

Second Regular Session
Sixty-fifth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 06-0615.01 Christy Chase

SENATE BILL 06-050

SENATE SPONSORSHIP

Johnson,

HOUSE SPONSORSHIP

(None),

Senate Committees
Business, Labor and Technology

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.)

Authorizes professional review committees (committees), governing boards (boards), and organizations that perform health care accreditation or certification to share with one another privileged and confidential information concerning health care providers (providers).

Gives a provider subject to review by a committee or board the right to reasonable notice of, as well as the right to any documents, records, and evidence pertaining to, a hearing regarding the provider's conduct. States that such information shall be privileged and confidential and shall not be admissible in a civil suit or other legal or administrative

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.

proceeding, except as otherwise specified.

Directs a committee or board and a provider subject to certain disciplinary actions to report actions taken against the provider, as well as any agreement or understanding made between the provider and the committee or board regarding the conduct of the provider, to the Colorado state board of medical examiners (board of medical examiners). Allows the board of medical examiners to initiate proceedings against a provider in certain instances and to ascertain whether a committee or board is conducting appropriate professional conduct reviews.

Clarifies that a person serving on or participating in activities of a committee or board that oversees the conduct of providers shall be immune from a civil suit and liability arising from such participation.

Makes legislative findings and declarations.

Makes conforming amendments.

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

2 **SECTION 1.** 12-36.5-101, Colorado Revised Statutes, is
3 amended BY THE ADDITION OF THE FOLLOWING NEW
4 SUBSECTIONS to read:

5 **12-36.5-101. Legislative declaration.** (4) THE GENERAL
6 ASSEMBLY FINDS, DETERMINES, AND DECLARES THAT THE PROTECTION OF
7 PUBLIC HEALTH, SAFETY, AND WELFARE WILL BE FURTHER STRENGTHENED
8 BY A STATE POLICY THAT ENCOURAGES AND PROTECTS LICENSED
9 PHYSICIANS ENGAGED IN THE EVALUATION AND REVIEW OF COMPETENCE,
10 PROFESSIONAL CONDUCT, AND QUALITY AND APPROPRIATENESS OF
11 PATIENT CARE PROVIDED BY OTHER LICENSED PHYSICIANS IN THE STATE.
12 TO ENCOURAGE AND PROTECT PROFESSIONAL REVIEW ACTIVITIES AS
13 DESCRIBED AND AUTHORIZED IN THIS ARTICLE, THE GENERAL ASSEMBLY
14 RECOGNIZES THAT IT MUST PROVIDE PARTICIPANTS WITH CERTAIN
15 IMMUNITIES FROM SUIT AND LIABILITY AND ENSURE THAT SUCH ACTIVITIES
16 ARE CONDUCTED, MAINTAINED, AND PROTECTED AS PRIVILEGED AND
17 CONFIDENTIAL. PRIVILEGE AND CONFIDENTIALITY ARE CRITICAL FOR THE

1 EFFECTIVE FUNCTIONING OF PROFESSIONAL REVIEW PROCESSES, WHICH IN
2 TURN ARE ESSENTIAL TO FURTHERING THE OVERWHELMING PUBLIC
3 INTEREST IN CONTINUED IMPROVEMENT IN PATIENT CARE AND SAFETY
4 THROUGH THE FREE, CANDID, AND UNFETTERED FLOW AND EXCHANGE OF
5 IDEAS, ADVICE, AND PROFESSIONAL JUDGMENT. ACCORDINGLY, IT IS THE
6 INTENT OF THE GENERAL ASSEMBLY THAT PROFESSIONAL REVIEW
7 ACTIVITIES, RECORDS, AND OTHER INFORMATION ARE PRIVILEGED AND
8 CONFIDENTIAL AND NOT SUBJECT TO DISCOVERY SO THAT PROFESSIONAL
9 REVIEW PARTICIPANTS MAY OPENLY, HONESTLY, AND OBJECTIVELY
10 CONDUCT PROFESSIONAL EVALUATIONS AND REVIEWS OF THEIR PEER
11 PHYSICIANS WITHOUT FEAR THAT THEIR WORK WILL BE SUBJECT TO THE
12 LITIGATION AND DISCOVERY PROCESSES.

13 (5) THE GENERAL ASSEMBLY RECOGNIZES AS STATE POLICY THE
14 IMPORTANCE OF THE AVAILABILITY AND ACCESSIBILITY OF PROFESSIONAL
15 LIABILITY INSURANCE COVERAGE FOR HEALTH CARE PROVIDERS AS A
16 MATTER OF STATEWIDE INTEREST AND CONCERN IN PROMOTION OF ACCESS
17 TO AND QUALITY OF HEALTH CARE. THE AVAILABILITY AND USE OF
18 INFORMATION IN THE PROFESSIONAL REVIEW CONTEXT FOR MAKING
19 UNDERWRITING, RISK MANAGEMENT, AND CLAIMS DECISIONS CONTRIBUTE
20 TO THE AVAILABILITY AND AFFORDABILITY OF PROFESSIONAL LIABILITY
21 COVERAGE AND CONSUMER SATISFACTION.

22 **SECTION 2.** 12-36.5-102 (1), (2), and (4), Colorado Revised
23 Statutes, are amended, and the said 12-36.5-102 is further amended BY
24 THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to
25 read:

26 **12-36.5-102. Definitions.** As used in this article, unless the
27 context otherwise requires:

1 (1) ~~"Board of medical examiners" means the Colorado state board~~
2 ~~of medical examiners created pursuant to section 12-36-103.~~

3 "ADVERSELY AFFECTS" MEANS REDUCES, RESTRICTS, SUSPENDS, REVOKES,
4 DENIES, OR FAILS TO RENEW A PHYSICIAN'S CLINICAL PRIVILEGES OR
5 MEMBERSHIP IN ANY ENTITY THAT CONDUCTS PROFESSIONAL REVIEW.

