

FINAL PROPOSAL
Professional Review of Health Care Providers

1 **12-30-201. [Formerly 12-36.5-101] Legislative declaration.** (1) The general
2 assembly hereby finds, determines, and declares that the Colorado medical board created in
3 article ~~36~~ **240** of this title **12** and the state board of nursing created in article ~~38~~ **255** of this
4 title **12** act for the state in their sovereign capacity to govern licensure, discipline, and
5 professional review of persons licensed to practice medicine, PERSONS licensed as physician
6 assistants, and ~~licensed to practice nursing and granted authority as~~ advanced practice
7 nurses, respectively, in this state. The general assembly further finds, determines, and
8 declares that:

9 (a) The authority to provide health care in this state is a privilege granted by the
10 legislative authority of the state; and

11 (b) It is necessary for the health, safety, and welfare of the people of this state that
12 the appropriate regulatory boards exercise their authority to protect the people of this state
13 from unauthorized practice and unprofessional conduct by persons licensed to provide health
14 care under articles ~~36~~ **240** and ~~38~~ **255** of this title **12**.

15 (2) The general assembly recognizes that:

16 (a) Many patients of persons licensed to provide health care in this state have
17 restricted choices of health care providers under a variety of circumstances and conditions;

18 (b) Many patients lack the knowledge, experience, or education to properly evaluate
19 the quality of medical or nursing practice or the professional conduct of ~~those~~ PERSONS
20 licensed to practice medicine, PERSONS licensed to act as physician assistants, and ~~licensed~~
21 ~~to practice nursing and granted authority as~~ advanced practice nurses; and

22 (c) It is necessary and proper that the respective regulatory boards exercise their
23 regulatory authority to protect the health, safety, and welfare of the people of this state.

24 (3) The general assembly recognizes that, in the proper exercise of their authority and
25 responsibilities under this ~~article~~ PART 2, the Colorado medical board and the state board of
26 nursing must, to some extent, replace competition with regulation, and that the replacement
27 of competition by regulation, particularly with regard to persons licensed under article ~~36~~
28 **240** of this title **12** or ~~licensed under article 38 of this title and granted authority as~~ TO
29 advanced practice nurses, is related to a legitimate state interest in the protection of the
30 health, safety, and welfare of the people of this state.

31 **12-30-202. [Formerly 12-36.5-102] Definitions.** As used in this ~~article~~ PART 2,
32 unless the context otherwise requires:

33 (1) "ADVANCED PRACTICE NURSE" HAS THE SAME MEANING AS SET FORTH IN SECTION
34 **{12-38-103 (1.5)} 12-255-104 (1).**

35 (±) (2) "Authorized entity" means a corporation, organization, or entity that is
36 authorized to establish a professional review committee under section ~~12-36.5-104(4) or (5)~~

1 **12-30-204 (5) OR (6)** or under rules of the medical board or nursing board adopted pursuant
2 to section ~~12-36.5-104(5)~~ **12-30-204 (6)**.

3 ~~(2)~~ (3) "CMS" means the federal centers for medicare and medicaid services.

4 ~~(2.5)~~ "Division" means the division of professions and occupations in the department
5 of regulatory agencies.

6 ~~(3)~~ (4) "Governing board" means a board, board of trustees, governing board, or
7 other body, or duly authorized subcommittee thereof, of an authorized entity, which board
8 or body has final authority pursuant to the entity's written bylaws, policies, or procedures to
9 take final action regarding the recommendations of a professional review committee.

10 ~~(4)~~ (5) "Joint commission" means the joint commission or its successor entity.

11 ~~(5)~~ (6) "Medical board" means the Colorado medical board created in section
12 ~~12-36-103(1)~~ **12-240-1 __ (1)**.

13 ~~(6)~~ (7) "Professional review committee" means any committee authorized under this
14 ~~article~~ PART 2 to review and evaluate the competence, professional conduct of, or the quality
15 and appropriateness of patient care provided by, any person licensed under article ~~36~~ **240**
16 of this title **12** or ~~licensed under article 38 of this title and granted authority as an advanced~~
17 practice nurse. "Professional review committee" includes a governing board, a hearing panel
18 appointed by a governing board to conduct a hearing under section ~~12-36.5-104(7)(a)~~
19 **12-30-204 (8)(a)**, and an independent third party designated by a governing board under
20 section ~~12-36.5-104(8)(b)~~ **12-30-204 (9)(b)**.

