

**First Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 09-0150.01 Christy Chase

SENATE BILL 09-012

SENATE SPONSORSHIP

Morse and Kopp, Boyd

HOUSE SPONSORSHIP

Frangas and Massey, Riesberg

Senate Committees
Health and Human Services

House Committees

A BILL FOR AN ACT

101 **CONCERNING PROFESSIONAL REVIEW OF HEALTH CARE PROVIDERS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Health Care Task Force. Authorizes the creation of professional review committees to review and investigate the quality and appropriateness of patient care provided by and the professional conduct of health care providers engaged in specified health care professions. Defines "health care profession" as:

- ! The practice of podiatry, chiropractic, dentistry, dental hygiene, midwifery, nursing, nursing home administration, optometry, occupational therapy, physical therapy, respiratory therapy, or psychology; or

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

! Practice as an emergency medical technician, physician assistant, nurse aide, or psychiatric technician.

Authorizes professional review committees to be formed by the following organizations, entities, or professional societies:

! The medical staff of a corporation or other entity that employs health care providers to provide care to patients;

! The medical staff of a community clinic, rehabilitation center, convalescent center, community mental health center, acute treatment unit, facility for persons with developmental disabilities, habilitation center for brain-damaged children, chiropractic center, nursing care facility, pilot project rehabilitative nursing facility, hospice care, assisted living residence, dialysis treatment clinic, ambulatory surgical center, birthing center, or home care agency, that is licensed by the department of public health and environment;

! A society or association of health care providers whose membership includes not less than 1/3 of the health care providers engaged in the particular health care profession and residing in this state, if the health care provider whose services are the subject of the review is a member of the society or association;

! A society or association of health care providers authorized to practice and residing in this state and specializing in a specific discipline of their health care profession, if the health care provider whose services are the subject of the review is a member of the specialty society or association;

! An individual practice association or a preferred provider organization composed of at least 25 health care providers or a medical group that predominantly serves members of a health maintenance organization;

! A corporation authorized to insure health care providers in this state when so designated by a regulatory entity;

! Governing boards of any entity that has a professional review committee;

! Any peer review committee established or created by a combination or pooling of any of the organizations authorized by this section to have a professional review committee.

Establishes confidentiality of proceedings and records of a professional review committee. Makes participants in the professional review process immune from liability if they acted in good faith.

1 *Be it enacted by the General Assembly of the State of Colorado:*

1 **SECTION 1.** 12-29.1-101, Colorado Revised Statutes, is
2 amended to read:

3 **12-29.1-101. Legislative declaration.** The general assembly
4 hereby finds and declares that the proper practice of ~~the healing arts~~
5 HEALTH CARE professions requires the supervision and discipline of
6 licensed, ~~practitioners~~ CERTIFIED, OR REGISTERED HEALTH CARE
7 PROVIDERS for the benefit of the public, and, to this end, the ~~licensing~~
8 ~~boards~~ REGULATORY ENTITIES and their duly constituted professional
9 review committees shall have the power, duty, and responsibility to
10 conduct proceedings to determine facts so that the ~~boards~~ REGULATORY
11 ENTITIES may invoke discipline fairly and progressively where required,
12 and that such proceedings shall accommodate the requirements of full
13 professional and technical disclosure, as well as due process of law for
14 the ~~licensee~~ HEALTH CARE PROVIDER under investigation.

15 **SECTION 2.** Article 29.1 of title 12, Colorado Revised Statutes,
16 is amended BY THE ADDITION OF THE FOLLOWING NEW
17 SECTIONS to read:

18 **12-29.1-103. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE
19 CONTEXT OTHERWISE REQUIRES:

20 (1) "BOARD" MEANS A REGULATORY BOARD ESTABLISHED
21 PURSUANT TO THIS TITLE TO REGULATE A PARTICULAR HEALTH CARE
22 PROFESSION AND THE STATE BOARD OF HEALTH CREATED PURSUANT TO
23 SECTION 25-1-103, C.R.S.

24 (2) "GOVERNING BOARD" MEANS ANY BOARD, BOARD OF
25 TRUSTEES, GOVERNING BOARD, OR OTHER BODY, OR DULY AUTHORIZED
26 SUBCOMMITTEE THEREOF, OF ANY ORGANIZATION OF HEALTH CARE
27 PROVIDERS, WHICH BOARD OR BODY HAS FINAL AUTHORITY PURSUANT TO

1 SUCH ORGANIZATION'S WRITTEN BYLAWS, POLICIES, OR PROCEDURES TO
2 TAKE FINAL ACTION REGARDING THE RECOMMENDATIONS OF ANY
3 AUTHORIZED PROFESSIONAL REVIEW COMMITTEE.