6 (1.5) "BOARD OF MEDICAL EXAMINERS" MEANS THE COLORADO
7 STATE BOARD OF MEDICAL EXAMINERS CREATED PURSUANT TO SECTION
8 12-36-103.

9 (2) "Governing board" means any board, board of trustees,
10 governing board, or other body, or duly authorized subcommittee thereof,
11 of any organization of health care providers, which board or body has
12 final authority pursuant to such organization's written bylaws,
13 ORGANIZATIONAL DOCUMENTS, policies, or procedures to take final action
14 regarding the recommendations of any authorized professional review
15 committee.

16 (2.5) "JOINT COMMISSION ON ACCREDITATION OF HEALTHCARE
17 ORGANIZATIONS" MEANS THE NATIONALLY RECOGNIZED NONPROFIT
18 ACCREDITATION ORGANIZATION THAT ESTABLISHES AND MAINTAINS
19 STANDARDS FOR THE QUALITY AND SAFETY OF PATIENT CARE PROVIDED
20 BY HEALTH CARE ORGANIZATIONS.

21 (4) (a) "Records" means any and all written or ~~verbal~~ ORAL
22 communications by any person, any member of an investigative body, or
23 any professional review committee or governing board, or the staff
24 ~~thereof~~ OF SUCH COMMITTEE OR BOARD, INCLUDING NONPROFESSIONAL
25 STAFF, arising from any activities of a professional review committee
26 authorized by this article, including the complaint, response,
27 correspondence related thereto, recordings or transcripts of proceedings,

1 minutes, formal recommendations, decisions, exhibits, and other similar
2 items or documents typically constituting the records of administrative
3 proceedings.

4 (b) "RECORDS" INCLUDES, BUT IS NOT LIMITED TO, ALL
5 INFORMATION, INTERVIEWS, REPORTS, STATEMENTS, MEMORANDA,
6 CREDENTIALS APPLICATIONS, RECOMMENDATIONS, LETTERS OF
7 REFERENCE, OR OTHER THIRD-PARTY CONFIDENTIAL ASSESSMENTS OF A
8 PHYSICIAN'S COMPETENCE OR PROFESSIONAL CONDUCT SUBMITTED TO OR
9 OBTAINED OR MAINTAINED BY A PROFESSIONAL REVIEW COMMITTEE,
10 GOVERNING BOARD, ENTITY AUTHORIZED TO ESTABLISH PROFESSIONAL
11 REVIEW COMMITTEES, OR ANY SUBDIVISION OR COMMITTEE OF SUCH A
12 PROFESSIONAL REVIEW COMMITTEE, GOVERNING BOARD, OR ENTITY.
13 "RECORDS" ALSO INCLUDES, BUT IS NOT LIMITED TO, ALL
14 COMMUNICATIONS, INFORMATION, AND DOCUMENTS USED IN THE COURSE
15 OF INTERNAL QUALITY CONTROL, MEDICAL STUDY FOR THE PURPOSE OF
16 REDUCING MORBIDITY OR MORTALITY, EVALUATING AND IMPROVING THE
17 QUALITY OF PATIENT CARE, EVALUATING CLAIMS, AND ENGAGING IN
18 UNDERWRITING AND RISK MANAGEMENT ACTIVITIES IN CONNECTION WITH
19 PROFESSIONAL LIABILITY INSURANCE COVERAGE FOR PHYSICIANS, OR
20 GRANTING, LIMITING, OR REVOKING STAFF PRIVILEGES OR AGREEMENTS
21 FOR SERVICES, AND REPORTS MADE TO THE BOARD OF MEDICAL
22 EXAMINERS PURSUANT TO THIS ARTICLE.

23 **SECTION 3.** 12-36.5-103 (3) (b), Colorado Revised Statutes, is
24 amended to read:

25 **12-36.5-103. Use of professional review committees.**
26 (3) (b) Professional review committees, the members who constitute such
27 committees, governing boards, and persons who participate directly or

1 indirectly in professional review proceedings are granted certain
2 immunities from SUIT AND liability arising from actions ~~which~~ THAT are
3 within the scope of their activities and taken in good faith as provided in
4 section 12-36.5-105. Such grants of immunity from SUIT AND liability are
5 declared to be necessary to ensure that professional review committees
6 and governing boards can exercise their professional knowledge and
7 judgment.

8 **SECTION 4.** 12-36.5-104 (4), Colorado Revised Statutes, is
9 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

10 **12-36.5-104. Establishment of professional review committees**

11 **- function.** (4) Any professional review committee established by any
12 of the following organizations, entities, or professional societies shall be
13 an approved professional review committee under this article if it operates
14 pursuant to written bylaws, policies, or procedures which are in
15 compliance with this article and which have been approved by its
16 governing board:

17 (j) ANY OTHER ENTITY THAT IS ELIGIBLE TO BE LICENSED AS A
18 HEALTH CARE FACILITY UNDER STATE LAW OR ELIGIBLE TO PARTICIPATE
19 AS A MEDICARE PROVIDER OR SUPPLIER.

20 **SECTION 5.** 12-36.5-104 (7) (c), (7) (d), (8) (b), (10) (a), and
21 (13), Colorado Revised Statutes, are amended to read:

22 **12-36.5-104. Establishment of professional review committees**

23 **- function.** (7) The written bylaws, policies, or procedures of any
24 professional review committee shall provide for at least the following:

25 (c) The physician who is the subject of any investigation shall be
26 given reasonable notice of such hearing and shall have a right to be
27 present, to be represented by legal counsel at such hearing, and to offer

