion to this subsection (4)  
36 AND THIS PARAGRAPH (i), the bylaws, policies, ~~and~~ OR procedures ~~shall~~  
37 MUST be in SUBSTANTIAL compliance with this article and ~~be~~ approved by  
38 the nonprofit corporation or association.

39 (j) The medical OR NURSING staff of an ambulatory surgical center  
40 licensed pursuant to part 1 of article 3 of title 25, C.R.S.;

41 (k) A PROFESSIONAL SERVICES ENTITY ORGANIZED PURSUANT TO

1 SECTION 12-36-134;

2 (l) A PROVIDER NETWORK THAT INCLUDES HEALTH CARE  
3 PROVIDERS ORGANIZED PURSUANT TO PART 3 OF ARTICLE 18 OF TITLE 6,  
4 C.R.S.;

5 (m) A HEALTH SYSTEM THAT INCLUDES TWO OR MORE  
6 AUTHORIZED ENTITIES WITH A COMMON GOVERNING BOARD;

7 (n) A TRUST ORGANIZATION ESTABLISHED UNDER ARTICLE 70 OF  
8 TITLE 11, C.R.S.;

9 (o) AN ENTITY LICENSED PURSUANT TO PARTS 1 AND 4 OF ARTICLE  
10 16 OF TITLE 10, C.R.S.; AND

11 (p) AN ACCOUNTABLE CARE ORGANIZATION ESTABLISHED UNDER  
12 THE FEDERAL "PATIENT PROTECTION AND AFFORDABLE CARE ACT",  
13 PUB.L. 111-148, OR OTHER ORGANIZATION WITH A SIMILAR FUNCTION.

14 (5) The medical board AND THE NURSING BOARD, WITH RESPECT  
15 TO THE LICENSEES SUBJECT TO THEIR JURISDICTION, may establish by rule  
16 procedures necessary to authorize other health care or physician  
17 organizations or professional societies to AS AUTHORIZED ENTITIES THAT  
18 MAY establish professional review committees.

19 (6) (a) A professional review committee acting pursuant to this  
20 part 1 may investigate or cause to be investigated:

21 (I) ~~The qualifications AND COMPETENCE of any physician licensed~~  
22 ~~under article 36 of this title~~ PERSON LICENSED UNDER ARTICLE 36 OF THIS  
23 TITLE OR LICENSED UNDER ARTICLE 38 OF THIS TITLE AND GRANTED  
24 AUTHORITY AS AN ADVANCED PRACTICE NURSE who seeks to subject  
25 himself or herself to the authority of any ~~organization, entity, or~~  
26 ~~professional society listed in subsection (4) of this section or any~~  
27 ~~organization or professional society that has been authorized by the~~  
28 ~~medical board to establish a professional review committee pursuant to~~  
29 ~~subsection (5) of this section~~ AUTHORIZED ENTITY; or

30 (II) The quality or appropriateness of patient care rendered by, or  
31 the professional conduct of, any ~~physician licensed under article 36 of this~~  
32 ~~title~~ PERSON LICENSED UNDER ARTICLE 36 OF THIS TITLE OR LICENSED  
33 UNDER ARTICLE 38 OF THIS TITLE AND GRANTED AUTHORITY AS AN  
34 ADVANCED-PRACTICE NURSE who is subject to the authority of ~~such~~  
35 ~~organization, entity, or professional society~~ THE AUTHORIZED ENTITY.

36 (b) ~~Such~~ THE PROFESSIONAL REVIEW COMMITTEE SHALL CONDUCT  
37 THE investigation ~~shall be conducted~~ in SUBSTANTIAL conformity with  
38 written bylaws, policies, or procedures adopted by ~~such organization;~~  
39 ~~entity, or professional society~~ THE AUTHORIZED ENTITY'S GOVERNING  
40 BOARD.

41 (7) The written bylaws, policies, or procedures of any professional





1 review committee ~~shall~~ FOR LICENSED PHYSICIANS AND PHYSICIAN  
2 ASSISTANTS MUST provide for at least the following:

3 (a) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS  
4 PARAGRAPH (a), if the findings of any investigation indicate that the  
5 LICENSED physician OR PHYSICIAN ASSISTANT who is the subject of the  
6 investigation is lacking in qualifications OR COMPETENCY, has provided  
7 substandard or inappropriate patient care, or has exhibited inappropriate  
8 professional conduct AND THE PROFESSIONAL REVIEW COMMITTEE TAKES  
9 OR RECOMMENDS AN ACTION TO ADVERSELY AFFECT THE PHYSICIAN'S OR  
10 PHYSICIAN ASSISTANT'S MEMBERSHIP, AFFILIATION, OR PRIVILEGES WITH  
11 THE AUTHORIZED ENTITY, the professional review committee shall hold  
12 a hearing ~~unless the physician waives his right to a hearing,~~ to consider  
13 the findings ~~except that,~~ AND RECOMMENDATIONS UNLESS THE PHYSICIAN  
14 OR PHYSICIAN ASSISTANT WAIVES, IN WRITING, THE RIGHT TO A HEARING.

15 (II) If the professional review committee is submitting its findings  
16 AND RECOMMENDATIONS to another professional review committee for  
17 review, only one hearing ~~shall be~~ IS necessary prior to any appeal before  
18 the governing ~~body~~ BOARD.

19 (b) ~~Any~~ A person who has participated in the course of ~~any~~ AN  
20 investigation ~~shall be~~ IS disqualified as a member of the PROFESSIONAL  
21 REVIEW committee ~~at any~~ THAT CONDUCTS A hearing ~~held~~ pursuant to  
22 paragraph (a) of this subsection (7), but ~~such~~ THE person may participate  
23 as a witness in ~~such~~ THE hearing.