4 (3) "HEALTH CARE PRACTICE" OR "HEALTH CARE PROFESSION"
5 MEANS:

6 (a) PRACTICE AS AN EMERGENCY MEDICAL TECHNICIAN, PHYSICIAN
7 ASSISTANT, NURSE AIDE, OR PSYCHIATRIC TECHNICIAN; OR

8 (b) THE PRACTICE OF PODIATRY, CHIROPRACTIC, DENTISTRY,
9 DENTAL HYGIENE, MIDWIFERY, NURSING, NURSING HOME
10 ADMINISTRATION, OPTOMETRY, OCCUPATIONAL THERAPY, PHYSICAL
11 THERAPY, RESPIRATORY THERAPY, OR PSYCHOLOGY.

12 (4) "HEALTH CARE PROVIDER" MEANS THE FOLLOWING:

13 (a) EMERGENCY MEDICAL TECHNICIANS LICENSED BY THE
14 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT PURSUANT TO PART
15 2 OF ARTICLE 3.5 OF TITLE 25, C.R.S.;

16 (b) PODIATRISTS LICENSED BY THE COLORADO PODIATRY BOARD
17 PURSUANT TO ARTICLE 32 OF THIS TITLE;

18 (c) CHIROPRACTORS LICENSED BY THE STATE BOARD OF
19 CHIROPRACTIC EXAMINERS PURSUANT TO ARTICLE 33 OF THIS TITLE;

20 (d) DENTISTS AND DENTAL HYGIENISTS LICENSED BY THE STATE
21 BOARD OF DENTAL EXAMINERS PURSUANT TO ARTICLE 35 OF THIS TITLE;

22 (e) PHYSICIAN ASSISTANTS LICENSED BY THE STATE BOARD OF
23 MEDICAL EXAMINERS PURSUANT TO ARTICLE 36 OF THIS TITLE;

24 (f) DIRECT-ENTRY MIDWIVES REGISTERED BY THE DIVISION OF
25 REGISTRATIONS IN THE DEPARTMENT OF REGULATORY AGENCIES
26 PURSUANT TO ARTICLE 37 OF THIS TITLE;

27 (g) NURSES LICENSED BY THE STATE BOARD OF NURSING

1 PURSUANT TO ARTICLE 38 OF THIS TITLE;

2 (h) NURSE AIDES CERTIFIED BY THE STATE BOARD OF NURSING
3 PURSUANT TO ARTICLE 38.1 OF THIS TITLE;

4 (i) NURSING HOME ADMINISTRATORS LICENSED BY THE BOARD OF
5 EXAMINERS OF NURSING HOME ADMINISTRATORS PURSUANT TO ARTICLE
6 39 OF THIS TITLE;

7 (j) OPTOMETRISTS LICENSED BY THE STATE BOARD OF OPTOMETRIC
8 EXAMINERS PURSUANT TO ARTICLE 40 OF THIS TITLE;

9 (k) OCCUPATIONAL THERAPISTS REGISTERED BY THE DIVISION OF
10 REGISTRATIONS IN THE DEPARTMENT OF REGULATORY AGENCIES
11 PURSUANT TO ARTICLE 40.5 OF THIS TITLE;

12 (l) PHYSICAL THERAPISTS LICENSED BY THE DIVISION OF
13 REGISTRATIONS IN THE DEPARTMENT OF REGULATORY AGENCIES
14 PURSUANT TO ARTICLE 41 OF THIS TITLE;

15 (m) RESPIRATORY THERAPISTS LICENSED BY THE DIVISION OF
16 REGISTRATIONS IN THE DEPARTMENT OF REGULATORY AGENCIES
17 PURSUANT TO ARTICLE 41.5 OF THIS TITLE;

18 (n) PSYCHIATRIC TECHNICIANS LICENSED BY THE STATE BOARD OF
19 NURSING PURSUANT TO ARTICLE 42 OF THIS TITLE; OR

20 (o) PSYCHOLOGISTS LICENSED BY THE STATE BOARD OF
21 PSYCHOLOGIST EXAMINERS PURSUANT TO PART 3 OF ARTICLE 43 OF THIS
22 TITLE;

23 (5) "PROFESSIONAL REVIEW COMMITTEE" MEANS ANY COMMITTEE
24 AUTHORIZED UNDER THIS ARTICLE TO REVIEW AND EVALUATE THE
25 PROFESSIONAL CONDUCT OF AND THE QUALITY AND APPROPRIATENESS OF
26 PATIENT CARE PROVIDED BY A HEALTH CARE PROVIDER.