1 evidence in his OR HER own behalf. FOR PURPOSES OF THIS PARAGRAPH
2 (c), "REASONABLE NOTICE" INCLUDES, BUT IS NOT LIMITED TO, PROVIDING
3 THE PHYSICIAN WITH COPIES OF DOCUMENTS OR OTHER EVIDENCE AS IS
4 FAIR TO THE PHYSICIAN UNDER THE CIRCUMSTANCES SO THAT HE OR SHE
5 MAY ADEQUATELY CONFRONT THE EVIDENCE AT THE HEARING.
6 PROVIDING COPIES TO A PHYSICIAN PURSUANT TO THIS PARAGRAPH (c) FOR
7 THE LIMITED PURPOSE OF ADDRESSING THE EVIDENCE AT THE HEARING IS
8 NOT PROHIBITED BY THE PRIVILEGES AND CONFIDENTIALITY OF RECORDS
9 DESCRIBED IN SUBSECTIONS (10) AND (13) OF THIS SECTION AND IS NOT A
10 WAIVER OF THOSE PRIVILEGES OR THE CONFIDENTIALITY OF THE RECORDS.
11 THE HEALTH CARE FACILITY MAY IMPOSE REASONABLE CONDITIONS,
12 CONSISTENT WITH LAW, ON THE RELEASE TO THE PHYSICIAN OF COPIES OF
13 THE DOCUMENTS AND EVIDENCE NECESSARY TO ENSURE THEIR CONTINUED
14 CONFIDENTIALITY AND PRIVILEGED STATUS OUTSIDE THE HEARING
15 PROCESS.

16 (d) After such hearing, the professional review committee shall
17 make any recommendations it deems necessary to the governing board
18 unless OTHERWISE provided by federal law or regulation.

19 (8) (b) The bylaws, POLICIES, OR PROCEDURES may provide that a
20 committee of not fewer than three members of the governing board may
21 hear the appeal. Such bylaws, POLICIES, OR PROCEDURES may also allow
22 for an appeal to be heard by an independent third party designated by the
23 board.

24 (10) (a) The records of a professional review committee, a
25 governing board, or the committee on anticompetitive conduct AND ALL
26 OTHER RECORDS DEFINED IN SECTION 12-36.5-102 (4) SHALL BE
27 PRIVILEGED AND CONFIDENTIAL, shall not be subject to subpoena or

1 discovery, and shall not be admissible in any civil suit ~~brought against a~~
2 ~~physician who is the subject of such records~~ OR OTHER LEGAL OR
3 ADMINISTRATIVE PROCEEDING EXCEPT PROCEEDINGS BEFORE THE BOARD
4 OF MEDICAL EXAMINERS OR THE DEPARTMENT OF PUBLIC HEALTH AND
5 ENVIRONMENT AS DESCRIBED IN SUBPARAGRAPH (V) OF PARAGRAPH (b)
6 OF THIS SUBSECTION (10). THE LEGAL PRIVILEGE CREATED BY THIS
7 PARAGRAPH (a) IS AVAILABLE TO THE PROFESSIONAL REVIEW COMMITTEE,
8 GOVERNING BOARD, OR OTHER COMMITTEE OR ENTITY AUTHORIZED TO
9 CONDUCT THE PROFESSIONAL REVIEW ACTIVITY.

10 (13) All proceedings, recommendations, records, and reports
11 involving professional review committees or governing boards shall be
12 PRIVILEGED AND confidential, SHALL NOT BE SUBJECT TO SUBPOENA OR
13 DISCOVERY, AND SHALL NOT BE ADMISSIBLE IN ANY CIVIL SUIT OR OTHER
14 LEGAL OR ADMINISTRATIVE PROCEEDING EXCEPT PROCEEDINGS BEFORE
15 THE BOARD OF MEDICAL EXAMINERS OR THE DEPARTMENT OF PUBLIC
16 HEALTH AND ENVIRONMENT AS DESCRIBED IN SUBPARAGRAPH (V) OF
17 PARAGRAPH (b) OF SUBSECTION (10) OF THIS SECTION. THE LEGAL
18 PRIVILEGE CREATED BY PARAGRAPH (a) OF SUBSECTION (10) OF THIS
19 SECTION IS AVAILABLE TO THE PROFESSIONAL REVIEW COMMITTEE,
20 GOVERNING BOARD, OR OTHER COMMITTEE OR ENTITY AUTHORIZED TO
21 CONDUCT THE PROFESSIONAL REVIEW ACTIVITY.

22 **SECTION 6.** 12-36.5-104 (10) (b), Colorado Revised Statutes,
23 is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to
24 read:

25 **12-36.5-104. Establishment of professional review committees**
26 **- function.** (10) (b) Notwithstanding the provisions of paragraph (a) of
27 this subsection (10), such records shall be subject to subpoena and

1 available for use:

2 (V) BY THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
3 FOR PURPOSES OF A REGULATORY OR ADMINISTRATIVE INSPECTION,
4 INVESTIGATION, OR PROCEEDING AS OTHERWISE PROVIDED BY LAW.

5 **SECTION 7.** 12-36.5-104.4 (2) (b), Colorado Revised Statutes,
6 is amended to read:

7 **12-36.5-104.4. Hospital professional review committees.**

8 (2) (b) All matters considered in collaboration with or referred to a
9 committee pursuant to this subsection (2) and all records, INFORMATION,
10 and proceedings related thereto shall remain PRIVILEGED AND
11 confidential. ~~and~~ The committee members, governing board, witnesses,
12 and complainants shall be ~~subject~~ ENTITLED to the immunities and
13 privileges as set forth in this article, AND THE RECORDS, INFORMATION,
14 AND PROCEEDINGS SHALL BE PRIVILEGED AND CONFIDENTIAL AS SET
15 FORTH IN THIS ARTICLE.