24 (c) ~~The physician~~ AUTHORIZED ENTITY SHALL GIVE REASONABLE  
25 NOTICE OF THE HEARING, AND OF ANY FINDING OR RECOMMENDATION  
26 THAT WOULD ADVERSELY AFFECT THE PHYSICIAN'S OR PHYSICIAN  
27 ASSISTANT'S MEMBERSHIP, AFFILIATION, OR PRIVILEGES WITH THE  
28 AUTHORIZED ENTITY TO THE PHYSICIAN OR PHYSICIAN ASSISTANT who is  
29 the subject of ~~any~~ AN investigation, ~~shall be given reasonable notice of~~  
30 ~~such hearing and shall have~~ THE PHYSICIAN OR PHYSICIAN ASSISTANT HAS  
31 a right to be present, to be represented by legal counsel at ~~such~~ THE  
32 hearing, and to offer evidence in his OR HER own behalf.

33 (d) After ~~such~~ THE hearing, the professional review committee  
34 THAT CONDUCTED THE HEARING shall make any recommendations it  
35 deems necessary to the governing board, unless OTHERWISE provided by  
36 federal law or regulation.

37 (e) THE PROFESSIONAL REVIEW COMMITTEE SHALL GIVE a copy of  
38 ~~such~~ THE recommendations ~~shall be given~~ to the subject physician OR  
39 PHYSICIAN ASSISTANT, who then ~~shall have~~ HAS the right to appeal the  
40 ~~findings and recommendations of the professional review committee to~~  
41 the governing board to which the recommendations are made WITH

1 REGARD TO ANY FINDING OR RECOMMENDATION THAT WOULD ADVERSELY  
2 AFFECT THE PHYSICIAN'S OR PHYSICIAN ASSISTANT'S MEMBERSHIP,  
3 AFFILIATION, OR PRIVILEGES WITH THE AUTHORIZED ENTITY.

4 (f) THE PROFESSIONAL REVIEW COMMITTEE SHALL FORWARD A  
5 COPY OF ANY RECOMMENDATIONS MADE PURSUANT TO PARAGRAPH (d) OF THIS  
6 SUBSECTION (7) ~~shall be promptly forwarded~~ to the medical board.

7 (8) (a) All governing boards shall adopt written bylaws, policies,  
8 or procedures UNDER which ~~provide that~~ a physician OR PHYSICIAN  
9 ASSISTANT who is the subject of an adverse recommendation by a  
10 professional review committee may appeal to the governing board ~~Such~~  
11 FOLLOWING A HEARING IN ACCORDANCE WITH SUBSECTION (7) OF THIS  
12 SECTION. THE bylaws, policies, or procedures ~~shall~~ MUST provide that the  
13 physician OR PHYSICIAN ASSISTANT ~~shall~~ be given reasonable notice of his  
14 OR HER right to appeal and, unless waived by the physician ~~shall have~~ OR  
15 PHYSICIAN ASSISTANT, HAS the right to appear before the governing  
16 board, to be represented by legal counsel, and to offer ~~such~~ THE argument  
17 on the record as he OR SHE deems appropriate.

18 (b) The bylaws may provide that a committee of not fewer than  
19 three members of the governing board may hear the appeal. ~~such~~ ALSO,  
20 THE bylaws may ~~also~~ allow for an appeal to be heard by an independent  
21 third party designated by ~~the~~ A GOVERNING board UNDER THIS PARAGRAPH  
22 (b).

23 (9) THE WRITTEN BYLAWS, POLICIES, OR PROCEDURES OF ANY  
24 PROFESSIONAL REVIEW COMMITTEE FOR ADVANCED PRACTICE NURSES  
25 MUST PROVIDE FOR AT LEAST THE FOLLOWING:

26 (a) ONE OR MORE LICENSED NURSES WHO ARE REGISTERED AS  
27 ADVANCED PRACTICE NURSES WHO ARE ACTIVELY ENGAGED IN THE  
28 PRACTICE OF NURSING IN THIS STATE MUST BE MEMBERS OF THE  
29 PROFESSIONAL REVIEW COMMITTEE ESTABLISHED PURSUANT TO THIS  
30 SECTION FOR ADVANCED PRACTICE NURSES, EXCEPT THAT ADVANCED  
31 PRACTICE NURSES NEED NOT BE MEMBERS OF A GOVERNING BOARD OR AN  
32 INDEPENDENT THIRD PARTY DESIGNATED BY A GOVERNING BOARD, IF  
33 APPLICABLE TO THE PROFESSIONAL REVIEW PROCESS.

34 (b) THE PROFESSIONAL REVIEW PROCESS FOR ADVANCED PRACTICE  
35 NURSES CONDUCTED BY AUTHORIZED ENTITIES THAT ARE NOT LICENSED  
36 HEALTH FACILITIES MAY BE SUBSTANTIALLY SIMILAR TO THE PROCESS  
37 UNDER SUBSECTIONS (7) AND (8) OF THIS SECTION FOR PHYSICIANS AND  
38 PHYSICIAN ASSISTANTS, EXCEPT THAT ADVANCED PRACTICE NURSES WILL  
39 SUBSTITUTE FOR PHYSICIAN ASSISTANTS. THE PROFESSIONAL REVIEW  
40 COMMITTEE SHALL FORWARD A COPY OF ANY RECOMMENDATIONS TO THE  
41 NURSING BOARD.



1 (c) THE PROFESSIONAL REVIEW PROCESS FOR ADVANCED PRACTICE  
2 NURSES CONDUCTED BY AUTHORIZED ENTITIES THAT ARE LICENSED  
3 HEALTH FACILITIES AND THAT PARTICIPATE IN ANY FEDERAL HEALTH CARE  
4 PROGRAM, INCLUDING THE FEDERAL MEDICARE AND MEDICAID PROGRAMS,  
5 MAY BE ESTABLISHED IN A MANNER TO COMPLY WITH THE APPLICABLE  
6 HEALTH FACILITY LICENSING REQUIREMENTS UNDER TITLE 25, C.R.S., AND  
7 ASSOCIATED REGULATIONS, THE FEDERAL "SOCIAL SECURITY ACT", AND  
8 THE CONDITIONS FOR COVERAGE OR CONDITIONS OF PARTICIPATION  
9 PROMULGATED BY THE CMS, AS APPLICABLE TO THE TYPE OF HEALTH  
10 FACILITY. THE PROFESSIONAL REVIEW COMMITTEE SHALL FORWARD A  
11 COPY OF ANY RECOMMENDATIONS TO THE NURSING BOARD.

