

HOUSE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

March 1, 2012
Date

Committee on Judiciary.

After consideration on the merits, the Committee recommends the following:

HB12-1300 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

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 Repeal of article.** This article is repealed, effective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

1 as follows:

2 **12-36.5-101. Legislative declaration.** (1) The general assembly
3 hereby finds, determines, and declares that the Colorado medical board
4 created ~~pursuant to~~ IN article 36 of this title ~~acts~~ AND THE STATE BOARD
5 OF NURSING CREATED IN ARTICLE 38 OF THIS TITLE ACT for the state in its
6 sovereign capacity to govern licensure, discipline, and professional
7 review of persons licensed to practice medicine, LICENSED AS PHYSICIAN
8 ASSISTANTS, AND LICENSED TO PRACTICE NURSING AND GRANTED AN
9 AUTHORITY AS ADVANCED PRACTICE NURSES, RESPECTIVELY, in this state.
10 The general assembly further finds, determines, and declares that:

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

14 (b) It is necessary for the health, safety, and welfare of the people
15 of this state that the ~~Colorado medical board~~ APPROPRIATE REGULATORY
16 BOARDS exercise ~~its~~ THEIR authority to protect the people of this state
17 from ~~the~~ unauthorized practice of ~~medicine~~ and from unprofessional
18 conduct by persons licensed to ~~practice medicine~~ PROVIDE HEALTH CARE
19 under ~~article 36~~ ARTICLES 36 AND 38 of this title.

20 (2) The general assembly recognizes that:

21 (a) Many patients of persons licensed to ~~practice medicine~~
22 PROVIDE HEALTH CARE in this state have restricted choices of ~~physicians~~
23 HEALTH CARE PROVIDERS under a variety of circumstances and
24 conditions;

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

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

33 (3) The general assembly recognizes that, in the proper exercise
34 of ~~its~~ THEIR authority and responsibilities under this article, the Colorado
35 medical board AND THE STATE BOARD OF NURSING must, to some extent,
36 replace competition with regulation, and that ~~such~~ THE replacement of
37 competition by regulation, particularly with regard to ~~physicians~~ PERSONS
38 LICENSED UNDER ARTICLE 36 OF THIS TITLE OR LICENSED UNDER ARTICLE
39 38 OF THIS TITLE AND GRANTED AN AUTHORITY AS ADVANCED PRACTICE
40 NURSES, is related to a legitimate state interest in the protection of the
41 health, safety, and welfare of the people of this state.

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

3 **12-36.5-102. Definitions.** As used in this article, unless the
4 context otherwise requires:

5 (1) ~~"Medical board" means the Colorado medical board created~~
6 ~~pursuant to section 12-36-103.~~ "AUTHORIZED ENTITY" MEANS A
7 CORPORATION, ORGANIZATION, OR ENTITY THAT IS AUTHORIZED TO
8 ESTABLISH A PROFESSIONAL REVIEW COMMITTEE UNDER SECTION
9 12-36.5-104 (3) OR (4) OR UNDER RULES OF THE MEDICAL BOARD OR
10 NURSING BOARD ADOPTED PURSUANT TO SECTION 12-36.5-104 (5).

11 (2) "CMS" MEANS THE FEDERAL CENTERS FOR MEDICARE AND
12 MEDICAID SERVICES.

13 ~~(2)~~ (3) "Governing board" means ~~any~~ A board, board of trustees,
14 governing board, or other body, or duly authorized subcommittee thereof,
15 ~~of any organization of health care providers~~ AN AUTHORIZED ENTITY,
16 which board or body has final authority pursuant to ~~such organization's~~
17 THE ENTITY'S written bylaws, policies, or procedures to take final action
18 regarding the recommendations of ~~any authorized~~ A professional review
19 committee.

20 (4) "JOINT COMMISSION" MEANS THE JOINT COMMISSION ON THE
21 ACCREDITATION OF HEALTHCARE ORGANIZATIONS OR ITS SUCCESSOR
22 ENTITY.

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

25 ~~(3)~~ (6) "Professional review committee" means any committee
26 authorized under ~~the provisions of~~ this article to review and evaluate the
27 QUALIFICATIONS, COMPETENCE, AND professional conduct of, and the
28 quality and appropriateness of patient care provided by, any ~~physician~~
29 PERSON licensed under article 36 of this title OR LICENSED UNDER ARTICLE
30 38 OF THIS TITLE AND GRANTED AN AUTHORITY AS AN ADVANCED
31 PRACTICE NURSE. "PROFESSIONAL REVIEW COMMITTEE" INCLUDES A
32 GOVERNING BOARD, A HEARING PANEL APPOINTED BY A GOVERNING BODY
33 TO CONDUCT A HEARING UNDER SECTION 12-36.5-104 (7) (a), AND AN
34 INDEPENDENT THIRD PARTY DESIGNATED BY A GOVERNING BOARD UNDER
35 SECTION 12-36.5-104 (8) (b).

36 ~~(4)~~ (7) (a) "Records" means any and all written, ELECTRONIC, or
37 ~~verbal~~ ORAL communications by any person ~~any member of an~~
38 ~~investigative body, or any professional review committee or governing~~
39 ~~board, or the staff thereof~~ arising from any activities of a professional
40 review committee, INCLUDING A GOVERNING BOARD, ESTABLISHED BY AN
41 authorized ~~by~~ ENTITY UNDER this article OR BY THE AGENT OR STAFF

- 1 THEREOF, including ~~the~~ ANY:
2 (I) REFERENCE;
3 (II) Complaint, response, OR correspondence related ~~thereto~~ TO
4 THE COMPLAINT OR RESPONSE;
5 (III) INTERVIEWS OR STATEMENTS, REPORTS, MEMORANDA,
6 ASSESSMENTS, AND PROGRESS REPORTS DEVELOPED TO ASSIST IN
7 PROFESSIONAL REVIEW ACTIVITIES;
8 (IV) ASSESSMENTS AND PROGRESS REPORTS TO ASSIST IN
9 PROFESSIONAL REVIEW ACTIVITIES, INCLUDING REPORTS AND
10 ASSESSMENTS DEVELOPED BY INDEPENDENT CONSULTANTS IN
11 CONNECTION WITH PROFESSIONAL REVIEW ACTIVITIES; AND
12 (V) Recordings or transcripts of proceedings, minutes, formal
13 recommendations, decisions, exhibits, and other similar items or
14 documents RELATED TO PROFESSIONAL REVIEW ACTIVITIES AND typically
15 constituting the records of administrative proceedings.