16 **SECTION 8.** Part 1 of article 36.5 of title 12, Colorado Revised
17 Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW
18 SECTIONS to read:

19 **12-36.5-104.7. Exchange and sharing of information - privilege
20 and confidentiality not waived.** (1) PROFESSIONAL REVIEW

21 COMMITTEES AND GOVERNING BOARDS MAY EXCHANGE AND SHARE
22 PRIVILEGED AND CONFIDENTIAL RECORDS AND OTHER INFORMATION WITH
23 EACH OTHER WITHOUT WAIVING THE PRIVILEGE OR CONFIDENTIALITY
24 ESTABLISHED BY THIS ARTICLE. THE PRIVILEGE AND CONFIDENTIALITY
25 SHALL NOT BE IMPAIRED, WAIVED, OR OTHERWISE AFFECTED SOLELY BY
26 REASON OF THE EXCHANGE OR SHARING OF RECORDS OR INFORMATION
27 AUTHORIZED BY THIS SECTION. THE PRIVILEGE AND CONFIDENTIALITY

1 SHALL BE EXTENDED AND APPLIED ON THE SAME TERMS AND CONDITIONS
2 TO ALL PROFESSIONAL REVIEW COMMITTEES AND GOVERNING BOARDS
3 ENGAGED IN THE EXCHANGE OR SHARING OF RECORDS AND INFORMATION.
4 THIS SUBSECTION (1) SHALL NOT BE CONSTRUED TO REQUIRE THE
5 EXCHANGE OR SHARING OF RECORDS OR INFORMATION IF NOT OTHERWISE
6 REQUIRED BY LAW.

7 (2) RECORDS AND OTHER PRIVILEGED AND CONFIDENTIAL
8 INFORMATION MAY BE RELEASED TO AN ORGANIZATION THAT PERFORMS
9 HEALTH CARE ACCREDITATION OR CERTIFICATION SERVICES, INCLUDING,
10 WITHOUT LIMITATION, THE JOINT COMMISSION ON ACCREDITATION OF
11 HEALTHCARE ORGANIZATIONS, WITHOUT WAIVING THE PRIVILEGE AND
12 CONFIDENTIALITY ESTABLISHED BY THIS ARTICLE. RECORDS OR OTHER
13 INFORMATION RELEASED UNDER THIS SUBSECTION (2) SHALL BE LIMITED
14 TO THOSE REASONABLY NECESSARY AND RELEVANT TO THE
15 ORGANIZATION'S DETERMINATION TO GRANT, CONTINUE, OR DENY
16 ACCREDITATION OR CERTIFICATION. ANY RECORDS OR INFORMATION
17 RELEASED PURSUANT TO THIS SUBSECTION (2) SHALL REMAIN
18 CONFIDENTIAL AND PRIVILEGED, AND THE ACCREDITATION OR
19 CERTIFICATION ORGANIZATION SHALL MAINTAIN THE CONFIDENTIALITY OF
20 THE RECORDS AND INFORMATION AS REQUIRED BY THIS ARTICLE. THIS
21 SUBSECTION (2) SHALL NOT BE CONSTRUED TO REQUIRE THE RELEASE OF
22 RECORDS OR INFORMATION TO AN ACCREDITATION OR CERTIFICATION
23 ORGANIZATION IF NOT OTHERWISE REQUIRED BY LAW.

24 **12-36.5-104.9. Reports to board of medical examiners.**

25 (1) (a) A PROFESSIONAL REVIEW COMMITTEE OR GOVERNING BOARD
26 SHALL REPORT THE FOLLOWING ACTIONS OR OCCURRENCES TO THE BOARD
27 OF MEDICAL EXAMINERS WITHIN FORTY-EIGHT HOURS AFTER THE ACTION

1 OR OCCURRENCE, IN A FORM DETERMINED BY THE BOARD:

2 (I) A PROFESSIONAL REVIEW ACTION THAT ADVERSELY AFFECTS
3 THE CLINICAL PRIVILEGES OF A PHYSICIAN FOR MORE THAN FOURTEEN
4 DAYS; OR

5 (II) ACCEPTANCE BY THE COMMITTEE OR BOARD OF THE
6 SURRENDER OF CLINICAL PRIVILEGES OF A PHYSICIAN WHILE
7 INVESTIGATING THE PHYSICIAN FOR POSSIBLE INCOMPETENCE OR
8 IMPROPER PROFESSIONAL CONDUCT OR IN RETURN FOR NOT CONDUCTING
9 AN INVESTIGATION OF THE PHYSICIAN.

10 (b) A PHYSICIAN WHO IS THE SUBJECT OF AN ACTION OR
11 OCCURRENCE DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (1)
12 SHALL MAKE AN INDEPENDENT REPORT OF THE ACTION OR OCCURRENCE
13 TO THE BOARD OF MEDICAL EXAMINERS WITHIN FORTY-EIGHT HOURS
14 AFTER THE ACTION OR OCCURRENCE IN A FORM DETERMINED BY THE
15 BOARD.

16 (2) (a) A PROFESSIONAL REVIEW COMMITTEE OR GOVERNING
17 BOARD SHALL REPORT TO THE BOARD OF MEDICAL EXAMINERS, IN A FORM
18 DETERMINED BY THE BOARD, ANY VOLUNTARY AGREEMENT OR
19 UNDERSTANDING BETWEEN A LICENSED PHYSICIAN OR PHYSICIAN
20 ASSISTANT AND THE PROFESSIONAL REVIEW COMMITTEE OR GOVERNING
21 BOARD IF THE AGREEMENT OR UNDERSTANDING IS BASED ON ALLEGATIONS
22 OF UNPROFESSIONAL CONDUCT AS DEFINED IN SECTION 12-36-117. THE
23 PROFESSIONAL REVIEW COMMITTEE OR GOVERNING BOARD SHALL SUBMIT
24 THE REPORT WITHIN FIVE DAYS AFTER THE EFFECTIVE DATE OF THE
25 AGREEMENT OR UNDERSTANDING.

26 (b) THE PHYSICIAN OR PHYSICIAN ASSISTANT WHO ENTERS A
27 VOLUNTARY AGREEMENT OR UNDERSTANDING WITH A PROFESSIONAL

1 REVIEW COMMITTEE OR GOVERNING BOARD SHALL MAKE AN INDEPENDENT
2 REPORT OF THE AGREEMENT OR UNDERSTANDING TO THE BOARD WITHIN
3 FIVE DAYS AFTER THE EFFECTIVE DATE OF THE AGREEMENT OR
4 UNDERSTANDING, IN A FORM DETERMINED BY THE BOARD.