27 (6) "RECORDS" MEANS ALL WRITTEN OR VERBAL

1 COMMUNICATIONS BY ANY PERSON, MEMBER OF AN INVESTIGATIVE BODY,
2 OR PROFESSIONAL REVIEW COMMITTEE OR GOVERNING BOARD, OR THE
3 STAFF THEREOF, ARISING FROM ANY ACTIVITIES OF A PROFESSIONAL
4 REVIEW COMMITTEE AUTHORIZED BY THIS ARTICLE, INCLUDING
5 COMPLAINT, RESPONSE, CORRESPONDENCE RELATED THERETO,
6 RECORDINGS OR TRANSCRIPTS OF PROCEEDINGS, MINUTES, FORMAL
7 RECOMMENDATIONS, DECISIONS, EXHIBITS, AND OTHER SIMILAR ITEMS OR
8 DOCUMENTS TYPICALLY CONSTITUTING THE RECORDS OF ADMINISTRATIVE
9 PROCEEDINGS.

10 (7) "REGULATORY ENTITY" MEANS THE ENTITY RESPONSIBLE FOR
11 REGULATING, SUPERVISING, AND DISCIPLINING A PARTICULAR HEALTH
12 CARE PROFESSION. THE TERM INCLUDES A BOARD, THE DIVISION OF
13 REGISTRATIONS IN THE DEPARTMENT OF REGULATORY AGENCIES, THE
14 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, AND ANY OTHER
15 ENTITY RESPONSIBLE FOR REGULATING A PARTICULAR HEALTH CARE
16 PROFESSION.

17 **12-29.1-104. Use of professional review committees.**

18 (1) (a) THE GENERAL ASSEMBLY RECOGNIZES THAT REGULATORY
19 ENTITIES, WHILE ASSUMING AND RETAINING ULTIMATE AUTHORITY FOR
20 REGULATION, SUPERVISION, OR DISCIPLINE OF HEALTH CARE PROVIDERS IN
21 ACCORDANCE WITH THIS TITLE OR TITLE 25, C.R.S., AS APPLICABLE,
22 CANNOT PRACTICALLY AND ECONOMICALLY ASSUME RESPONSIBILITY
23 OVER EVERY ALLEGATION OR INSTANCE OF PURPORTED DEVIATION FROM
24 THE STANDARDS OF:

25 (I) QUALITY FOR THE PRACTICE OF A PARTICULAR HEALTH CARE
26 PRACTICE;

27 (II) PROFESSIONAL CONDUCT; OR

1 (III) APPROPRIATE CARE.

2 (b) THE GENERAL ASSEMBLY FURTHER RECOGNIZES THAT AN
3 ATTEMPT TO EXERCISE SUCH OVERSIGHT WOULD RESULT IN
4 EXTRAORDINARY DELAYS IN THE DETERMINATION OF THE LEGITIMACY OF
5 ALLEGATIONS AND WOULD RESULT IN THE INAPPROPRIATE AND UNEQUAL
6 EXERCISE OF REGULATORY ENTITIES' AUTHORITY TO REGULATE AND
7 DISCIPLINE HEALTH CARE PROVIDERS. IT IS THEREFORE THE INTENT OF THE
8 GENERAL ASSEMBLY THAT REGULATORY ENTITIES UTILIZE AND ALLOW
9 PROFESSIONAL REVIEW COMMITTEES AND GOVERNING BOARDS TO ASSIST
10 THEM IN MEETING THEIR RESPONSIBILITIES UNDER THIS TITLE OR TITLE 25,
11 C.R.S., AS APPLICABLE.

12 (2) HEALTH CARE PROVIDERS ARE ENCOURAGED TO SERVE ON
13 PROFESSIONAL REVIEW COMMITTEES FOR THEIR PARTICULAR HEALTH CARE
14 PROFESSION WHEN CALLED TO DO SO AND TO STUDY AND REVIEW IN GOOD
15 FAITH THE PROFESSIONAL CONDUCT OF HEALTH CARE PROVIDERS,
16 INCLUDING THE QUALITY AND APPROPRIATENESS OF PATIENT CARE.

17 (3) (a) THE USE OF PROFESSIONAL REVIEW COMMITTEES IS
18 DECLARED TO BE AN EXTENSION OF THE AUTHORITY OF THE REGULATORY
19 ENTITY RESPONSIBLE FOR REGULATING A PARTICULAR HEALTH CARE
20 PROFESSION. HOWEVER, EXCEPT AS OTHERWISE PROVIDED IN THIS
21 ARTICLE, NOTHING IN THIS ARTICLE SHALL LIMIT THE AUTHORITY OF
22 PROFESSIONAL REVIEW COMMITTEES PROPERLY CONSTITUTED UNDER THIS
23 ARTICLE.