16 (b) "RECORDS" DOES NOT INCLUDE ANY WRITTEN, ELECTRONIC, OR
17 ORAL COMMUNICATIONS BY ANY PERSON THAT ARE OTHERWISE
18 AVAILABLE FROM AN ORIGINAL SOURCE OUTSIDE THE SCOPE OF
19 PROFESSIONAL REVIEW ACTIVITIES, INCLUDING MEDICAL RECORDS AND
20 OTHER HEALTH INFORMATION.

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

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

25 **12-36.5-103. Use of professional review committees.**

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

27 (I) The medical board AND THE NURSING BOARD, while assuming
28 and retaining ultimate authority for licensure and discipline in accordance
29 with ~~article~~ ARTICLES 36 AND 38 of this title, RESPECTIVELY, and in
30 accordance with this article, cannot practically and economically assume
31 responsibility over every single allegation or instance of purported
32 deviation from the standards of quality for the practice of medicine OR
33 NURSING, from the standards of professional conduct, or from the
34 standards of appropriate care; and ~~that~~

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

41 (b) It is therefore the intent of the general assembly that the

1 medical board AND THE NURSING BOARD utilize and allow professional
2 review committees and governing boards to assist ~~it~~ THEM in meeting ~~its~~
3 THEIR responsibilities under ~~article~~ ARTICLES 36 AND 38 of this title,
4 RESPECTIVELY, and under this article.

5 (2) ~~All physicians~~ PERSONS LICENSED UNDER ARTICLE 36 OF THIS
6 TITLE OR LICENSED UNDER ARTICLE 38 OF THIS TITLE AND GRANTED
7 AUTHORITY AS ADVANCED PRACTICE NURSES are encouraged to serve
8 upon ~~such~~ professional review committees when called to do so and to
9 study and review in ~~good faith~~ AN OBJECTIVELY REASONABLE MANNER the
10 professional conduct of ~~physicians~~ PERSONS LICENSED UNDER ARTICLE 36
11 OF THIS TITLE OR LICENSED UNDER ARTICLE 38 OF THIS TITLE AND
12 GRANTED AUTHORITY AS ADVANCED PRACTICE NURSES, including the
13 QUALIFICATIONS, COMPETENCE, AND PROFESSIONAL CONDUCT OF, AND
14 THE quality and appropriateness of patient care PROVIDED BY, THOSE
15 PERSONS.

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

21 (b) Professional review committees, the members who constitute
22 ~~such~~ THE committees, governing boards, AUTHORIZED ENTITIES, and
23 persons who participate directly or indirectly in professional review
24 ~~proceedings~~ ACTIVITIES are granted certain immunities from SUIT AND
25 liability FOR DAMAGES arising from actions ~~which~~ THAT are within the
26 scope of their activities ~~and taken in good faith~~ as provided in section
27 12-36.5-105. ~~Such~~ THESE grants of immunity from SUIT AND liability FOR
28 DAMAGES are ~~declared to be~~ necessary to ensure that professional review
29 committees and governing boards can exercise their professional
30 knowledge and judgment.

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

33 **12-36.5-104. Establishment of professional review committees**
34 **- function - rules.** (1) A professional review committee may be
35 established pursuant to this section to review and evaluate the
36 QUALIFICATIONS AND COMPETENCE OF, THE quality and appropriateness
37 of patient care provided by, and the professional conduct of, any
38 ~~physician licensed under article 36 of this title~~ PERSON LICENSED UNDER
39 ARTICLE 36 OF THIS TITLE OR LICENSED UNDER ARTICLE 38 OF THIS TITLE
40 AND GRANTED AN AUTHORITY AS AN ADVANCED PRACTICE NURSE.

41 (2) ~~Persons Licensed to practice medicine under article 36 of this~~

1 ~~title~~ PHYSICIANS who are actively engaged in the practice of medicine in
2 this state ~~shall~~ MUST constitute a majority of THE VOTING MEMBERS OF any
3 professional review committee established pursuant to this section FOR
4 PHYSICIANS AND PHYSICIAN ASSISTANTS; ~~except for those boards~~ THAT
5 PHYSICIANS NEED NOT CONSTITUTE THE MAJORITY OF THE VOTING
6 MEMBERS OF A BOARD authorized by paragraph (g) of subsection (4) of
7 this section OR AN INDEPENDENT THIRD PARTY DESIGNATED BY A
8 GOVERNING BOARD UNDER PARAGRAPH (b) OF SUBSECTION (8) OF THIS
9 SECTION.

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

14 (4) ~~Any~~ A professional review committee established by any of
15 the following ~~organizations, entities, or professional societies~~ ~~shall be~~
16 AUTHORIZED ENTITIES IS an approved professional review committee
17 under this article if it operates ~~pursuant to~~ IN SUBSTANTIAL COMPLIANCE
18 WITH written bylaws, policies, or procedures that are in compliance with
19 this article and that have been approved by ~~its~~ THE AUTHORIZED ENTITY'S
20 governing board:

21 (a) The medical OR NURSING staff of a hospital licensed pursuant
22 to part 1 of article 3 of title 25, C.R.S., or certified pursuant to section
23 25-1.5-103 (1) (a) (II), C.R.S.;

24 (b) The medical OR NURSING staff of a hospital-related
25 corporation. For the purposes of this paragraph (b), ~~a corporation~~ AN
26 ENTITY is A "hospital-related CORPORATION" if the licensed or certified
27 hospital or holding company of ~~such~~ THE LICENSED OR CERTIFIED hospital
28 has ownership or control of ~~such corporation~~ THE ENTITY;