5 (c) THE BOARD OF MEDICAL EXAMINERS MAY CONFIRM THAT THE
6 LICENSED PHYSICIAN OR PHYSICIAN ASSISTANT COMPLIES WITH THE TERMS
7 OF A VOLUNTARY AGREEMENT OR UNDERSTANDING REPORTED PURSUANT
8 TO THIS SUBSECTION (2) AND MAY ENTER INTO DISCUSSION WITH THE
9 PROFESSIONAL REVIEW COMMITTEE OR GOVERNING BOARD REGARDING
10 THE TERMS OF THE AGREEMENT OR UNDERSTANDING. HOWEVER, THE
11 BOARD OF MEDICAL EXAMINERS MAY INITIATE PROCEEDINGS PURSUANT TO
12 SECTION 12-36-118 FOR CONDUCT RESULTING IN THE VOLUNTARY
13 AGREEMENT OR UNDERSTANDING ONLY UNDER THE FOLLOWING
14 CIRCUMSTANCES:

15 (I) THE BOARD OF MEDICAL EXAMINERS RECEIVES A COMPLAINT
16 FROM THE PUBLIC INVOLVING THE SAME CONDUCT THAT IS THE SUBJECT
17 OF THE VOLUNTARY AGREEMENT OR UNDERSTANDING;

18 (II) THE LICENSED PHYSICIAN OR PHYSICIAN ASSISTANT DOES NOT
19 COMPLY WITH THE VOLUNTARY AGREEMENT OR UNDERSTANDING; OR

20 (III) THE BOARD OF MEDICAL EXAMINERS RECEIVES THREE OR
21 MORE REPORTS OF VOLUNTARY AGREEMENTS OR UNDERSTANDINGS
22 ENTERED INTO BY THE SAME PHYSICIAN OR PHYSICIAN ASSISTANT WITHIN
23 THREE YEARS THAT INVOLVE SEPARATE INCIDENTS OR SETS OF INCIDENTS.

24 (3) TO ASSURE THAT APPROPRIATE PROFESSIONAL REVIEW IS BEING
25 CONDUCTED, THE BOARD OF MEDICAL EXAMINERS MAY REQUEST, AND
26 SHALL BE PROVIDED WITH, GENERAL PROFESSIONAL REVIEW INFORMATION
27 AND PROCEEDINGS FROM A PROFESSIONAL REVIEW COMMITTEE OR

1 GOVERNING BOARD IF THE BOARD OF MEDICAL EXAMINERS HAS NOT
2 RECEIVED A REPORT PURSUANT TO SUBSECTION (1) OR (2) OF THIS SECTION
3 FOR THREE YEARS. THE INFORMATION REQUESTED PURSUANT TO THIS
4 SUBSECTION (3) SHALL BE PROVIDED IN A FORM DETERMINED BY THE
5 BOARD OF MEDICAL EXAMINERS BY RULE.

6 (4) AN INDIVIDUAL PHYSICIAN REVIEWING ANOTHER PHYSICIAN AS
7 PART OF A PROFESSIONAL REVIEW PROCESS IS NOT OBLIGATED UNDER
8 SECTION 12-36-118 (3) (a) TO REPORT TO THE BOARD OF MEDICAL
9 EXAMINERS ANY INFORMATION ABOUT THE PHYSICIAN WHO IS THE
10 SUBJECT OF THE PROFESSIONAL REVIEW PROCESS IF THE REVIEWING
11 PHYSICIAN BECAME AWARE OF THE INFORMATION ONLY THROUGH
12 PARTICIPATION IN THE PROFESSIONAL REVIEW PROCESS. NOTHING IN THIS
13 SUBSECTION (4) SHALL BE CONSTRUED TO LIMIT OR NEGATE THE
14 RESPONSIBILITY OF A PHYSICIAN UNDER SECTION 12-36-118 (3) (a) TO
15 REPORT TO THE BOARD OF MEDICAL EXAMINERS ANY INFORMATION
16 REPORTABLE UNDER SAID SECTION THAT THE PHYSICIAN BECAME AWARE
17 OF BY ANY MEANS OTHER THAN A PROFESSIONAL REVIEW ACTIVITY.

18 **SECTION 9.** 12-36.5-105, Colorado Revised Statutes, is
19 amended to read:

20 **12-36.5-105. Immunity from suit and liability.** (1) A member
21 of a professional review committee, a witness before a professional
22 review committee, or any person who files a complaint or otherwise
23 participates in the professional review process shall be immune from suit
24 AND LIABILITY in any civil or criminal action, including antitrust actions,
25 brought by a physician who is the subject of the review by such
26 professional review committee, if such member made a reasonable effort
27 to obtain the facts of the matter as to which he OR SHE acted, acted in the

1 reasonable belief that the action taken by him OR HER was warranted by
2 the facts, and otherwise acted in good faith within the scope of such
3 professional review committee process and if such witness or participant
4 acted in good faith within the scope of such professional review
5 committee process.

6 (2) The governing board, the individual members of such board
7 and the entity that has established a peer review committee pursuant to
8 section 12-36.5-104, the board's staff, any person acting as a witness or
9 consultant to the board, any witness testifying in a proceeding authorized
10 under this article, and any person who lodges a complaint pursuant to this
11 article shall be immune from SUIT AND liability in any civil action brought
12 against him or her for acts occurring while acting in his or her capacity as
13 board member, staff, consultant, or witness, respectively, if such
14 individual was acting in good faith within the scope of his or her
15 respective capacity, made a reasonable effort to obtain the facts of the
16 matter as to which he or she acted, and acted in the reasonable belief that
17 the action taken by him or her was warranted by the facts. Any person
18 participating in good faith in lodging a complaint or participating in any
19 investigative or administrative proceeding pursuant to this article shall be
20 immune from any civil or criminal liability that may result from such
21 participation.