12 ~~(9)~~(10) All governing boards that are required to report their final  
13 actions to the medical board OR THE NURSING BOARD, AS APPROPRIATE,  
14 are not otherwise relieved of ~~such~~ THEIR obligations by virtue of any  
15 ~~provision of this article.~~

16 ~~(10)~~ (11) (a) EXCEPT AS SPECIFIED IN PARAGRAPH (b) OF THIS  
17 SUBSECTION (11), the records of ~~a~~ AN AUTHORIZED ENTITY AND ITS  
18 professional review committee, ~~a~~ ITS governing board, or the committee  
19 on anticompetitive conduct ~~shall~~ ARE not be subject to subpoena or  
20 discovery and ~~shall~~ ARE not be admissible in any civil suit. ~~brought~~  
21 ~~against a physician who is the subject of such records.~~

22 (b) ~~Notwithstanding the provisions of paragraph (a) of this~~  
23 ~~subsection (10),~~ ~~such~~ SUBJECT TO SUBSECTION (14) OF THIS SECTION, THE  
24 records ~~shall be~~ ARE subject to subpoena and available for use:

25 (I) By the committee on anticompetitive conduct;

26 (II) By either party in ~~any~~ AN appeal or de novo proceeding  
27 brought pursuant to this part 1;

28 (III) By a ~~physician~~ PERSON LICENSED UNDER ARTICLE 36 OF THIS  
29 TITLE, OR LICENSED UNDER ARTICLE 38 OF THIS TITLE AND GRANTED  
30 AUTHORITY AS AN ADVANCED PRACTICE NURSE, in a suit seeking judicial  
31 review of ~~any~~ AN action by the governing board;

32 (IV) BY THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND  
33 ENVIRONMENT IN ACCORDANCE WITH ITS AUTHORITY TO ISSUE OR  
34 CONTINUE A HEALTH FACILITY LICENSE OR CERTIFICATION FOR AN  
35 AUTHORIZED ENTITY;

36 (V) BY THE CMS IN ACCORDANCE WITH ITS EVALUATION PROCESS  
37 FOR FEDERAL HEALTH CARE PROGRAM PARTICIPATION BY AN AUTHORIZED  
38 ENTITY;

39 ~~(IV)~~ (VI) By a governing board seeking judicial review;

40 (VII) BY THE MEDICAL BOARD WITHIN THE SCOPE OF ITS  
41 AUTHORITY OVER LICENSED PHYSICIANS AND PHYSICIAN ASSISTANTS; AND



1 (VIII) BY THE NURSING BOARD WITHIN THE SCOPE OF ITS  
2 AUTHORITY OVER ADVANCED PRACTICE NURSES.

3 (12) (a) EXCEPT AS PROVIDED IN PARAGRAPH (b) OF THIS  
4 SUBSECTION (12), THE RECORDS OF AN AUTHORIZED ENTITY OR ITS  
5 PROFESSIONAL REVIEW COMMITTEE MAY BE DISCLOSED TO:

6 (I) THE MEDICAL BOARD, AS REQUESTED BY THE MEDICAL BOARD  
7 ACTING WITHIN THE SCOPE OF ITS AUTHORITY OR AS REQUIRED OR  
8 APPROPRIATE UNDER THIS ARTICLE OR ARTICLE 36 OF THIS TITLE;

9 (II) THE NURSING BOARD, AS REQUESTED BY THE NURSING BOARD  
10 ACTING WITHIN THE SCOPE OF ITS AUTHORITY OR AS REQUIRED OR  
11 APPROPRIATE UNDER THIS ARTICLE OR ARTICLE 38 OF THIS TITLE;

12 (III) THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND  
13 ENVIRONMENT ACTING WITHIN THE SCOPE OF ITS HEALTH FACILITY  
14 LICENSING AUTHORITY OR AS THE AGENT OF CMS;

15 (IV) CMS, IN CONNECTION WITH THE SURVEY AND CERTIFICATION  
16 PROCESSES FOR FEDERAL HEALTH CARE PROGRAM PARTICIPATION BY AN  
17 AUTHORIZED ENTITY; AND

18 (V) THE JOINT COMMISSION OR OTHER ENTITY GRANTED DEEMING  
19 AUTHORITY BY CMS, IN CONNECTION WITH A SURVEY OR REVIEW FOR  
20 ACCREDITATION.

21 (b) THE MEDICAL BOARD, NURSING BOARD, AND COLORADO  
22 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT SHALL NOT MAKE  
23 FURTHER DISCLOSURES OF ANY RECORDS DISCLOSED BY AN AUTHORIZED  
24 ENTITY OR ITS PROFESSIONAL REVIEW COMMITTEE UNDER THIS SECTION.

25 (13) THE RECORDS OF AN AUTHORIZED ENTITY OR ITS  
26 PROFESSIONAL REVIEW COMMITTEE OR GOVERNING BOARD MAY BE  
27 SHARED BY AND AMONG AUTHORIZED ENTITIES AND THEIR PROFESSIONAL  
28 REVIEW COMMITTEES AND GOVERNING BOARDS CONCERNING THE  
29 QUALIFICATIONS, COMPETENCE, AND PROFESSIONAL CONDUCT OF, AND  
30 QUALITY AND APPROPRIATENESS OF PATIENT CARE PROVIDED BY, A  
31 HEALTH CARE PROVIDER WHO SEEKS TO SUBJECT HIMSELF OR HERSELF TO,  
32 OR IS CURRENTLY SUBJECT TO, THE AUTHORITY OF THE AUTHORIZED  
33 ENTITY.