21 ~~(7)~~ (8) (a) "Records" means any and all written, electronic, or oral communications
22 by any person arising from any activities of a professional review committee, including a
23 governing board, established by an authorized entity under this ~~article~~ PART 2 or by the agent
24 or staff thereof, including any:

25 (I) Letters of reference;

26 (II) Complaint, response, or correspondence related to the complaint or response;

27 (III) Interviews or statements, reports, memoranda, assessments, and progress reports
28 developed to assist in professional review activities;

29 (IV) Assessments and progress reports to assist in professional review activities,
30 including reports and assessments developed by independent consultants in connection with
31 professional review activities; and

32 (V) Recordings or transcripts of proceedings, minutes, formal recommendations,
33 decisions, exhibits, and other similar items or documents related to professional review
34 activities or the committee on anticompetitive conduct and typically constituting the records
35 of administrative proceedings.

36 (b) "Records" does not include any written, electronic, or oral communications by
37 any person that are otherwise available from a source outside the scope of professional

1 review activities, including medical records and other health information.

2 (8) (9) "State board of nursing" or "nursing board" means the state board of nursing
3 created in section ~~12-38-104~~ **12-255-1**.

4 **12-30-203. [Formerly 12-36.5-103] Use of professional review committees.**

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

6 (I) The medical board and the nursing board, while assuming and retaining ultimate
7 authority for licensure and discipline in accordance with articles ~~36 240~~ and ~~38 255~~ of this
8 title **12**, respectively, and in accordance with this ~~article~~ PART 2, cannot practically and
9 economically assume responsibility over every single allegation or instance of purported
10 deviation from the standards of quality for the practice of medicine or nursing, from the
11 standards of professional conduct, or from the standards of appropriate care; and

12 (II) An attempt to exercise such oversight would result in extraordinary delays in the
13 determination of the legitimacy of the allegations and would result in the inappropriate and
14 unequal exercise of their authority to license and discipline persons licensed under article
15 ~~36 240~~ of this title **12** or ~~licensed under article 38 of this title and granted authority as~~
16 advanced practice nurses.

17 (b) It is therefore the intent of the general assembly that the medical board and the
18 nursing board utilize and allow professional review committees and governing boards to
19 assist them in meeting their responsibilities under articles ~~36 240~~ and ~~38 255~~ of this title **12**,
20 respectively, and under this ~~article~~ PART 2.

21 (2) ~~All~~ Persons licensed under article ~~36 240~~ of this title or ~~licensed under article 38~~
22 ~~of this title and granted authority as~~ **12** AND advanced practice nurses are encouraged to
23 serve upon professional review committees when called to do so and to study and review in
24 an objectively reasonable manner the professional conduct of persons licensed under article
25 ~~36 240~~ of this title **12** or ~~licensed under article 38 of this title and granted authority as~~
26 advanced practice nurses, including the competence, professional conduct of, or the quality
27 and appropriateness of patient care provided by, those persons.

28 (3) (a) The use of professional review committees is an extension of the authority of
29 the medical board and nursing board. However, except as otherwise provided in this ~~article~~
30 PART 2, nothing in this ~~article~~ PART 2 limits the authority of professional review committees
31 properly constituted under this ~~article~~ PART 2.

32 (b) Professional review committees, the members who constitute the committees,
33 governing boards, authorized entities, and persons who participate directly or indirectly in
34 professional review activities are granted certain immunities from liability arising from
35 actions that are within the scope of their activities as provided in section ~~12-36.5-105~~
36 **12-30-207**. These grants of immunity from liability are necessary to ensure that professional
37 review committees and governing boards can exercise their professional knowledge and

1 judgment.

2 **12-30-204. [Formerly 12-36.5-104] Establishment of professional review**
3 **committees - function - rules.** (1) A professional review committee may be established
4 pursuant to this section to review and evaluate the competence of, the quality and
5 appropriateness of patient care provided by, or the professional conduct of, any person
6 licensed under article ~~36 240~~ of this title **12** or ~~licensed under article 38 of this title and~~
7 ~~granted authority as an~~ ANY advanced practice nurse.

8 (2) Licensed physicians who are actively engaged in the practice of medicine in this
9 state must constitute a majority of the voting members of any professional review committee
10 established pursuant to this section for physicians and physician assistants; except that
11 physicians need not constitute the majority of the voting members of a governing board
12 authorized by ~~paragraph (g) of subsection (4)~~ SUBSECTION (5)(i) of this section or an
13 independent third party designated by a governing board under ~~paragraph (b) of subsection~~
14 ~~(8)~~ SUBSECTION (9)(b) of this section.