22 **SECTION 10.** 25-3-109 (1), (2), (3), (4), (5), (5.5), and (6),
23 Colorado Revised Statutes, are amended, and the said 25-3-109 is further
24 amended BY THE ADDITION OF THE FOLLOWING NEW
25 SUBSECTIONS, to read:

26 **25-3-109. Quality management and patient safety - privilege,**
27 **confidentiality, and immunity - definitions.** (1) The general assembly

1 hereby finds and declares that the ~~implementation of~~ quality management,
2 ~~functions to evaluate and improve patient and resident care is essential to~~
3 ~~the operation of~~ PERFORMANCE IMPROVEMENT, AND PATIENT SAFETY
4 PROCESSES AT COLORADO HOSPITALS AND OTHER health care facilities
5 licensed or certified by the department of public health and environment
6 pursuant to section 25-1.5-103 (1) (a) ~~For this purpose, it is necessary that~~
7 ~~the collection of information and data by such licensed or certified health~~
8 ~~care facilities be reasonably unfettered so a complete and thorough~~
9 ~~evaluation and improvement of the quality of patient and resident care can~~
10 ~~be accomplished. To this end, quality management information relating~~
11 ~~to the evaluation or improvement of the quality of health care services~~
12 ~~shall be confidential, subject to the provisions of subsection (4) of this~~
13 ~~section, and persons performing such functions shall be granted qualified~~
14 ~~immunity. It is the intent of the general assembly that nothing in this~~
15 ~~section revise, amend, or alter article 36 or part 1 of article 36.5 of title~~
16 ~~42, C.R.S.~~ ARE ESSENTIAL TO THE CONTINUOUS IMPROVEMENT OF PATIENT
17 CARE AND SAFETY IN THIS STATE. THE GENERAL ASSEMBLY FURTHER
18 RECOGNIZES THAT CONFIDENTIALITY AND IMMUNITY FROM LIABILITY ARE
19 CRITICAL TO THE EFFECTIVE AND SUCCESSFUL FUNCTIONING OF THOSE
20 PROCESSES BECAUSE THE COLLECTION, ANALYSIS, AND EFFECTIVE USE OF
21 QUALITY MANAGEMENT, PERFORMANCE IMPROVEMENT, AND PATIENT
22 SAFETY INFORMATION MUST BE CANDID, OBJECTIVE, AND UNFETTERED BY
23 FEAR OF DISCLOSURE IN DISCOVERY OR PERSONAL LIABILITY IN
24 LITIGATION. OPENING SUCH PROCEEDINGS OR INFORMATION TO THE
25 LITIGATION OR DISCOVERY PROCESS WOULD UNREASONABLY DISCOURAGE
26 AND INHIBIT THE QUALITY AND SAFETY DISCUSSION AND ACTIVITIES THAT
27 ARE SO IMPORTANT TO HEALTH CARE IMPROVEMENT, PATIENT SAFETY,

1 AND THE PUBLIC INTEREST. TO THAT END, IT IS THE PURPOSE OF THIS
2 SECTION TO ENCOURAGE A CULTURE OF SAFETY AND QUALITY IN THE
3 COLORADO HEALTH CARE SYSTEM BY PROVIDING IMMUNITY FROM SUIT
4 AND LIABILITY FOR PARTICIPANTS IN THE QUALITY MANAGEMENT,
5 PERFORMANCE IMPROVEMENT, AND PATIENT SAFETY PROCESSES AND BY
6 PROVIDING CONFIDENTIALITY AND OTHER LEGAL PROTECTION FOR
7 INFORMATION REPORTED, ANALYZED, OR USED IN THOSE PROCESSES.

8 (2) ~~For purposes of this section, a "quality management program"~~
9 ~~means a program which includes quality assurance and risk management~~
10 ~~activities, the peer review of licensed health care professionals not~~
11 ~~otherwise provided for in part 1 of article 36.5 of title 12, C.R.S., and~~
12 ~~other quality management functions which are described by a facility in~~
13 ~~a quality management program approved by the department of public~~
14 ~~health and environment. Nothing in this section shall revise, amend, or~~
15 ~~alter article 36 or part 1 of article 36.5 of title 12, C.R.S.~~ A PATIENT
16 SAFETY COMMITTEE AT A HOSPITAL OR OTHER LICENSED OR CERTIFIED
17 HEALTH CARE FACILITY, INCLUDING A HEALTH CARRIER, AS DEFINED IN
18 SECTION 10-16-102 (8), C.R.S., AND A LICENSED PHYSICIAN PRACTICE
19 GROUP, SHALL:

20 (a) RECEIVE REPORTS CONCERNING PATIENT SAFETY AT OR BY THE
21 HOSPITAL, FACILITY, CARRIER, OR GROUP;

22 (b) EVALUATE PATIENT SAFETY ACTIONS TAKEN IN CONNECTION
23 WITH ALL REPORTS OF SENTINEL EVENTS ALLEGED TO HAVE OCCURRED AT
24 OR BY THE HOSPITAL, FACILITY, CARRIER, OR GROUP;

25 (c) REVIEW AND EVALUATE THE QUALITY MEASURES CARRIED OUT
26 BY THE HOSPITAL, FACILITY, CARRIER, OR GROUP TO IMPROVE THE SAFETY
27 OF PATIENTS WHO RECEIVE TREATMENT;

1 (d) MAKE RECOMMENDATIONS TO THE GOVERNING BOARD OF THE
2 HOSPITAL OR FACILITY TO REDUCE THE NUMBER AND SEVERITY OF
3 SENTINEL EVENTS THAT OCCUR AT THE HOSPITAL OR FACILITY;

4 (e) REPORT THE FOLLOWING TO THE GOVERNING BOARD OF THE
5 HOSPITAL OR FACILITY AT LEAST QUARTERLY:

6 (I) THE NUMBER OF SENTINEL EVENTS THAT OCCURRED AT THE
7 HOSPITAL OR FACILITY DURING THE PRECEDING QUARTER; AND

8 (II) ANY RECOMMENDATIONS TO REDUCE THE NUMBER AND
9 SEVERITY OF SENTINEL EVENTS THAT OCCUR AT THE HOSPITAL OR
10 FACILITY.