24 (b) PROFESSIONAL REVIEW COMMITTEES, THE MEMBERS WHO
25 CONSTITUTE SUCH COMMITTEES, GOVERNING BOARDS, AND PERSONS WHO
26 PARTICIPATE DIRECTLY OR INDIRECTLY IN PROFESSIONAL REVIEW
27 PROCEEDINGS ARE GRANTED CERTAIN IMMUNITIES FROM LIABILITY

1 ARISING FROM ACTIONS THAT ARE WITHIN THE SCOPE OF THEIR ACTIVITIES
2 AND TAKEN IN GOOD FAITH AS PROVIDED IN SECTION 12-29.1-106.
3 GRANTS OF IMMUNITY FROM LIABILITY ARE DECLARED TO BE NECESSARY
4 TO ENSURE THAT PROFESSIONAL REVIEW COMMITTEES AND GOVERNING
5 BOARDS CAN EXERCISE THEIR PROFESSIONAL KNOWLEDGE AND JUDGMENT.

6 **12-29.1-105. Establishment of professional review committees**

7 **- function - rules.** (1) A PROFESSIONAL REVIEW COMMITTEE MAY BE
8 ESTABLISHED PURSUANT TO THIS SECTION TO REVIEW AND EVALUATE THE
9 QUALITY AND APPROPRIATENESS OF PATIENT CARE PROVIDED BY AND THE
10 PROFESSIONAL CONDUCT OF A HEALTH CARE PROVIDER.

11 (2) WHEN A PROFESSIONAL REVIEW COMMITTEE IS ESTABLISHED
12 PURSUANT TO THIS SECTION TO INVESTIGATE THE QUALIFICATIONS OR
13 PROFESSIONAL CONDUCT OF OR PATIENT CARE PROVIDED BY A HEALTH
14 CARE PROVIDER, A MAJORITY OF THE PROFESSIONAL REVIEW COMMITTEE
15 SHALL CONSIST OF PERSONS AUTHORIZED TO ENGAGE AND ACTIVELY
16 ENGAGED IN THE SAME HEALTH CARE PROFESSION AS THE HEALTH CARE
17 PROVIDER UNDER INVESTIGATION, EXCEPT FOR THOSE PROFESSIONAL
18 REVIEW COMMITTEES AUTHORIZED BY PARAGRAPH (f) OF SUBSECTION (4)
19 OF THIS SECTION.

20 (3) A UTILIZATION AND QUALITY CONTROL PEER REVIEW
21 ORGANIZATION, AS DEFINED PURSUANT TO 42 U.S.C. SEC. 1320c-1, OR
22 ANY OTHER ORGANIZATION PERFORMING SIMILAR REVIEW SERVICES
23 UNDER FEDERAL OR STATE LAW SHALL BE AN APPROVED PROFESSIONAL
24 REVIEW COMMITTEE UNDER THIS ARTICLE.

25 (4) ANY PROFESSIONAL REVIEW COMMITTEE ESTABLISHED BY ANY
26 OF THE FOLLOWING ORGANIZATIONS, ENTITIES, OR PROFESSIONAL
27 SOCIETIES SHALL BE AN APPROVED PROFESSIONAL REVIEW COMMITTEE

1 UNDER THIS ARTICLE IF IT OPERATES PURSUANT TO WRITTEN BYLAWS,
2 POLICIES, OR PROCEDURES THAT ARE IN COMPLIANCE WITH THIS ARTICLE
3 AND THAT HAVE BEEN APPROVED BY THE GOVERNING BOARD OF THE
4 ORGANIZATION, ENTITY, OR PROFESSIONAL SOCIETY:

5 (a) THE MEDICAL STAFF OF A CORPORATION OR OTHER ENTITY
6 THAT EMPLOYS HEALTH CARE PROVIDERS TO PROVIDE CARE TO PATIENTS;

7 (b) THE MEDICAL STAFF OF A COMMUNITY CLINIC, REHABILITATION
8 CENTER, CONVALESCENT CENTER, COMMUNITY MENTAL HEALTH CENTER,
9 ACUTE TREATMENT UNIT, FACILITY FOR PERSONS WITH DEVELOPMENTAL
10 DISABILITIES, HABILITATION CENTER FOR BRAIN-DAMAGED CHILDREN,
11 CHIROPRACTIC CENTER, NURSING CARE FACILITY, PILOT PROJECT
12 REHABILITATIVE NURSING FACILITY, HOSPICE CARE, ASSISTED LIVING
13 RESIDENCE, DIALYSIS TREATMENT CLINIC, AMBULATORY SURGICAL
14 CENTER, BIRTHING CENTER, OR HOME CARE AGENCY, THAT IS LICENSED
15 PURSUANT TO PART 1 OF ARTICLE 3 OF TITLE 25, C.R.S.;