34 (14) RESPONDING TO A SUBPOENA OR DISCLOSING OR SHARING OF  
35 OTHERWISE PRIVILEGED RECORDS AND INFORMATION PURSUANT TO  
36 SUBSECTION (11), (12), OR (13) OF THIS SECTION DOES NOT CONSTITUTE A  
37 WAIVER OF THE PRIVILEGE SPECIFIED IN PARAGRAPH (a) OF SUBSECTION  
38 (11) OF THIS SECTION OR A VIOLATION OF THE CONFIDENTIALITY  
39 REQUIREMENTS OF SUBSECTION (15) OF THIS SECTION. RECORDS PROVIDED  
40 TO ANY GOVERNMENTAL AGENCY, INCLUDING THE DEPARTMENT OF PUBLIC  
41 HEALTH AND ENVIRONMENT, THE MEDICAL BOARD, AND THE NURSING

1 BOARD PURSUANT TO SUBSECTION (11) OR (12) OF THIS SECTION ARE NOT  
2 PUBLIC RECORDS SUBJECT TO THE "COLORADO OPEN RECORDS ACT", PART  
3 2 OF ARTICLE 72 OF TITLE 24, C.R.S. A PERSON PROVIDING THE RECORDS  
4 TO AN AUTHORIZED ENTITY OR ITS PROFESSIONAL REVIEW COMMITTEE OR  
5 GOVERNING BOARD, THE DEPARTMENT OF PUBLIC HEALTH AND  
6 ENVIRONMENT, THE MEDICAL BOARD, THE NURSING BOARD, CMS, THE  
7 JOINT COMMISSION, OR OTHER GOVERNMENTAL AGENCY IS ENTITLED TO  
8 THE SAME IMMUNITY FROM SUIT AND LIABILITY FOR DAMAGES AS  
9 PROVIDED UNDER SECTION 12-36.5-105 FOR THE DISCLOSURE OF THE  
10 RECORDS.

11 ~~(11) At the request of the medical board, a governing board shall~~  
12 ~~provide the medical board with the complete record of all professional~~  
13 ~~review proceedings, including, but not limited to, the findings,~~  
14 ~~recommendations, and actions taken.~~

15 ~~(12)~~(15) Investigations, examinations, hearings, meetings, or any  
16 AND other proceedings of a professional review committee or governing  
17 board conducted pursuant to ~~the provisions of this part 1 shall be~~ ARE  
18 exempt from ~~the provisions of any law requiring that proceedings be~~  
19 conducted publicly or that the ~~minutes or records, INCLUDING ANY~~  
20 MINUTES, be open to public inspection.

21 ~~(13)~~(16) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (11),  
22 (12), OR (13) OF THIS SECTION, all proceedings, recommendations, records,  
23 and reports involving professional review committees or governing  
24 boards ~~shall be~~ ARE confidential.

25 ~~(14)~~(17) A professional review committee or governing board  
26 ~~which~~ THAT is constituted and conducts its reviews and activities pursuant  
27 ~~to the provisions of~~ SUBSTANTIALLY IN ACCORDANCE WITH this part 1 is  
28 ~~declared not to be~~ an unlawful conspiracy in violation of section 6-4-104  
29 or 6-4-105, C.R.S.

30 **SECTION 7.** In Colorado Revised Statutes, 12-36.5-104.4,  
31 **amend** (1) as follows:

32 **12-36.5-104.4. Hospital professional review committees.**

33 (1) The quality and appropriateness of patient care rendered by  
34 ~~physicians~~ PERSONS LICENSED UNDER ARTICLE 36 OF THIS TITLE, LICENSED  
35 UNDER ARTICLE 38 OF THIS TITLE AND GRANTED AUTHORITY AS  
36 ADVANCED PRACTICE NURSES, and other licensed health care professionals  
37 so influence the total quality of patient care that a review of care provided  
38 in a hospital is ineffective without concomitantly reviewing THE overall  
39 QUALIFICATIONS, COMPETENCE, AND PROFESSIONAL CONDUCT OF, AND  
40 THE quality and appropriateness of care rendered by, ~~physicians and other~~  
41 ~~licensed health care professionals~~ SUCH PERSONS.



1           **SECTION 8.** In Colorado Revised Statutes, **add** 12-36.5-104.6  
2 as follows:

3           **12-36.5-104.6. Governing boards to register with medical**  
4 **board - annual reports - aggregation and publication of data - rules.**

5 (1) EACH GOVERNING BOARD THAT ESTABLISHES OR USES ONE OR MORE  
6 PROFESSIONAL REVIEW COMMITTEES TO REVIEW THE PRACTICE OF  
7 PHYSICIANS OR PHYSICIAN ASSISTANTS SHALL:

8           (a) REGISTER WITH THE MEDICAL BOARD IN A FORM SATISFACTORY  
9 TO THE MEDICAL BOARD ON OR BEFORE JULY 1, 2013, IF THE GOVERNING  
10 BOARD HAS EXISTING PROFESSIONAL REVIEW COMMITTEES, OR, IF THE  
11 GOVERNING BOARD ESTABLISHES A PROFESSIONAL REVIEW COMMITTEE ON  
12 OR AFTER JULY 1, 2013, WITHIN THIRTY DAYS AFTER APPROVING THE  
13 WRITTEN BYLAWS, POLICIES, OR PROCEDURES FOR THE PROFESSIONAL  
14 REVIEW COMMITTEE; AND

15           (b) REPORT ON ITS PROFESSIONAL REVIEW ACTIVITIES DURING THE  
16 IMMEDIATELY PRECEDING CALENDAR YEAR IN A FORM SATISFACTORY TO  
17 THE MEDICAL BOARD. THESE REPORTS MUST INCLUDE THE NUMBER AND  
18 TYPE OF CASES REVIEWED AND THE RESULTS OF SUCH REVIEWS, IN  
19 AGGREGATE FORM AND WITHOUT INDIVIDUALLY IDENTIFIABLE  
20 INFORMATION CONCERNING THE SUBJECT PHYSICIANS OR PHYSICIAN  
21 ASSISTANTS.