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

34 (d) A society or association of physicians licensed to practice and
35 residing in this state and specializing in a specific discipline of medicine,
36 whose society or association has been designated by the medical board as
37 ~~the~~ A specialty society or association representative of physicians
38 practicing ~~such~~ THE specific discipline of medicine, if the physician
39 whose services are the subject of the review is a member of ~~such~~ THE
40 specialty society or association;

41 (e) An individual practice association or a preferred provider

1 organization ~~comprised~~ CONSISTING of at least twenty-five physicians or
2 a medical group ~~which~~ THAT predominantly serves members of a health
3 maintenance organization licensed pursuant to parts 1 and 4 of article 16
4 of title 10, C.R.S. A professional review committee established pursuant
5 to this paragraph (e) ~~shall have~~ HAS jurisdiction to review only physicians
6 who are members of the association or organization creating and
7 authorizing that committee; except that ~~such~~ THE professional review
8 committee may review the care provided to a particular patient referred
9 by a member of ~~such~~ THE association or organization to another physician
10 who is not a member of ~~such~~ THE association or organization.

11 (f) A corporation authorized to insure ~~physicians~~ PERSONS
12 LICENSED UNDER ARTICLE 36 OF THIS TITLE OR LICENSED UNDER ARTICLE
13 38 OF THIS TITLE AND GRANTED AUTHORITY AS ADVANCED PRACTICE
14 NURSES pursuant to article 3 of title 10, C.R.S., or any other ~~corporation~~
15 ORGANIZATION authorized to insure such ~~physicians~~ PERSONS in this state
16 when designated by the medical board OR NURSING BOARD under
17 subsection (5) of this section;

18 (g) THE governing ~~boards~~ BOARD of any AUTHORIZED entity ~~which~~
19 THAT has a professional review committee established pursuant to article
20 36 OR ARTICLE 38 of this title;

21 (h) Any ~~peer~~ PROFESSIONAL review committee established or
22 created by a combination or pooling of any ~~of the organizations~~
23 authorized by this section to have a professional review committee
24 ENTITIES;

25 (i) (I) A nonprofit corporation or association ~~comprised~~
26 CONSISTING of representatives from a statewide ~~medical~~ PROFESSIONAL
27 society and a statewide hospital association. ~~Such~~ THE association ~~shall~~
28 ~~be comprised~~ MUST CONSIST of ~~physicians~~ PERSONS LICENSED UNDER
29 ARTICLE 36 OF THIS TITLE OR LICENSED UNDER ARTICLE 38 OF THIS TITLE
30 AND GRANTED AUTHORITY AS ADVANCED PRACTICE NURSES, hospital
31 administrators, and hospital trustees, with a majority of ~~such~~ THE
32 representatives being ~~physicians~~ PERSONS LICENSED UNDER ARTICLE 36 OF
33 THIS TITLE OR LICENSED UNDER ARTICLE 38 OF THIS TITLE AND GRANTED
34 AUTHORITY AS ADVANCED PRACTICE NURSES. The association may
35 establish, or contract for, one or more ~~peer~~ PROFESSIONAL review
36 committees to review the care by hospital staff ~~physicians~~ HEALTH CARE
37 PROVIDERS, with priority given to small rural ~~medical~~ HOSPITAL staffs.
38 ~~Such peer~~ THESE PROFESSIONAL review services ~~shall~~ MUST be available
39 statewide on a fee-for-service basis to licensed or certified hospitals at the
40 joint request of the governing ~~body~~ BOARD and the medical OR NURSING
41 staff of the hospital or at the sole request of the governing ~~body~~ BOARD

1 of the hospital. If a ~~physician~~ MEMBER being reviewed specializes in a
2 generally recognized specialty of medicine OR NURSING, at least one of
3 the ~~physicians~~ HEALTH CARE PROVIDERS on the ~~peer~~ PROFESSIONAL
4 review committee ~~shall~~ MUST be a ~~physician practicing~~ PERSON LICENSED
5 UNDER ARTICLE 36 OF THIS TITLE, OR LICENSED UNDER ARTICLE 38 OF THIS
6 TITLE AND GRANTED AUTHORITY AS AN ADVANCED PRACTICE NURSE, WHO
7 PRACTICES such specialty.

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

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

14 (k) A PROFESSIONAL SERVICES ENTITY ORGANIZED PURSUANT TO
15 SECTION 12-36-134;

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

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

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

23 (o) AN ENTITY LICENSED PURSUANT TO PARTS 1 AND 4 OF ARTICLE
24 16 OF TITLE 10, C.R.S.; AND

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

28 (5) The medical board AND THE NURSING BOARD, WITH RESPECT
29 TO THE LICENSEES SUBJECT TO THEIR JURISDICTION, may establish by rule
30 procedures necessary to authorize other health care or physician
31 organizations or professional societies ~~to~~ AS AUTHORIZED ENTITIES THAT
32 MAY establish professional review committees.

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

35 (I) ~~The qualifications AND COMPETENCE of any physician licensed~~
36 ~~under article 36 of this title~~ PERSON LICENSED UNDER ARTICLE 36 OF THIS
37 TITLE OR LICENSED UNDER ARTICLE 38 OF THIS TITLE AND GRANTED
38 AUTHORITY AS AN ADVANCED PRACTICE NURSE who seeks to subject
39 himself or herself to the authority of any ~~organization, entity, or~~
40 ~~professional society listed in subsection (4) of this section or any~~
41 ~~organization or professional society that has been authorized by the~~

1 ~~medical board to establish a professional review committee pursuant to~~
2 ~~subsection (5) of this section~~ AUTHORIZED ENTITY; or

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

9 (b) ~~Such~~ THE PROFESSIONAL REVIEW COMMITTEE SHALL CONDUCT
10 THE investigation ~~shall be conducted~~ in SUBSTANTIAL conformity with
11 written bylaws, policies, or procedures adopted by ~~such organization,~~
12 ~~entity, or professional society~~ THE AUTHORIZED ENTITY'S GOVERNING
13 BOARD.