16 (c) A SOCIETY OR ASSOCIATION OF HEALTH CARE PROVIDERS
17 WHOSE MEMBERSHIP INCLUDES NOT LESS THAN ONE-THIRD OF THE HEALTH
18 CARE PROVIDERS ENGAGED IN THE PARTICULAR HEALTH CARE PROFESSION
19 AND RESIDING IN THIS STATE, IF THE HEALTH CARE PROVIDER WHOSE
20 SERVICES ARE THE SUBJECT OF THE REVIEW IS A MEMBER OF THE SOCIETY
21 OR ASSOCIATION;

22 (d) A SOCIETY OR ASSOCIATION OF HEALTH CARE PROVIDERS
23 AUTHORIZED TO PRACTICE AND RESIDING IN THIS STATE AND SPECIALIZING
24 IN A SPECIFIC DISCIPLINE OF THEIR HEALTH CARE PROFESSION, WHOSE
25 SOCIETY OR ASSOCIATION HAS BEEN DESIGNATED BY THE REGULATORY
26 ENTITY FOR THE HEALTH CARE PROFESSION AS THE SPECIALTY SOCIETY OR
27 ASSOCIATION REPRESENTATIVE OF HEALTH CARE PROVIDERS PRACTICING

1 SUCH SPECIFIC DISCIPLINE OF THE HEALTH CARE PROFESSION, IF THE
2 HEALTH CARE PROVIDER WHOSE SERVICES ARE THE SUBJECT OF THE
3 REVIEW IS A MEMBER OF THE SPECIALTY SOCIETY OR ASSOCIATION;

4 (e) AN INDIVIDUAL PRACTICE ASSOCIATION OR A PREFERRED
5 PROVIDER ORGANIZATION COMPOSED OF AT LEAST TWENTY-FIVE HEALTH
6 CARE PROVIDERS OR A MEDICAL GROUP THAT PREDOMINANTLY SERVES
7 MEMBERS OF A HEALTH MAINTENANCE ORGANIZATION LICENSED
8 PURSUANT TO PARTS 1 AND 4 OF ARTICLE 16 OF TITLE 10, C.R.S. A
9 PROFESSIONAL REVIEW COMMITTEE ESTABLISHED PURSUANT TO THIS
10 PARAGRAPH (e) SHALL HAVE JURISDICTION TO REVIEW ONLY HEALTH CARE
11 PROVIDERS WHO ARE MEMBERS OF THE ASSOCIATION OR ORGANIZATION
12 CREATING AND AUTHORIZING THAT COMMITTEE; EXCEPT THAT SUCH
13 PROFESSIONAL REVIEW COMMITTEE MAY REVIEW THE CARE PROVIDED TO
14 A PARTICULAR PATIENT REFERRED BY A MEMBER OF SUCH ASSOCIATION OR
15 ORGANIZATION TO ANOTHER HEALTH CARE PROVIDER WHO IS NOT A
16 MEMBER OF THE ASSOCIATION OR ORGANIZATION.

17 (f) A CORPORATION AUTHORIZED PURSUANT TO ARTICLE 3 OF
18 TITLE 10, C.R.S., TO INSURE HEALTH CARE PROVIDERS OR ANY OTHER
19 CORPORATION AUTHORIZED TO INSURE HEALTH CARE PROVIDERS IN THIS
20 STATE WHEN DESIGNATED BY A REGULATORY ENTITY UNDER SUBSECTION
21 (5) OF THIS SECTION;

22 (g) A GOVERNING BOARD OF ANY ENTITY THAT HAS A
23 PROFESSIONAL REVIEW COMMITTEE ESTABLISHED PURSUANT TO THIS
24 ARTICLE;

25 (h) ANY PEER REVIEW COMMITTEE ESTABLISHED OR CREATED BY
26 A COMBINATION OR POOLING OF ANY OF THE ORGANIZATIONS AUTHORIZED
27 BY THIS SECTION TO HAVE A PROFESSIONAL REVIEW COMMITTEE.

1 (5) A REGULATORY ENTITY MAY ESTABLISH PROCEDURES
2 NECESSARY TO AUTHORIZE OTHER HEALTH CARE ORGANIZATIONS OR
3 PROFESSIONAL SOCIETIES TO ESTABLISH PROFESSIONAL REVIEW
4 COMMITTEES. THE PROCEDURES SHALL BE ADOPTED BY RULE IN
5 ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S.