22           (2) THE MEDICAL BOARD SHALL PUBLISH THE DATA PROVIDED  
23 PURSUANT TO PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION IN  
24 AGGREGATE FORM AND WITHOUT INDIVIDUALLY IDENTIFIABLE  
25 INFORMATION CONCERNING THE SUBJECT PHYSICIANS OR PHYSICIAN  
26 ASSISTANTS OR THE AUTHORIZED ENTITY.

27           (3) THE MEDICAL BOARD SHALL ADOPT RULES TO IMPLEMENT THIS  
28 SECTION AND MAY COLLECT A REASONABLE REGISTRATION FEE TO  
29 RECOVER ITS DIRECT AND INDIRECT COSTS OF ADMINISTERING THE  
30 REGISTRATION AND PUBLICATION SYSTEMS REQUIRED BY THIS SECTION.

31           **SECTION 9.** In Colorado Revised Statutes, **add** 12-36.5-104.8  
32 as follows:

33           **12-36.5-104.8. Governing boards to register with nursing**  
34 **board - annual reports - aggregation and publication of data - rules.**

35 (1) EACH GOVERNING BOARD THAT ESTABLISHES OR USES ONE OR MORE  
36 PROFESSIONAL REVIEW COMMITTEES TO REVIEW THE PRACTICE OF  
37 ADVANCED PRACTICE NURSES SHALL:

38           (a) REGISTER WITH THE NURSING BOARD IN A FORM SATISFACTORY  
39 TO THE NURSING BOARD ON OR BEFORE JULY 1, 2013, IF THE GOVERNING  
40 BOARD HAS EXISTING PROFESSIONAL REVIEW COMMITTEES, OR, IF THE  
41 GOVERNING BOARD ESTABLISHES A PROFESSIONAL REVIEW COMMITTEE ON

1 OR AFTER JULY 1, 2013, WITHIN THIRTY DAYS AFTER APPROVING THE  
2 WRITTEN BYLAWS, POLICIES, OR PROCEDURES FOR THE PROFESSIONAL  
3 REVIEW COMMITTEE; AND

4 (b) REPORT ON ITS PROFESSIONAL REVIEW ACTIVITIES DURING THE  
5 IMMEDIATELY PRECEDING CALENDAR YEAR IN A FORM SATISFACTORY TO  
6 THE NURSING BOARD. THESE REPORTS MUST INCLUDE THE NUMBER AND  
7 TYPE OF CASES REVIEWED AND THE RESULTS OF SUCH REVIEWS, IN  
8 AGGREGATE FORM AND WITHOUT INDIVIDUALLY IDENTIFIABLE  
9 INFORMATION CONCERNING THE SUBJECT ADVANCED PRACTICE NURSES.

10 (2) THE NURSING BOARD SHALL PUBLISH THE DATA PROVIDED  
11 PURSUANT TO PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION IN  
12 AGGREGATE FORM AND WITHOUT INDIVIDUALLY IDENTIFIABLE  
13 INFORMATION CONCERNING THE SUBJECT ADVANCED PRACTICE NURSES OR  
14 THE AUTHORIZED ENTITY.

15 (3) THE NURSING BOARD SHALL ADOPT RULES TO IMPLEMENT THIS  
16 SECTION AND MAY COLLECT A REASONABLE REGISTRATION FEE TO  
17 RECOVER ITS DIRECT AND INDIRECT COSTS OF ADMINISTERING THE  
18 REGISTRATION AND PUBLICATION SYSTEMS REQUIRED BY THIS SECTION.

19 **SECTION 10.** In Colorado Revised Statutes, **amend** 12-36.5-105  
20 as follows:

21 **12-36.5-105. Immunity from suit and liability.** (1) A member  
22 of a professional review committee, GOVERNING BOARD, HEARING PANEL,  
23 OR INDEPENDENT THIRD PARTY DESIGNATED BY A GOVERNING BOARD  
24 UNDER SECTION 12-36.5-104 (8) (b); A PERSON SERVING ON THE STAFF OF  
25 THAT COMMITTEE, BOARD, PANEL, OR THIRD PARTY; a witness OR  
26 CONSULTANT before a professional review committee; or AND any person  
27 who files a complaint or otherwise participates in the professional review  
28 process ~~shall be~~ IS immune from suit in any civil or criminal action,  
29 including antitrust actions, ~~brought by a physician who is the subject of~~  
30 ~~the review by such professional review committee, if such member made~~  
31 ~~a reasonable effort to obtain the facts of the matter as to which he acted;~~  
32 ~~acted in the reasonable belief that the action taken by him was warranted~~  
33 ~~by the facts, and otherwise acted in good faith within the scope of such~~  
34 ~~professional review committee process and if such witness or participant~~  
35 ~~acted in good faith within the scope of such professional review~~  
36 ~~committee process~~ AND IS IMMUNE FROM LIABILITY FOR DAMAGES UNLESS,  
37 IN CONNECTION WITH THE PROFESSIONAL REVIEW PROCESS, THE PERSON  
38 PROVIDED FALSE INFORMATION AND KNEW THAT THE INFORMATION WAS  
39 FALSE.