14 (7) The written bylaws, policies, or procedures of any professional
15 review committee ~~shall~~ FOR LICENSED PHYSICIANS AND PHYSICIAN
16 ASSISTANTS MUST provide for at least the following:

17 (a) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS
18 PARAGRAPH (a), if the findings of any investigation indicate that the
19 LICENSED physician OR PHYSICIAN ASSISTANT who is the subject of the
20 investigation is lacking in qualifications OR COMPETENCY, has provided
21 substandard or inappropriate patient care, or has exhibited inappropriate
22 professional conduct AND THE PROFESSIONAL REVIEW COMMITTEE TAKES
23 OR RECOMMENDS AN ACTION TO ADVERSELY AFFECT THE PHYSICIAN'S OR
24 PHYSICIAN ASSISTANT'S MEMBERSHIP, AFFILIATION, OR PRIVILEGES WITH
25 THE AUTHORIZED ENTITY, the professional review committee shall hold
26 a hearing ~~unless the physician waives his right to a hearing,~~ to consider
27 the findings ~~except that,~~ AND RECOMMENDATIONS UNLESS THE PHYSICIAN
28 OR PHYSICIAN ASSISTANT WAIVES, IN WRITING, THE RIGHT TO A HEARING.

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

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

38 (c) The ~~physician~~ AUTHORIZED ENTITY SHALL GIVE REASONABLE
39 NOTICE OF THE HEARING, AND OF ANY FINDING OR RECOMMENDATION
40 THAT WOULD ADVERSELY AFFECT THE PHYSICIAN'S OR PHYSICIAN
41 ASSISTANT'S MEMBERSHIP, AFFILIATION, OR PRIVILEGES WITH THE

1 AUTHORIZED ENTITY TO THE PHYSICIAN OR PHYSICIAN ASSISTANT who is
2 the subject of any AN investigation, ~~shall be given reasonable notice of~~
3 ~~such hearing and shall have~~ THE PHYSICIAN OR PHYSICIAN ASSISTANT HAS
4 a right to be present, to be represented by legal counsel at ~~such~~ THE
5 hearing, and to offer evidence in his OR HER own behalf.

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

10 (e) THE PROFESSIONAL REVIEW COMMITTEE SHALL GIVE a copy of
11 ~~such~~ THE recommendations ~~shall be given~~ to the subject physician OR
12 PHYSICIAN ASSISTANT, who then ~~shall have~~ HAS the right to appeal ~~the~~
13 ~~findings and recommendations of the professional review committee~~ to
14 the governing board to which the recommendations are made WITH
15 REGARD TO ANY FINDING OR RECOMMENDATION THAT WOULD ADVERSELY
16 AFFECT THE PHYSICIAN'S OR PHYSICIAN ASSISTANT'S MEMBERSHIP,
17 AFFILIATION, OR PRIVILEGES WITH THE AUTHORIZED ENTITY.

18 (f) THE PROFESSIONAL REVIEW COMMITTEE SHALL FORWARD a
19 copy of any recommendations made pursuant to paragraph (d) of this
20 subsection (7) ~~shall be promptly forwarded~~ to the medical board.

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

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

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

40 (a) ONE OR MORE LICENSED NURSES WHO ARE REGISTERED AS
41 ADVANCED PRACTICE NURSES WHO ARE ACTIVELY ENGAGED IN THE

1 PRACTICE OF NURSING IN THIS STATE MUST BE MEMBERS OF THE
2 PROFESSIONAL REVIEW COMMITTEE ESTABLISHED PURSUANT TO THIS
3 SECTION FOR ADVANCED PRACTICE NURSES, EXCEPT THAT ADVANCED
4 PRACTICE NURSES NEED NOT BE MEMBERS OF A GOVERNING BOARD OR AN
5 INDEPENDENT THIRD PARTY DESIGNATED BY A GOVERNING BOARD, IF
6 APPLICABLE TO THE PROFESSIONAL REVIEW PROCESS.

7 (b) THE PROFESSIONAL REVIEW PROCESS FOR ADVANCED PRACTICE
8 NURSES CONDUCTED BY AUTHORIZED ENTITIES THAT ARE NOT LICENSED
9 HEALTH FACILITIES MAY BE SUBSTANTIALLY SIMILAR TO THE PROCESS
10 UNDER SUBSECTIONS (7) AND (8) OF THIS SECTION FOR PHYSICIANS AND
11 PHYSICIAN ASSISTANTS, EXCEPT THAT ADVANCED PRACTICE NURSES WILL
12 SUBSTITUTE FOR PHYSICIAN ASSISTANTS. THE PROFESSIONAL REVIEW
13 COMMITTEE SHALL FORWARD A COPY OF ANY RECOMMENDATIONS TO THE
14 NURSING BOARD.

15 (c) THE PROFESSIONAL REVIEW PROCESS FOR ADVANCED PRACTICE
16 NURSES CONDUCTED BY AUTHORIZED ENTITIES THAT ARE LICENSED
17 HEALTH FACILITIES AND THAT PARTICIPATE IN ANY FEDERAL HEALTH CARE
18 PROGRAM, INCLUDING THE FEDERAL MEDICARE AND MEDICAID PROGRAMS,
19 MAY BE ESTABLISHED IN A MANNER TO COMPLY WITH THE APPLICABLE
20 HEALTH FACILITY LICENSING REQUIREMENTS UNDER TITLE 25, C.R.S., AND
21 ASSOCIATED REGULATIONS, THE FEDERAL "SOCIAL SECURITY ACT", AND
22 THE CONDITIONS FOR COVERAGE OR CONDITIONS OF PARTICIPATION
23 PROMULGATED BY THE CMS, AS APPLICABLE TO THE TYPE OF HEALTH
24 FACILITY. THE PROFESSIONAL REVIEW COMMITTEE SHALL FORWARD A
25 COPY OF ANY RECOMMENDATIONS TO THE NURSING BOARD.