6 (6) (a) A PROFESSIONAL REVIEW COMMITTEE ACTING PURSUANT TO
7 THIS ARTICLE MAY INVESTIGATE OR CAUSE TO BE INVESTIGATED:

8 (I) THE QUALIFICATIONS OF A HEALTH CARE PROVIDER WHO SEEKS
9 TO SUBJECT HIMSELF OR HERSELF TO THE AUTHORITY OF ANY
10 ORGANIZATION, ENTITY, OR PROFESSIONAL SOCIETY LISTED IN SUBSECTION
11 (4) OF THIS SECTION OR ANY ORGANIZATION OR PROFESSIONAL SOCIETY
12 THAT HAS BEEN AUTHORIZED BY A REGULATORY ENTITY TO ESTABLISH A
13 PROFESSIONAL REVIEW COMMITTEE PURSUANT TO SUBSECTION (5) OF THIS
14 SECTION; OR

15 (II) THE QUALITY OR APPROPRIATENESS OF PATIENT CARE
16 RENDERED BY OR THE PROFESSIONAL CONDUCT OF A HEALTH CARE
17 PROVIDER WHO IS SUBJECT TO THE AUTHORITY OF SUCH ORGANIZATION,
18 ENTITY, OR PROFESSIONAL SOCIETY.

19 (b) AN INVESTIGATION OF A HEALTH CARE PROVIDER PURSUANT TO
20 THIS SUBSECTION (6) SHALL BE CONDUCTED IN CONFORMITY WITH
21 WRITTEN BYLAWS, POLICIES, OR PROCEDURES ADOPTED BY THE
22 ORGANIZATION, ENTITY, OR PROFESSIONAL SOCIETY.

23 (7) THE WRITTEN BYLAWS, POLICIES, OR PROCEDURES OF ANY
24 PROFESSIONAL REVIEW COMMITTEE SHALL PROVIDE FOR AT LEAST THE
25 FOLLOWING:

26 (a) IF THE FINDINGS OF ANY INVESTIGATION INDICATE THAT THE
27 HEALTH CARE PROVIDER WHO IS THE SUBJECT OF THE INVESTIGATION IS

1 LACKING IN QUALIFICATIONS, HAS PROVIDED SUBSTANDARD OR
2 INAPPROPRIATE PATIENT CARE, OR HAS EXHIBITED INAPPROPRIATE
3 PROFESSIONAL CONDUCT, THE PROFESSIONAL REVIEW COMMITTEE SHALL
4 HOLD A HEARING, UNLESS THE HEALTH CARE PROVIDER WAIVES HIS OR HER
5 RIGHT TO A HEARING, TO CONSIDER THE FINDINGS; EXCEPT THAT, IF THE
6 PROFESSIONAL REVIEW COMMITTEE IS SUBMITTING ITS FINDINGS TO
7 ANOTHER PROFESSIONAL REVIEW COMMITTEE FOR REVIEW, ONLY ONE
8 HEARING SHALL BE NECESSARY PRIOR TO ANY APPEAL BEFORE THE
9 GOVERNING BODY.

10 (b) ANY PERSON WHO HAS PARTICIPATED IN THE COURSE OF ANY
11 INVESTIGATION SHALL NOT SERVE AS A MEMBER OF THE COMMITTEE AT
12 ANY HEARING HELD PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION
13 (7), BUT THE PERSON MAY PARTICIPATE AS A WITNESS AT THE HEARING.

14 (c) THE HEALTH CARE PROVIDER WHO IS THE SUBJECT OF AN
15 INVESTIGATION SHALL BE GIVEN REASONABLE NOTICE OF THE HEARING
16 AND SHALL HAVE A RIGHT TO BE PRESENT, TO BE REPRESENTED BY LEGAL
17 COUNSEL AT THE HEARING, AND TO OFFER EVIDENCE ON HIS OR HER OWN
18 BEHALF.

19 (d) AFTER THE HEARING, THE PROFESSIONAL REVIEW COMMITTEE
20 SHALL MAKE ANY RECOMMENDATIONS IT DEEMS NECESSARY TO THE
21 GOVERNING BOARD UNLESS FEDERAL LAW OR REGULATION REQUIRES A
22 PARTICULAR OUTCOME BASED ON THE FINDINGS OF THE COMMITTEE.

23 (e) A COPY OF THE RECOMMENDATIONS SHALL BE GIVEN TO THE
24 HEALTH CARE PROVIDER. THE HEALTH CARE PROVIDER SHALL HAVE THE
25 RIGHT TO APPEAL THE FINDINGS AND RECOMMENDATIONS OF THE
26 PROFESSIONAL REVIEW COMMITTEE TO THE GOVERNING BOARD TO WHICH
27 THE RECOMMENDATIONS ARE MADE.