40 (2) The governing board ~~the individual members of such board~~  
41 and the AUTHORIZED entity that has established a ~~peer~~ PROFESSIONAL



1 review committee pursuant to section 12-36.5-104 ~~the board's staff, any~~  
2 ~~person acting as a witness or consultant to the board, any witness~~  
3 ~~testifying in a proceeding authorized under this article, and any person~~  
4 ~~who lodges a complaint pursuant to this article shall be immune from~~  
5 ~~liability in any civil action brought against him or her for acts occurring~~  
6 ~~while acting in his or her capacity as board member, staff, consultant, or~~  
7 ~~witness, respectively, if such individual was acting in good faith within~~  
8 ~~the scope of his or her respective capacity, made a reasonable effort to~~  
9 ~~obtain the facts of the matter as to which he or she acted, and acted in the~~  
10 ~~reasonable belief that the action taken by him or her was warranted by the~~  
11 ~~facts. Any person participating in good faith in lodging a complaint or~~  
12 ~~participating in any investigative or administrative proceeding pursuant~~  
13 ~~to this article shall be immune from any civil or criminal liability that may~~  
14 ~~result from such participation~~ IS IMMUNE FROM SUIT IN ANY CIVIL OR  
15 CRIMINAL ACTION, INCLUDING ANTITRUST ACTIONS, AND IS IMMUNE FROM  
16 LIABILITY FOR DAMAGES IF THE PROFESSIONAL REVIEW ACTION WAS  
17 TAKEN WITHIN THE SCOPE OF THE PROFESSIONAL REVIEW PROCESS AND  
18 WAS TAKEN:

19 (a) IN THE OBJECTIVELY REASONABLE BELIEF THAT THE ACTION  
20 WAS IN THE FURTHERANCE OF QUALITY HEALTH CARE;

21 (b) AFTER AN OBJECTIVELY REASONABLE EFFORT TO OBTAIN THE  
22 FACTS OF THE MATTER;

23 (c) IN THE OBJECTIVELY REASONABLE BELIEF THAT THE ACTION  
24 TAKEN WAS WARRANTED BY THE FACTS; AND

25 (d) IN ACCORDANCE WITH PROCEDURES THAT, UNDER THE  
26 CIRCUMSTANCES, WERE FAIR TO THE PERSON LICENSED UNDER ARTICLE 36  
27 OF THIS TITLE OR LICENSED UNDER ARTICLE 38 OF THIS TITLE AND  
28 GRANTED AN AUTHORITY AS AN ADVANCED PRACTICE NURSE.

29 **SECTION 11.** In Colorado Revised Statutes, 12-36.5-106,  
30 **amend** (2), (5), (7), (8), (9) introductory portion, (9) (a), (9) (b), (9) (e),  
31 (9) (f), (9) (k), (9) (n), (10), (12), and (13) as follows:

32 **12-36.5-106. Committee on anticompetitive conduct - rules.**

33 (2) The committee ~~shall be composed~~ CONSISTS of five persons, none of  
34 whom ~~shall be~~ IS a member of the medical board, APPOINTED AS  
35 FOLLOWS:

36 (a) THE MEDICAL BOARD SHALL APPOINT four members of the  
37 committee, ~~shall~~ WHO MUST be licensed to ~~practice medicine~~ PROVIDE  
38 HEALTH CARE and actively engaged in the practice of medicine in this  
39 state. ~~and shall be appointed by the medical board.~~ No A member  
40 APPOINTED PURSUANT TO THIS PARAGRAPH (a) shall NOT practice in the  
41 same medical subspecialty as any other member ~~nor~~ AND SHALL NOT



1 conduct his or her primary practice in the same county as any other  
2 member.

3 (b) THE GOVERNOR SHALL APPOINT one member ~~shall be~~  
4 ~~appointed by the governor and shall be~~ WHO IS an attorney licensed to  
5 practice in this state AND who has particular expertise and experience in  
6 the area of antitrust law.

7 (5) The committee shall annually elect a ~~chairman~~ CHAIR from  
8 among its members. Any three members of the committee shall constitute  
9 a quorum. Any action of a majority of those present comprising ~~such~~ THE  
10 quorum ~~shall be~~ IS the action of the committee. Committee members ~~shall~~  
11 ~~be~~ ARE compensated as provided in section 24-34-102 (13), C.R.S. The  
12 committee may ~~in its discretion~~, utilize the expertise of consultants,  
13 including ~~but not limited to~~, legal, medical, and business specialists. THE  
14 COMMITTEE SHALL ASSESS AND COLLECT costs of ~~such~~ THE consultants  
15 ~~shall be assessed and collected~~ as provided in subsection (11) of this  
16 section.

17 (7) ~~Any physician~~ A HEALTH CARE PROVIDER who is the subject  
18 of a final action by a governing board, which action results in the denial,  
19 termination, or restriction of privileges at or membership ~~in~~ or  
20 participation in an organization, and who believes that ~~such~~ THE action  
21 resulted from unreasonable anticompetitive conduct ~~shall have, as his sole~~  
22 ~~and exclusive remedy~~, MAY SEEK direct review of the record by the  
23 committee. ~~such~~ THE review, ~~shall be~~ WHICH IS THE HEALTH CARE  
24 PROVIDER'S EXCLUSIVE REMEDY, IS limited to the sole issue of whether  
25 ~~such~~ THE final board action resulted from unreasonable anticompetitive  
26 conduct. Failure to exhaust this administrative remedy before the  
27 committee ~~shall preclude~~ PRECLUDES the right of de novo review on the  
28 merits of the issue of unreasonable anticompetitive conduct.

29 (8) Nothing in this article ~~shall preclude~~ PRECLUDES a ~~physician~~  
30 or health care provider otherwise aggrieved by the final action of a  
31 governing board from seeking other remedies available to them by law,  
32 except as provided in subsection (7) of this section.

33 (9) ~~Review by~~ The committee shall ~~be~~ CONDUCT THE REVIEW in  
34 accordance with the following procedures and, to the extent practicable,  
35 in accordance with the procedures used in the district courts of this state:

36 (a) ~~Review~~ THE AGGRIEVED HEALTH CARE PROVIDER ~~shall be~~  
37 ~~initiated~~ MUST INITIATE THE REVIEW by filing a verified complaint with  
38 the committee, no later than thirty days after receipt of a notice of final  
39 action by the governing board, alleging, with specificity, all facts  
40 disclosed in the record and all additional facts known to the complainant  
41 ~~which~~ THAT would support his OR HER allegation that the final action

1 taken by the governing board resulted from unreasonable anticompetitive  
2 conduct.