26 ~~(9)~~ (10) All governing boards that are required to report their final
27 actions to the medical board OR THE NURSING BOARD, AS APPROPRIATE,
28 are not otherwise relieved of ~~such~~ THEIR obligations by virtue of ~~any~~
29 ~~provision~~ of this article.

30 ~~(10)~~ (11) (a) EXCEPT AS SPECIFIED IN PARAGRAPH (b) OF THIS
31 SUBSECTION (11), the records of ~~a~~ AN AUTHORIZED ENTITY AND ITS
32 professional review committee, ~~a~~ ITS governing board, or the committee
33 on anticompetitive conduct ~~shall~~ ARE not ~~be~~ subject to subpoena or
34 discovery and ~~shall~~ ARE not ~~be~~ admissible in any civil suit. ~~brought~~
35 ~~against a physician who is the subject of such records.~~

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

39 (I) By the committee on anticompetitive conduct;

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

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

5 (IV) BY THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND
6 ENVIRONMENT IN ACCORDANCE WITH ITS AUTHORITY TO ISSUE OR
7 CONTINUE A HEALTH FACILITY LICENSE OR CERTIFICATION FOR AN
8 AUTHORIZED ENTITY;

9 (V) BY THE CMS IN ACCORDANCE WITH ITS EVALUATION PROCESS
10 FOR FEDERAL HEALTH CARE PROGRAM PARTICIPATION BY AN AUTHORIZED
11 ENTITY;

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

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

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

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

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

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

26 (III) THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND
27 ENVIRONMENT ACTING WITHIN THE SCOPE OF ITS HEALTH FACILITY
28 LICENSING AUTHORITY OR AS THE AGENT OF CMS;

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

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

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

39 (13) THE RECORDS OF AN AUTHORIZED ENTITY OR ITS
40 PROFESSIONAL REVIEW COMMITTEE OR GOVERNING BOARD MAY BE
41 SHARED BY AND AMONG AUTHORIZED ENTITIES AND THEIR PROFESSIONAL

1 REVIEW COMMITTEES AND GOVERNING BOARDS CONCERNING THE
2 QUALIFICATIONS, COMPETENCE, AND PROFESSIONAL CONDUCT OF, AND
3 QUALITY AND APPROPRIATENESS OF PATIENT CARE PROVIDED BY, A
4 HEALTH CARE PROVIDER WHO SEEKS TO SUBJECT HIMSELF OR HERSELF TO,
5 OR IS CURRENTLY SUBJECT TO, THE AUTHORITY OF THE AUTHORIZED
6 ENTITY.

7 (14) RESPONDING TO A SUBPOENA OR DISCLOSING OR SHARING OF
8 OTHERWISE PRIVILEGED RECORDS AND INFORMATION PURSUANT TO
9 SUBSECTION (11), (12), OR (13) OF THIS SECTION DOES NOT CONSTITUTE A
10 WAIVER OF THE PRIVILEGE SPECIFIED IN PARAGRAPH (a) OF SUBSECTION
11 (11) OF THIS SECTION OR A VIOLATION OF THE CONFIDENTIALITY
12 REQUIREMENTS OF SUBSECTION (15) OF THIS SECTION. RECORDS PROVIDED
13 TO ANY GOVERNMENTAL AGENCY, INCLUDING THE DEPARTMENT OF PUBLIC
14 HEALTH AND ENVIRONMENT, THE MEDICAL BOARD, AND THE NURSING
15 BOARD PURSUANT TO SUBSECTION (11) OR (12) OF THIS SECTION ARE NOT
16 PUBLIC RECORDS SUBJECT TO THE "COLORADO OPEN RECORDS ACT", PART
17 2 OF ARTICLE 72 OF TITLE 24, C.R.S. A PERSON PROVIDING THE RECORDS
18 TO AN AUTHORIZED ENTITY OR ITS PROFESSIONAL REVIEW COMMITTEE OR
19 GOVERNING BOARD, THE DEPARTMENT OF PUBLIC HEALTH AND
20 ENVIRONMENT, THE MEDICAL BOARD, THE NURSING BOARD, CMS, THE
21 JOINT COMMISSION, OR OTHER GOVERNMENTAL AGENCY IS ENTITLED TO
22 THE SAME IMMUNITY FROM SUIT AND LIABILITY FOR DAMAGES AS
23 PROVIDED UNDER SECTION 12-36.5-105 FOR THE DISCLOSURE OF THE
24 RECORDS.

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

29 ~~(12)~~ (15) Investigations, examinations, hearings, meetings, or any
30 AND other proceedings of a professional review committee or governing
31 board conducted pursuant to ~~the provisions of this part 1 shall be~~ ARE
32 exempt from ~~the provisions of~~ any law requiring that proceedings be
33 conducted publicly or that the ~~minutes or~~ records, INCLUDING ANY
34 MINUTES, be open to public inspection.

35 ~~(13)~~ (16) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (11),
36 (12), OR (13) OF THIS SECTION, all proceedings, recommendations, records,
37 and reports involving professional review committees or governing
38 boards ~~shall be~~ ARE confidential.

39 ~~(14)~~ (17) A professional review committee or governing board
40 ~~which~~ THAT is constituted and conducts its reviews and activities pursuant
41 ~~to the provisions of~~ SUBSTANTIALLY IN ACCORDANCE WITH this part 1 is

1 ~~declared not to be~~ an unlawful conspiracy in violation of section 6-4-104
2 or 6-4-105, C.R.S.