1 (f) A COPY OF ANY RECOMMENDATIONS MADE PURSUANT TO
2 PARAGRAPH (d) OF THIS SUBSECTION (7) SHALL BE PROMPTLY FORWARDED
3 TO THE REGULATORY ENTITY THAT REGULATES THE HEALTH CARE
4 PROFESSION IN WHICH THE HEALTH CARE PROVIDER IS ENGAGED.

5 (8) (a) ALL GOVERNING BOARDS SHALL ADOPT WRITTEN BYLAWS,
6 POLICIES, OR PROCEDURES THAT PROVIDE A HEALTH CARE PROVIDER WHO
7 IS THE SUBJECT OF AN ADVERSE RECOMMENDATION BY A PROFESSIONAL
8 REVIEW COMMITTEE THE ABILITY TO APPEAL THE ADVERSE
9 RECOMMENDATION TO THE GOVERNING BOARD. THE BYLAWS, POLICIES,
10 OR PROCEDURES SHALL REQUIRE THAT THE HEALTH CARE PROVIDER BE
11 GIVEN REASONABLE NOTICE OF HIS OR HER RIGHT TO APPEAL AND, UNLESS
12 WAIVED BY THE HEALTH CARE PROVIDER, SHALL HAVE THE RIGHT TO
13 APPEAR BEFORE THE GOVERNING BOARD, TO BE REPRESENTED BY LEGAL
14 COUNSEL, AND TO OFFER ANY ARGUMENT ON THE RECORD THE HEALTH
15 CARE PROVIDER DEEMS APPROPRIATE.

16 (b) THE BYLAWS MAY PROVIDE THAT A COMMITTEE OF NOT FEWER
17 THAN THREE MEMBERS OF THE GOVERNING BOARD MAY HEAR THE APPEAL.
18 THE BYLAWS MAY ALSO ALLOW FOR AN APPEAL TO BE HEARD BY AN
19 INDEPENDENT THIRD PARTY DESIGNATED BY THE REGULATORY ENTITY.

20 (9) ALL GOVERNING BOARDS THAT ARE REQUIRED TO REPORT
21 THEIR FINAL ACTIONS TO A REGULATORY ENTITY ARE NOT OTHERWISE
22 RELIEVED OF THIS OBLIGATION BY VIRTUE OF ANY PROVISION OF THIS
23 ARTICLE.

24 (10) (a) THE RECORDS OF A PROFESSIONAL REVIEW COMMITTEE OR
25 A GOVERNING BOARD SHALL NOT BE SUBJECT TO SUBPOENA OR DISCOVERY
26 AND SHALL NOT BE ADMISSIBLE IN ANY CIVIL SUIT BROUGHT AGAINST A
27 HEALTH CARE PROVIDER WHO IS THE SUBJECT OF THE RECORDS.

1 (b) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (a) OF
2 THIS SUBSECTION (10), THE RECORDS SHALL BE SUBJECT TO SUBPOENA
3 AND AVAILABLE FOR USE:

4 (I) BY EITHER PARTY IN ANY APPEAL OR DE NOVO PROCEEDING
5 BROUGHT PURSUANT TO THIS ARTICLE;

6 (II) BY A HEALTH CARE PROVIDER IN A SUIT SEEKING JUDICIAL
7 REVIEW OF ANY ACTION BY THE GOVERNING BOARD; OR

8 (III) BY A GOVERNING BOARD SEEKING JUDICIAL REVIEW.

9 (11) AT THE REQUEST OF A REGULATORY ENTITY, A GOVERNING
10 BOARD SHALL PROVIDE THE REGULATORY ENTITY WITH THE COMPLETE
11 RECORD OF ALL PROFESSIONAL REVIEW PROCEEDINGS, INCLUDING, BUT
12 NOT LIMITED TO, THE FINDINGS, RECOMMENDATIONS, AND ACTIONS
13 TAKEN.

14 (12) (a) INVESTIGATIONS, EXAMINATIONS, HEARINGS, MEETINGS,
15 OR ANY OTHER PROCEEDINGS OF A PROFESSIONAL REVIEW COMMITTEE OR
16 GOVERNING BOARD CONDUCTED PURSUANT TO THIS ARTICLE SHALL BE
17 EXEMPT FROM THE OPEN MEETINGS LAW, PART 4 OF ARTICLE 6 OF TITLE 24,
18 C.R.S., THE "COLORADO OPEN RECORDS ACT", ARTICLE 72 OF TITLE 24,
19 C.R.S., OR ANY OTHER LAW REQUIRING THAT PROCEEDINGS BE
20 CONDUCTED PUBLICLY OR THAT THE MINUTES OR RECORDS BE OPEN TO
21 PUBLIC INSPECTION.