3 (b) The committee shall mail a copy of ~~such~~ THE complaint to the  
4 governing board and the professional review committee by certified mail,  
5 return receipt requested, within five days ~~of~~ AFTER the receipt of ~~such~~ THE  
6 complaint by the committee, advising them of their right to file a verified  
7 answer to the allegations stated ~~therein~~ IN THE COMPLAINT. ~~Receipt of~~  
8 ~~such complaint by mail shall make~~ The recipients ~~thereof~~ OF THE  
9 COMPLAINT BECOME a party to these proceedings UPON RECEIPT OF THE  
10 COMPLAINT.

11 (e) If the committee finds THAT no ~~such~~ probable cause exists, it  
12 shall dismiss the complaint, which dismissal ~~shall constitute~~ CONSTITUTES  
13 final administrative action.

14 (f) If the committee finds ~~such~~ THAT probable cause exists, it shall  
15 schedule a hearing. At ~~such~~ THE hearing, the committee shall review the  
16 record below on the sole issue of whether the final action of the  
17 governing board resulted from unreasonable anticompetitive conduct and  
18 shall take evidence only with regard to the additional facts specifically  
19 alleged in the complaint or answer regarding unreasonable  
20 anticompetitive conduct, except when, in the discretion of the committee,  
21 the interests of a fair hearing demand otherwise.

22 (k) If the committee finds by a preponderance of evidence that the  
23 final action of the governing board resulted from unreasonable  
24 anticompetitive conduct, it shall issue its final order disapproving and  
25 setting aside ~~such~~ THE action or modifying the action taken by the  
26 governing board in whole or in part, which final order ~~shall be~~ IS binding  
27 on the parties. THE COMMITTEE SHALL MAIL a copy of ~~such~~ THE order  
28 ~~shall be mailed~~ by certified mail, return receipt requested, to the parties.

29 (n) In any case presented to the committee where the ~~medical~~  
30 HEALTH CARE practice of the complainant constitutes a clear and present  
31 danger to patients, the committee shall refer the case to the medical board  
32 OR NURSING BOARD, AS APPLICABLE, for ~~such~~ action as the board deems  
33 appropriate.

34 (10) (a) ~~Following final administrative action by the committee,~~  
35 ~~such action of the committee may be reviewed only by the court of~~  
36 appeals MAY REVIEW THE ACTION OF THE COMMITTEE through appropriate  
37 proceedings brought pursuant to section 24-4-106 (11), C.R.S.

38 (b) Following final administrative action by the committee, ~~any~~  
39 A party aggrieved by the final action of a governing board who wishes to  
40 challenge the action of ~~such~~ THE governing board, rather than the  
41 committee's review of ~~such~~ THE action, ~~shall have~~ HAS the right to seek



1 de novo review on the merits in a district court in Colorado. In no event  
2 shall the medical board, NURSING BOARD, or the committee be made  
3 parties to ~~such a~~ THE district court action.

4 (c) As a condition of filing a complaint under paragraph (a) of  
5 subsection (9) of this section, the complainant shall post a cash bond or  
6 equivalent liquid security of three thousand dollars to cover anticipated  
7 costs ~~which~~ THAT may be assessed against him OR HER. Within thirty days  
8 of AFTER receipt of service of a complaint on a governing board, or  
9 concurrently with the filing of an answer, whichever is earlier, the  
10 governing board shall post a cash bond or equivalent liquid security of  
11 three thousand dollars to cover anticipated costs ~~which~~ THAT may be  
12 assessed against it as a party. The committee may enforce this latter  
13 requirement through the district court.

14 (12) The committee shall promulgate ~~such rules and regulations~~  
15 as ~~may be~~ necessary for the implementation of this section, including  
16 mechanisms to secure the payment of costs as provided in paragraph (c)  
17 of subsection (10) and subsection (11) of this section.

18 (13) ~~Any A~~ member of the committee, ~~any A~~ member of the  
19 committee's staff, ~~any A~~ person acting as a witness or consultant to the  
20 committee, ~~any A~~ witness testifying in a proceeding authorized under this  
21 article, and ~~any A~~ person who lodges a complaint pursuant to this article  
22 ~~shall be~~ ARE immune from liability in any civil action brought against him  
23 or her for acts occurring while acting in his or her capacity as committee  
24 member, staff, consultant, or witness, respectively, if ~~such~~ THE individual  
25 was acting in ~~good faith~~ AN OBJECTIVELY REASONABLE MANNER within  
26 the scope of his or her respective capacity, made a reasonable effort to  
27 obtain the facts of the matter as to which he or she acted, and acted in the  
28 reasonable belief that the action taken by him or her was warranted by the  
29 facts. Any person participating in good faith in lodging a complaint or  
30 participating in any investigative or administrative proceeding pursuant  
31 to this article ~~shall be~~ IS immune from any civil or criminal liability that  
32 may result from ~~such~~ THE participation.

33 **SECTION 12.** In Colorado Revised Statutes, **amend** 12-36.5-202  
34 as follows:

35 **12-36.5-202. Rules - compliance with reporting requirements**  
36 **of federal act.** ~~Upon implementation of~~ THE MEDICAL BOARD MAY  
37 PROMULGATE RULES TO COMPLY WITH THE REPORTING REQUIREMENTS OF  
38 the federal "Health Care Quality Improvement Act of 1986", as amended,  
39 42 U.S.C. secs. 11101 through 11152, and ~~upon implementation of~~ TO  
40 PARTICIPATE IN the federal data bank. ~~the medical board shall promulgate~~  
41 ~~rules to comply with such act which rules are consistent with the~~

1 standards and the reporting requirements of such act.