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

5 **12-36.5-104.4. Hospital professional review committees.**

6 (1) The quality and appropriateness of patient care rendered by
7 ~~physicians~~ PERSONS LICENSED UNDER ARTICLE 36 OF THIS TITLE, LICENSED
8 UNDER ARTICLE 38 OF THIS TITLE AND GRANTED AUTHORITY AS
9 ADVANCED PRACTICE NURSES, and other licensed health care professionals
10 so influence the total quality of patient care that a review of care provided
11 in a hospital is ineffective without concomitantly reviewing THE overall
12 QUALIFICATIONS, COMPETENCE, AND PROFESSIONAL CONDUCT OF, AND
13 THE quality and appropriateness of care rendered by, ~~physicians and other~~
14 ~~licensed health care professionals~~ SUCH PERSONS.

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

17 **12-36.5-104.6. Governing boards to register with medical**
18 **board - annual reports - aggregation and publication of data - rules.**

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

22 (a) REGISTER WITH THE MEDICAL BOARD IN A FORM SATISFACTORY
23 TO THE MEDICAL BOARD ON OR BEFORE JULY 1, 2013, IF THE GOVERNING
24 BOARD HAS EXISTING PROFESSIONAL REVIEW COMMITTEES, OR, IF THE
25 GOVERNING BOARD ESTABLISHES A PROFESSIONAL REVIEW COMMITTEE ON
26 OR AFTER JULY 1, 2013, WITHIN THIRTY DAYS AFTER APPROVING THE
27 WRITTEN BYLAWS, POLICIES, OR PROCEDURES FOR THE PROFESSIONAL
28 REVIEW COMMITTEE; AND

29 (b) REPORT ON ITS PROFESSIONAL REVIEW ACTIVITIES DURING THE
30 IMMEDIATELY PRECEDING CALENDAR YEAR IN A FORM SATISFACTORY TO
31 THE MEDICAL BOARD. THESE REPORTS MUST INCLUDE THE NUMBER AND
32 TYPE OF CASES REVIEWED AND THE RESULTS OF SUCH REVIEWS, IN
33 AGGREGATE FORM AND WITHOUT INDIVIDUALLY IDENTIFIABLE
34 INFORMATION CONCERNING THE SUBJECT PHYSICIANS OR PHYSICIAN
35 ASSISTANTS.

36 (2) THE MEDICAL BOARD SHALL PUBLISH THE DATA PROVIDED
37 PURSUANT TO PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION IN
38 AGGREGATE FORM AND WITHOUT INDIVIDUALLY IDENTIFIABLE
39 INFORMATION CONCERNING THE SUBJECT PHYSICIANS OR PHYSICIAN
40 ASSISTANTS OR THE AUTHORIZED ENTITY.

41 (3) THE MEDICAL BOARD SHALL ADOPT RULES TO IMPLEMENT THIS

1 SECTION AND MAY COLLECT A REASONABLE REGISTRATION FEE TO
2 RECOVER ITS DIRECT AND INDIRECT COSTS OF ADMINISTERING THE
3 REGISTRATION AND PUBLICATION SYSTEMS REQUIRED BY THIS SECTION.

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

6 **12-36.5-104.8. Governing boards to register with nursing**
7 **board - annual reports - aggregation and publication of data - rules.**

8 (1) EACH GOVERNING BOARD THAT ESTABLISHES OR USES ONE OR MORE
9 PROFESSIONAL REVIEW COMMITTEES TO REVIEW THE PRACTICE OF
10 ADVANCED PRACTICE NURSES SHALL:

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

18 (b) REPORT ON ITS PROFESSIONAL REVIEW ACTIVITIES DURING THE
19 IMMEDIATELY PRECEDING CALENDAR YEAR IN A FORM SATISFACTORY TO
20 THE NURSING BOARD. THESE REPORTS MUST INCLUDE THE NUMBER AND
21 TYPE OF CASES REVIEWED AND THE RESULTS OF SUCH REVIEWS, IN
22 AGGREGATE FORM AND WITHOUT INDIVIDUALLY IDENTIFIABLE
23 INFORMATION CONCERNING THE SUBJECT ADVANCED PRACTICE NURSES.

24 (2) THE NURSING BOARD SHALL PUBLISH THE DATA PROVIDED
25 PURSUANT TO PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION IN
26 AGGREGATE FORM AND WITHOUT INDIVIDUALLY IDENTIFIABLE
27 INFORMATION CONCERNING THE SUBJECT ADVANCED PRACTICE NURSES OR
28 THE AUTHORIZED ENTITY.

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

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

35 **12-36.5-105. Immunity from suit and liability.** (1) A member
36 of a professional review committee, GOVERNING BOARD, HEARING PANEL,
37 OR INDEPENDENT THIRD PARTY DESIGNATED BY A GOVERNING BOARD
38 UNDER SECTION 12-36.5-104 (8) (b); A PERSON SERVING ON THE STAFF OF
39 THAT COMMITTEE, BOARD, PANEL, OR THIRD PARTY; a witness OR
40 CONSULTANT before a professional review committee; ~~or~~ AND any person
41 who files a complaint or otherwise participates in the professional review

1 process shall be IS immune from suit in any civil or criminal action,
2 including antitrust actions, brought by a physician who is the subject of
3 the review by such professional review committee, if such member made
4 a reasonable effort to obtain the facts of the matter as to which he acted,
5 acted in the reasonable belief that the action taken by him was warranted
6 by the facts, and otherwise acted in good faith within the scope of such
7 professional review committee process and if such witness or participant
8 acted in good faith within the scope of such professional review
9 committee process AND IS IMMUNE FROM LIABILITY FOR DAMAGES UNLESS,
10 IN CONNECTION WITH THE PROFESSIONAL REVIEW PROCESS, THE PERSON
11 PROVIDED FALSE INFORMATION AND KNEW THAT THE INFORMATION WAS
12 FALSE.