22 (b) ALL PROCEEDINGS, RECOMMENDATIONS, RECORDS, AND
23 REPORTS INVOLVING PROFESSIONAL REVIEW COMMITTEES OR GOVERNING
24 BOARDS SHALL BE CONFIDENTIAL.

25 (13) A PROFESSIONAL REVIEW COMMITTEE OR GOVERNING BOARD
26 THAT IS CONSTITUTED AND CONDUCTS ITS REVIEWS AND ACTIVITIES
27 PURSUANT TO THIS ARTICLE IS DECLARED NOT TO BE AN UNLAWFUL

1 CONSPIRACY IN VIOLATION OF SECTION 6-4-104 OR 6-4-105, C.R.S.

2 **12-29.1-106. Immunity from liability.** (1) A MEMBER OF A
3 PROFESSIONAL REVIEW COMMITTEE, A WITNESS BEFORE A PROFESSIONAL
4 REVIEW COMMITTEE, OR ANY PERSON WHO FILES A COMPLAINT OR
5 OTHERWISE PARTICIPATES IN THE PROFESSIONAL REVIEW PROCESS SHALL
6 BE IMMUNE FROM SUIT IN ANY CIVIL OR CRIMINAL ACTION, INCLUDING
7 ANTITRUST ACTIONS, BROUGHT BY A HEALTH CARE PROVIDER WHO IS THE
8 SUBJECT OF THE REVIEW BY THE PROFESSIONAL REVIEW COMMITTEE, IF:

9 (a) THE MEMBER MADE A REASONABLE EFFORT TO OBTAIN THE
10 FACTS OF THE MATTER AS TO WHICH HE OR SHE ACTED, ACTED IN THE
11 REASONABLE BELIEF THAT THE ACTION TAKEN BY HIM OR HER WAS
12 WARRANTED BY THE FACTS, AND OTHERWISE ACTED IN GOOD FAITH
13 WITHIN THE SCOPE OF THE PROFESSIONAL REVIEW COMMITTEE PROCESS;
14 OR

15 (b) THE WITNESS, PARTICIPANT, OR COMPLAINANT ACTED IN GOOD
16 FAITH WITHIN THE SCOPE OF THE PROFESSIONAL REVIEW COMMITTEE
17 PROCESS.

18 (2) THE GOVERNING BOARD, THE INDIVIDUAL MEMBERS OF THE
19 GOVERNING BOARD, THE ENTITY THAT HAS ESTABLISHED A PEER REVIEW
20 COMMITTEE PURSUANT TO SECTION 12-29.1-105, THE GOVERNING BOARD'S
21 STAFF, ANY PERSON ACTING AS A WITNESS OR CONSULTANT TO THE
22 GOVERNING BOARD, ANY WITNESS TESTIFYING IN A PROCEEDING
23 AUTHORIZED UNDER THIS ARTICLE, AND ANY PERSON WHO LODGES A
24 COMPLAINT PURSUANT TO THIS ARTICLE SHALL BE IMMUNE FROM
25 LIABILITY IN ANY CIVIL ACTION BROUGHT AGAINST HIM OR HER FOR ACTS
26 OCCURRING WHILE ACTING IN HIS OR HER CAPACITY AS GOVERNING BOARD
27 MEMBER, STAFF, CONSULTANT, OR WITNESS, RESPECTIVELY, IF THE

1 INDIVIDUAL WAS ACTING IN GOOD FAITH WITHIN THE SCOPE OF HIS OR HER
2 RESPECTIVE CAPACITY, MADE A REASONABLE EFFORT TO OBTAIN THE
3 FACTS OF THE MATTER AS TO WHICH HE OR SHE ACTED, AND ACTED IN THE
4 REASONABLE BELIEF THAT THE ACTION TAKEN BY HIM OR HER WAS
5 WARRANTED BY THE FACTS. ANY PERSON PARTICIPATING IN GOOD FAITH
6 IN LODGING A COMPLAINT OR PARTICIPATING IN ANY INVESTIGATIVE OR
7 ADMINISTRATIVE PROCEEDING PURSUANT TO THIS ARTICLE SHALL BE
8 IMMUNE FROM ANY CIVIL OR CRIMINAL LIABILITY THAT MAY RESULT FROM
9 SUCH PARTICIPATION.

10 **SECTION 3. Safety clause.** The general assembly hereby finds,
11 determines, and declares that this act is necessary for the immediate
12 preservation of the public peace, health, and safety.