2 **SECTION 13.** In Colorado Revised Statutes, amend 12-36.5-203  
3 as follows:

4 **12-36.5-203. Limitations on liability relating to professional**  
5 **review actions.** (1) The following persons ~~shall~~ ARE IMMUNE FROM SUIT  
6 AND not be liable for damages in any A civil action with respect to their  
7 participation in, assistance to, or reporting of information to a  
8 professional review body COMMITTEE in connection with a professional  
9 review action in this state, and ~~such~~ THE persons ~~shall~~ ARE IMMUNE FROM  
10 SUIT AND not be liable for damages in any A civil action with respect to  
11 their participation in, assistance to, or reporting of information to a  
12 professional review body ~~which~~ COMMITTEE THAT meets the standards of  
13 and is in conformity with ~~the provisions of~~ the federal "Health Care  
14 Quality Improvement Act of 1986", as amended, 42 U.S.C. secs. 11101  
15 through 11152: ~~upon implementation of such act by the federal~~  
16 ~~government:~~

17 (a) ~~The~~ AN AUTHORIZED ENTITY, professional review body  
18 COMMITTEE, OR GOVERNING BOARD;

19 (b) Any person acting as a member of or staff to the AUTHORIZED  
20 ENTITY, professional review body COMMITTEE, OR GOVERNING BOARD;

21 (c) ~~Any person under a contract or other formal agreement with~~  
22 ~~the professional review body~~ A WITNESS, CONSULTANT, OR OTHER PERSON  
23 WHO PROVIDED INFORMATION TO THE AUTHORIZED ENTITY, PROFESSIONAL  
24 REVIEW COMMITTEE, OR GOVERNING BOARD; AND

25 (d) Any person who participates with or assists the professional  
26 review body COMMITTEE OR GOVERNING BOARD with respect to the  
27 professional review action ACTIVITIES.

28 (2) ~~Notwithstanding any other provision of law, no person,~~  
29 ~~whether as a witness or otherwise, who provides information to a~~  
30 ~~professional review body regarding the competence or professional~~  
31 ~~conduct of a physician shall be held, by reason of having provided such~~  
32 ~~information, liable in damages in any civil action unless such information~~  
33 ~~is false and the person providing it knew that such information was false:~~

34 (3) For the purposes of this section, unless the context otherwise  
35 requires:

36 (a) "Professional review action" means an action or  
37 recommendation of a professional review body ~~which~~ COMMITTEE,  
38 INCLUDING A GOVERNING BOARD, THAT is taken or made in the conduct  
39 of professional review activity and ~~which~~ THAT is based on the QUALITY  
40 AND APPROPRIATENESS OF PATIENT CARE PROVIDED BY, AND THE  
41 QUALIFICATIONS, competence, or professional conduct of, an individual



1 ~~physician~~ PERSON LICENSED UNDER ARTICLE 36 OF THIS TITLE OR  
2 LICENSED UNDER ARTICLE 38 OF THIS TITLE AND GRANTED AN AUTHORITY  
3 AS AN ADVANCED PRACTICE NURSE, which ~~conduct~~ ACTION affects or may  
4 affect adversely the PERSON'S clinical privileges of or membership in a  
5 ~~professional society of the physician~~ AN AUTHORIZED ENTITY.  
6 "Professional review action" includes a formal decision by the  
7 professional review ~~body~~ COMMITTEE, INCLUDING A GOVERNING BOARD,  
8 not to take an action or make a recommendation as provided in this  
9 paragraph (a) and also includes professional review activities relating to  
10 a professional review action. An action ~~shall~~ IS not be considered to be  
11 based upon the competence or professional conduct of a ~~physician~~  
12 HEALTH CARE PROVIDER if the action is primarily based on:

13 (I) The ~~physician's~~ PERSON'S association or lack of association  
14 with a professional society or association;

15 (II) The ~~physician's~~ PERSON'S fees or his OR HER advertising or  
16 engaging in other competitive acts intended to solicit or retain business;

17 (III) The ~~physician's~~ PERSON'S association with, supervision of,  
18 delegation of authority to, support for, training of, or participation in a  
19 private group practice with a member or members of a particular class of  
20 health care practitioners or professionals;

21 (IV) The ~~physician's~~ PERSON'S participation in prepaid group  
22 health plans, salaried employment, or any other manner of delivering  
23 health services whether on a fee-for-service basis or other basis;

24 (V) Any other matter that does not relate to the QUALITY AND  
25 APPROPRIATENESS OF PATIENT CARE PROVIDED BY, OR THE  
26 QUALIFICATIONS, competence, or professional conduct of, a ~~physician~~  
27 PERSON LICENSED UNDER ARTICLE 36 OF THIS TITLE OR LICENSED UNDER  
28 ARTICLE 38 OF THIS TITLE AND GRANTED AN AUTHORITY AS AN ADVANCED  
29 PRACTICE NURSE.

30 (b) ~~"Professional review body" means a health care entity and the~~  
31 ~~governing body or any committee of a health care entity which conducts~~  
32 ~~professional review actions and includes any committee of the medical~~  
33 ~~staff of such an entity when assisting the governing body in a professional~~  
34 ~~review activity.~~

35 **SECTION 14.** In Colorado Revised Statutes, 12-36-118, **amend**  
36 (10) (b) as follows:

37 **12-36-118. Disciplinary action by board - immunity - rules.**

38 (10) (b) For purposes of the records related to a complaint filed pursuant  
39 to this section against a licensee, the board ~~shall be considered~~ IS a  
40 professional review committee, the records related to the complaint ~~shall~~  
41 include all records described in section 12-36.5-102 ~~(4)~~ (7), and section



1 12-36.5-104 (10) shall apply (11) APPLIES to those records.

2         **SECTION 15. Effective date.** (1) Except as otherwise provided  
3 in subsection (2) of this section, this act takes effect July 1, 2012.

4         (2) Section 11 of this act takes effect only if House Bill 12-1297  
5 does not become law.

6         **SECTION 16. Safety clause.** The general assembly hereby finds,  
7 determines, and declares that this act is necessary for the immediate  
8 preservation of the public peace, health, and safety.".

\*\* \*\*\* \*\* \*\*\* \*\*