13 (2) The governing board ~~the individual members of such board~~
14 and the AUTHORIZED entity that has established a peer PROFESSIONAL
15 review committee pursuant to section 12-36.5-104 ~~the board's staff, any~~
16 ~~person acting as a witness or consultant to the board, any witness~~
17 ~~testifying in a proceeding authorized under this article, and any person~~
18 ~~who lodges a complaint pursuant to this article shall be immune from~~
19 ~~liability in any civil action brought against him or her for acts occurring~~
20 ~~while acting in his or her capacity as board member, staff, consultant, or~~
21 ~~witness, respectively, if such individual was acting in good faith within~~
22 ~~the scope of his or her respective capacity, made a reasonable effort to~~
23 ~~obtain the facts of the matter as to which he or she acted, and acted in the~~
24 ~~reasonable belief that the action taken by him or her was warranted by the~~
25 ~~facts. Any person participating in good faith in lodging a complaint or~~
26 ~~participating in any investigative or administrative proceeding pursuant~~
27 ~~to this article shall be immune from any civil or criminal liability that may~~
28 ~~result from such participation~~ IS IMMUNE FROM SUIT IN ANY CIVIL OR
29 CRIMINAL ACTION, INCLUDING ANTITRUST ACTIONS, AND IS IMMUNE FROM
30 LIABILITY FOR DAMAGES IF THE PROFESSIONAL REVIEW ACTION WAS
31 TAKEN WITHIN THE SCOPE OF THE PROFESSIONAL REVIEW PROCESS AND
32 WAS TAKEN:

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

35 (b) AFTER AN OBJECTIVELY REASONABLE EFFORT TO OBTAIN THE
36 FACTS OF THE MATTER;

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

39 (d) IN ACCORDANCE WITH PROCEDURES THAT, UNDER THE
40 CIRCUMSTANCES, WERE FAIR TO THE PERSON LICENSED UNDER ARTICLE 36
41 OF THIS TITLE OR LICENSED UNDER ARTICLE 38 OF THIS TITLE AND

1 GRANTED AN AUTHORITY AS AN ADVANCED PRACTICE NURSE.

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

5 **12-36.5-106. Committee on anticompetitive conduct - rules.**

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

9 (a) THE MEDICAL BOARD SHALL APPOINT four members of the
10 committee, ~~shall~~ WHO MUST be licensed to ~~practice medicine~~ PROVIDE
11 HEALTH CARE and actively engaged in the practice of medicine in this
12 state. ~~and shall be appointed by the medical board.~~ No A member
13 APPOINTED PURSUANT TO THIS PARAGRAPH (a) shall NOT practice in the
14 same medical subspecialty as any other member ~~nor~~ AND SHALL NOT
15 conduct his or her primary practice in the same county as any other
16 member.

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

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

31 (7) ~~Any physician~~ A HEALTH CARE PROVIDER who is the subject
32 of a final action by a governing board, which action results in the denial,
33 termination, or restriction of privileges at or membership ~~in~~ or
34 participation in an organization, and who believes that ~~such~~ THE action
35 resulted from unreasonable anticompetitive conduct ~~shall have, as his sole~~
36 ~~and exclusive remedy,~~ MAY SEEK direct review of the record by the
37 committee. ~~such~~ THE review, ~~shall be~~ WHICH IS THE HEALTH CARE
38 PROVIDER'S EXCLUSIVE REMEDY, IS limited to the sole issue of whether
39 ~~such~~ THE final board action resulted from unreasonable anticompetitive
40 conduct. Failure to exhaust this administrative remedy before the
41 committee ~~shall preclude~~ PRECLUDES the right of de novo review on the

1 merits of the issue of unreasonable anticompetitive conduct.

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

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

9 (a) ~~Review shall be initiated~~ THE AGGRIEVED HEALTH CARE
10 PROVIDER MUST INITIATE THE REVIEW by filing a verified complaint with
11 the committee, no later than thirty days after receipt of a notice of final
12 action by the governing board, alleging, with specificity, all facts
13 disclosed in the record and all additional facts known to the complainant
14 ~~which~~ THAT would support his OR HER allegation that the final action
15 taken by the governing board resulted from unreasonable anticompetitive
16 conduct.

17 (b) The committee shall mail a copy of ~~such~~ THE complaint to the
18 governing board and the professional review committee by certified mail,
19 return receipt requested, within five days ~~of~~ AFTER the receipt of ~~such~~ THE
20 complaint by the committee, advising them of their right to file a verified
21 answer to the allegations stated ~~therein~~ Receipt of such complaint by mail
22 ~~shall make~~ IN THE COMPLAINT. The recipients ~~thereof~~ OF THE COMPLAINT
23 BECOME a party to these proceedings UPON RECEIPT OF THE COMPLAINT.

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

27 (f) If the committee finds ~~such~~ THAT probable cause exists, it shall
28 schedule a hearing. At ~~such~~ THE hearing, the committee shall review the
29 record below on the sole issue of whether the final action of the
30 governing board resulted from unreasonable anticompetitive conduct and
31 shall take evidence only with regard to the additional facts specifically
32 alleged in the complaint or answer regarding unreasonable
33 anticompetitive conduct, except when, in the discretion of the committee,
34 the interests of a fair hearing demand otherwise.

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

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

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

10 (b) Following final administrative action by the committee, ~~any~~
11 A party aggrieved by the final action of a governing board who wishes to
12 challenge the action of ~~such~~ THE governing board, rather than the
13 committee's review of ~~such~~ THE action, ~~shall have~~ HAS the right to seek
14 de novo review on the merits in a district court in Colorado. In no event
15 shall the medical board, NURSING BOARD, or the committee be made
16 parties to ~~such a~~ THE district court action.

17 (c) As a condition of filing a complaint under paragraph (a) of
18 subsection (9) of this section, the complainant shall post a cash bond or
19 equivalent liquid security of three thousand dollars to cover anticipated
20 costs ~~which~~ THAT may be assessed against him OR HER. Within thirty days
21 ~~of~~ AFTER receipt of service of a complaint on a governing board, or
22 concurrently with the filing of an answer, whichever is earlier, the
23 governing board shall post a cash bond or equivalent liquid security of
24 three thousand dollars to cover anticipated costs ~~which~~ THAT may be
25 assessed against it as a party. The committee may enforce this latter
26 requirement through the district court.