11 ~~(3) Except as otherwise provided in this section, any records,~~
12 ~~reports, or other information of a licensed or certified health care facility~~
13 ~~that are part of a quality management program designed to identify,~~
14 ~~evaluate, and reduce the risk of patient or resident injury associated with~~
15 ~~care or to improve the quality of patient care shall be confidential~~
16 ~~information; except that such information shall be subject to the~~
17 ~~provisions of subsection (4) of this section.~~ EXCEPT AS OTHERWISE
18 PROVIDED IN SUBSECTION (4):

19 (a) THE PROCEEDINGS, RECORDS, AND OTHER INFORMATION
20 COLLECTED, ANALYZED, OR USED BY OR REPORTED TO ANY OF THE
21 FOLLOWING SHALL BE PRIVILEGED AND CONFIDENTIAL AND SHALL NOT BE
22 SUBJECT TO SUBPOENA OR DISCOVERY IN ANY CIVIL SUIT OR OTHER LEGAL
23 OR ADMINISTRATIVE PROCEEDING:

24 (I) A PATIENT SAFETY COMMITTEE;

25 (II) AN ORGANIZED COMMITTEE OF A HOSPITAL OR OTHER HEALTH
26 CARE FACILITY RESPONSIBLE FOR THE EVALUATION AND IMPROVEMENT OF
27 THE QUALITY OF CARE RENDERED AT THE HOSPITAL OR FACILITY; AND

1 (III) A QUALITY IMPROVEMENT OR REVIEW COMMITTEE OF A
2 MEDICAL OR DENTAL SOCIETY.

3 (b) A PERSON WHO ATTENDS A MEETING OF A COMMITTEE
4 DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (3) OR WHO
5 PARTICIPATES IN THE REPORTING, COLLECTION, EVALUATION, OR USE OF
6 INFORMATION BY OR TO SUCH COMMITTEE MAY BE REQUIRED TO TESTIFY
7 CONCERNING THE INFORMATION AS PART OF THE PROCEEDINGS AT THE
8 MEETING.

9 (c) THE LEGAL PRIVILEGE CREATED BY THIS SUBSECTION (3) IS
10 AVAILABLE TO A COMMITTEE DESCRIBED IN PARAGRAPH (a) OF THIS
11 SUBSECTION (3), AND THE COMMITTEE HAS THE RIGHT TO ASSERT,
12 ENFORCE, OR WAIVE THE PRIVILEGE.

13 ~~(4) The records, reports, and other information described in~~
14 ~~subsection (3) and subsection (5.5) of this section shall not be subject to~~
15 ~~subpoena or discoverable or admissible as evidence in any civil or~~
16 ~~administrative proceeding. No person who participates in the reporting,~~
17 ~~collection, evaluation, or use of such quality management information~~
18 ~~with regard to a specific circumstance shall testify thereon in any civil or~~
19 ~~administrative proceeding. However, this subsection (4) THE PRIVILEGE~~
20 ~~AND CONFIDENTIALITY REQUIRED BY SUBSECTION (3) OF THIS SECTION~~
21 ~~shall not apply to:~~

22 (a) Any civil or administrative proceeding, inspection, or
23 investigation as otherwise provided by law by the department of public
24 health and environment or other appropriate regulatory agency having
25 jurisdiction for disciplinary or licensing sanctions;

26 (b) Persons giving testimony concerning facts of which they have
27 personal knowledge acquired independently of the quality management,

1 ~~information program or function~~ PERFORMANCE IMPROVEMENT, OR
2 PATIENT SAFETY PROCESSES;

3 (c) ~~The availability, as provided by law or the rules of civil~~
4 ~~procedure, of factual information relating solely to the individual in~~
5 ~~interest in a civil suit by such person, next friend or legal representative.~~
6 ~~In no event shall such factual information include opinions or evaluations~~
7 ~~performed as a part of the quality management program.~~

8 (d) ~~Persons giving testimony concerning an act or omission which~~
9 ~~they have observed or in which they participated, notwithstanding any~~
10 ~~participation by them in the quality management program;~~

11 (e) ~~Persons giving testimony concerning facts they have recorded~~
12 ~~in a medical record relating solely to the individual in interest in a civil~~
13 ~~suit by such person.~~

14 (5) Nothing in this section shall affect the voluntary release of any
15 quality management, PERFORMANCE IMPROVEMENT, OR PATIENT SAFETY
16 record or information by a HOSPITAL OR OTHER health care facility. ~~except~~
17 ~~that no patient-identifying information shall be released without the~~
18 ~~patient's consent.~~

19 (5.5) (a) The PRIVILEGE AND confidentiality of information
20 provided for in this section shall in no way be impaired or otherwise
21 adversely affected solely by reason of the submission of the information
22 to a nongovernmental entity to conduct studies that evaluate, develop, and
23 analyze information about health care operations, practices, or any other
24 function of health care facilities. The records, reports, and other
25 information collected or developed by a nongovernmental entity shall
26 remain protected as provided in ~~subsections (3) and (4)~~ SUBSECTION (3)
27 of this section. In order to adequately protect the confidentiality of such

1 information, no findings, conclusions, or recommendations contained in
2 such studies conducted by any such nongovernmental entity shall be
3 deemed to establish a standard of care for HOSPITALS OR OTHER health
4 care facilities.