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

31 (13) ~~Any~~ A member of the committee, ~~any~~ A member of the
32 committee's staff, ~~any~~ A person acting as a witness or consultant to the
33 committee, ~~any~~ A witness testifying in a proceeding authorized under this
34 article, and ~~any~~ A person who lodges a complaint pursuant to this article
35 ~~shall be~~ ARE immune from liability in any civil action brought against him
36 or her for acts occurring while acting in his or her capacity as committee
37 member, staff, consultant, or witness, respectively, if ~~such~~ THE individual
38 was acting in ~~good faith~~ AN OBJECTIVELY REASONABLE MANNER within
39 the scope of his or her respective capacity, made a reasonable effort to
40 obtain the facts of the matter as to which he or she acted, and acted in the
41 reasonable belief that the action taken by him or her was warranted by the

1 facts. Any person participating in good faith in lodging a complaint or
2 participating in any investigative or administrative proceeding pursuant
3 to this article ~~shall be~~ IS immune from any civil or criminal liability that
4 may result from ~~such~~ THE participation.

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

7 **12-36.5-202. Rules - compliance with reporting requirements**
8 **of federal act.** ~~Upon implementation of~~ THE MEDICAL BOARD MAY
9 PROMULGATE RULES TO COMPLY WITH THE REPORTING REQUIREMENTS OF
10 the federal "Health Care Quality Improvement Act of 1986", as amended,
11 42 U.S.C. secs. 11101 through 11152, and ~~upon implementation of~~ TO
12 PARTICIPATE IN the federal data bank. ~~the medical board shall promulgate~~
13 ~~rules to comply with such act which rules are consistent with the~~
14 ~~standards and the reporting requirements of such act.~~

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

17 **12-36.5-203. Limitations on liability relating to professional**
18 **review actions.** (1) The following persons ~~shall~~ ARE IMMUNE FROM SUIT
19 AND not ~~be~~ liable for damages in ~~any~~ A civil action with respect to their
20 participation in, assistance to, or reporting of information to a
21 professional review ~~body~~ COMMITTEE in connection with a professional
22 review action in this state, and ~~such~~ THE persons ~~shall~~ ARE IMMUNE FROM
23 SUIT AND not ~~be~~ liable for damages in ~~any~~ A civil action with respect to
24 their participation in, assistance to, or reporting of information to a
25 professional review ~~body~~ ~~which~~ COMMITTEE THAT meets the standards of
26 and is in conformity with ~~the provisions of~~ the federal "Health Care
27 Quality Improvement Act of 1986", as amended, 42 U.S.C. secs. 11101
28 through 11152: ~~upon implementation of such act by the federal~~
29 ~~government:~~

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

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

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

38 (d) Any person who participates with or assists the professional
39 review ~~body~~ COMMITTEE OR GOVERNING BOARD with respect to the
40 professional review ~~action~~ ACTIVITIES.

41 (2) ~~Notwithstanding any other provision of law, no person,~~

1 ~~whether as a witness or otherwise, who provides information to a~~
2 ~~professional review body regarding the competence or professional~~
3 ~~conduct of a physician shall be held, by reason of having provided such~~
4 ~~information, liable in damages in any civil action unless such information~~
5 ~~is false and the person providing it knew that such information was false.~~

6 (3) For the purposes of this section, unless the context otherwise
7 requires:

8 (a) "Professional review action" means an action or
9 recommendation of a professional review ~~body which~~ COMMITTEE,
10 INCLUDING A GOVERNING BOARD, THAT is taken or made in the conduct
11 of professional review activity and ~~which~~ THAT is based on the QUALITY
12 AND APPROPRIATENESS OF PATIENT CARE PROVIDED BY, AND THE
13 QUALIFICATIONS, competence, or professional conduct of, an individual
14 ~~physician~~ PERSON LICENSED UNDER ARTICLE 36 OF THIS TITLE OR
15 LICENSED UNDER ARTICLE 38 OF THIS TITLE AND GRANTED AN AUTHORITY
16 AS AN ADVANCED PRACTICE NURSE, which ~~conduct~~ ACTION affects or may
17 affect adversely the PERSON'S clinical privileges of or membership in a
18 ~~professional society of the physician~~ AN AUTHORIZED ENTITY.
19 "Professional review action" includes a formal decision by the
20 professional review ~~body~~ COMMITTEE, INCLUDING A GOVERNING BOARD,
21 not to take an action or make a recommendation as provided in this
22 paragraph (a) and also includes professional review activities relating to
23 a professional review action. An action ~~shall~~ IS not ~~be considered to be~~
24 based upon the competence or professional conduct of a ~~physician~~
25 HEALTH CARE PROVIDER if the action is primarily based on:

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

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

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

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

37 (V) Any other matter that does not relate to the QUALITY AND
38 APPROPRIATENESS OF PATIENT CARE PROVIDED BY, OR THE
39 QUALIFICATIONS, competence, or professional conduct of, a ~~physician~~
40 PERSON LICENSED UNDER ARTICLE 36 OF THIS TITLE OR LICENSED UNDER
41 ARTICLE 38 OF THIS TITLE AND GRANTED AN AUTHORITY AS AN ADVANCED

1 PRACTICE NURSE.

2 (b) "~~Professional review body~~" means a health care entity and the
3 ~~governing body or any committee of a health care entity which conducts~~
4 ~~professional review actions and includes any committee of the medical~~
5 ~~staff of such an entity when assisting the governing body in a professional~~
6 ~~review activity.~~

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

9 **12-36-118. Disciplinary action by board - immunity - rules.**

10 (10) (b) For purposes of the records related to a complaint filed pursuant
11 to this section against a licensee, the board ~~shall be considered~~ IS a
12 professional review committee, the records related to the complaint ~~shall~~
13 include all records described in section 12-36.5-102 ~~(4)~~ (7), and section
14 12-36.5-104 ~~(10)~~ shall apply (11) APPLIES to those records.

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

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

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

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