5 (b) ~~For purposes of this subsection (5.5), "health care facility"~~
6 ~~includes a health carrier as defined in section 10-16-102 (8), C.R.S., and~~
7 ~~a health care practitioner licensed or certified pursuant to title 12, C.R.S.~~

8 (5.6) PATIENT SAFETY COMMITTEES AND ORGANIZED COMMITTEES
9 OF HOSPITALS OR OTHER HEALTH CARE FACILITIES WHOSE RECORDS AND
10 PROCEEDINGS ARE PRIVILEGED AND CONFIDENTIAL UNDER SUBSECTION (3)
11 OF THIS SECTION MAY EXCHANGE AND SHARE SUCH RECORDS AND OTHER
12 RELATED INFORMATION WITH EACH OTHER WITHOUT WAIVING THE
13 PRIVILEGE AND CONFIDENTIALITY OF THE RECORDS AND INFORMATION.
14 THE PROTECTIONS PROVIDED BY SAID SUBSECTION (3) SHALL NOT BE
15 IMPAIRED, WAIVED, OR OTHERWISE AFFECTED SOLELY BY REASON OF THE
16 EXCHANGE OR SHARING OF THE RECORDS OR OTHER INFORMATION, AND
17 THE PRIVILEGE AND CONFIDENTIALITY SHALL BE EXTENDED AND APPLIED
18 ON THE SAME TERMS AND CONDITIONS TO ALL PATIENT SAFETY
19 COMMITTEES AND OTHER ORGANIZED HOSPITAL OR HEALTH CARE FACILITY
20 COMMITTEES ENGAGED IN SUCH EXCHANGE OR SHARING. NOTHING IN THIS
21 SUBSECTION (5.6) SHALL BE CONSTRUED TO REQUIRE A PATIENT SAFETY
22 COMMITTEE OR OTHER ORGANIZED HOSPITAL OR HEALTH CARE FACILITY
23 COMMITTEE TO EXCHANGE OR SHARE RECORDS OR INFORMATION IF NOT
24 OTHERWISE REQUIRED BY LAW.

25 (5.7) RECORDS AND OTHER PRIVILEGED AND CONFIDENTIAL
26 INFORMATION MAY BE RELEASED TO AN ORGANIZATION THAT PERFORMS
27 HEALTH CARE ACCREDITATION OR CERTIFICATION SERVICES, INCLUDING,

1 WITHOUT LIMITATION, THE JOINT COMMISSION ON ACCREDITATION OF
2 HEALTHCARE ORGANIZATIONS, WITHOUT WAIVING THE PRIVILEGE AND
3 CONFIDENTIALITY ESTABLISHED BY THIS SECTION. RECORDS OR OTHER
4 INFORMATION RELEASED UNDER THIS SUBSECTION (5.7) SHALL BE LIMITED
5 TO THOSE REASONABLY NECESSARY AND RELEVANT TO THE
6 ORGANIZATION'S DETERMINATION TO GRANT, CONTINUE, OR DENY
7 ACCREDITATION OR CERTIFICATION. ANY RECORDS OR INFORMATION
8 RELEASED PURSUANT TO THIS SUBSECTION (5.7) SHALL REMAIN
9 CONFIDENTIAL AND PRIVILEGED, AND THE ACCREDITATION OR
10 CERTIFICATION ORGANIZATION SHALL MAINTAIN THE CONFIDENTIALITY OF
11 THE RECORDS AND INFORMATION AS REQUIRED BY THIS SECTION. THIS
12 SUBSECTION (5.7) SHALL NOT BE CONSTRUED TO REQUIRE THE RELEASE OF
13 RECORDS OR INFORMATION TO AN ACCREDITATION OR CERTIFICATION
14 ORGANIZATION IF NOT OTHERWISE REQUIRED BY LAW.

15 (6) Any person who in good faith and within the scope of ~~the~~
16 ~~functions~~ of a quality management, ~~program~~ PERFORMANCE
17 IMPROVEMENT, OR PATIENT SAFETY PROCESS participates in the reporting,
18 collection, evaluation, ~~or~~ use, EXCHANGE, OR SHARING of quality
19 management, PERFORMANCE IMPROVEMENT, OR PATIENT SAFETY
20 information or performs other functions as part of a quality management,
21 ~~program~~ PERFORMANCE IMPROVEMENT, OR PATIENT SAFETY PROCESS with
22 regard to a specific circumstance shall be immune from suit in any civil
23 action based on such ACTIVITIES AND functions brought by a health care
24 provider or person to whom the quality, PERFORMANCE, OR SAFETY
25 information pertains. In no event shall this immunity apply to any
26 negligent or intentional act or omission in the provision of care.

27 (12) AS USED IN THIS SECTION:

1 (a) "JOINT COMMISSION ON ACCREDITATION OF HEALTHCARE
2 ORGANIZATIONS" MEANS THE NATIONALLY RECOGNIZED NONPROFIT
3 ACCREDITATION ORGANIZATION THAT ESTABLISHES AND MAINTAINS
4 STANDARDS FOR THE QUALITY AND SAFETY OF PATIENT CARE PROVIDED
5 BY HEALTH CARE ORGANIZATIONS.

6 (b) "SENTINEL EVENT" MEANS A SENTINEL EVENT AS DEFINED BY
7 THE JOINT COMMISSION ON ACCREDITATION OF HEALTHCARE
8 ORGANIZATIONS.

9 **SECTION 11. Effective date - applicability.** (1) This act shall
10 take effect at 12:01 a.m. on the day following the expiration of the
11 ninety-day period after final adjournment of the general assembly that is
12 allowed for submitting a referendum petition pursuant to article V,
13 section 1 (3) of the state constitution (August 9, 2006, if adjournment sine
14 die is on May 10, 2006); except that, if a referendum petition is filed
15 against this act or an item, section, or part of this act within such period,
16 then the act, item, section, or part, if approved by the people, shall take
17 effect on the date of the official declaration of the vote thereon by
18 proclamation of the governor.

19 (2) The provisions of this act shall apply to professional review of
20 health care providers on or after the applicable effective date of this act.