15 ~~(2.5)~~ (3) A professional review committee that is reviewing the competence of, the
16 quality and appropriateness of patient care provided by, or the professional conduct of, a
17 ~~person licensed under article 38 of this title and granted authority as an~~ advanced practice
18 nurse must either:

19 (a) Have, as a voting member, at least one ~~person licensed under article 38 of this~~
20 ~~title and granted authority as an~~ advanced practice nurse with a scope of practice similar to
21 that of the person who is the subject of the review; or

22 (b) Engage, to perform an independent review as appropriate, an independent person
23 ~~licensed under article 38 of this title and granted authority as~~ WHO IS an advanced practice
24 nurse with a scope of practice similar to that of the person who is the subject of the review.
25 The person conducting the independent review must be a person who was not previously
26 involved in the review.

27 ~~(3)~~ (4) A ~~utilization and quality control peer review~~ QUALITY IMPROVEMENT
28 organization, as defined pursuant to 42 U.S.C. sec. 1320c-1, or any other organization
29 performing similar review services under federal or state law is an approved professional
30 review committee under this ~~article~~ PART 2.

31 ~~(4)~~ (5) A professional review committee established by any of the following
32 authorized entities is an approved professional review committee under this ~~article~~ PART 2
33 if it operates in compliance with written bylaws, policies, or procedures that are in
34 compliance with this ~~article~~ PART 2 and that have been approved by the authorized entity's
35 governing board and if it is registered with the division in accordance with section
36 ~~12-36.5-104.6~~ **12-30-206:**

37 (a) The medical staff of a hospital licensed pursuant to part 1 of article 3 of title 25

1 ~~C.R.S.~~, or certified pursuant to section 25-1.5-103 (1)(a)(II); ~~C.R.S.~~;

2 (b) The medical staff of a hospital-related corporation. For the purposes of this
3 ~~paragraph (b)~~ SUBSECTION (5)(b), an entity is a "hospital-related corporation" if the licensed
4 or certified hospital or holding company of the licensed or certified hospital has ownership
5 or control of the entity.

6 (c) A society or association of physicians whose membership includes not less than
7 one-third of the doctors of medicine or doctors of osteopathy licensed to practice and
8 residing in this state, if the physician whose services are the subject of the review is a
9 member of the society or association;

10 ~~(c.5)~~ (d) A society or association of advanced practice nurses ~~licensed and registered~~
11 ~~pursuant to article 38 of this title and residing~~ WHO RESIDE in this state, if the advanced
12 practice nurse whose services are the subject of the review is a member of the society or
13 association;

14 ~~(d)~~ (e) A society or association of physicians licensed to practice and residing in this
15 state and specializing in a specific discipline of medicine, whose society or association has
16 been designated by the medical board as a specialty society or association representative of
17 physicians practicing the specific discipline of medicine, if the physician whose services are
18 the subject of the review is a member of the specialty society or association;

19 ~~(d.5)~~ (f) A society or association of advanced practice nurses ~~licensed and registered~~
20 ~~pursuant to article 38 of this title and practicing~~ WHO PRACTICE in a specified nursing role
21 and population focus, as defined by the nursing board, which society or association has been
22 designated by the nursing board as the specific nursing society or association representative
23 of those advanced practice nurses practicing in that nursing role and population focus, if the
24 advanced practice nurse whose services are the subject of the review is a member of the
25 designated nursing society or association;

26 ~~(e)~~ (g) An individual practice association or a preferred provider organization
27 consisting of persons licensed under article ~~36 240~~ of this title ~~12~~ or ~~licensed under article~~
28 ~~38 of this title and granted authority as~~ OF advanced practice nurses, or a medical group that
29 predominantly serves members of a health maintenance organization licensed pursuant to
30 parts 1 and 4 of article 16 of title 10. ~~C.R.S.~~ A professional review committee established
31 pursuant to this ~~paragraph (e)~~ SUBSECTION (5)(g) has jurisdiction to review only persons
32 licensed under article ~~36 240~~ of this title ~~12~~ or ~~licensed under article 38 of this title and~~
33 ~~granted authority as~~ advanced practice nurses ~~who~~ IF THE PERSONS LICENSED UNDER SAID
34 ARTICLE OR THE ADVANCED PRACTICE NURSES are members of the association or
35 organization creating and authorizing that committee; except that the professional review
36 committee may review the care provided to a particular patient referred by a member of the
37 association or organization to another person WHO IS NOT A MEMBER OF THE ASSOCIATION

1 OR ORGANIZATION AND IS licensed under article ~~36 240~~ of this title *12* or licensed under
2 ~~article 38 of this title and granted authority~~ as IS an advanced practice nurse. ~~who is not a~~
3 ~~member of the association or organization.~~

4 (f) (h) A corporation authorized PURSUANT TO ARTICLE 3 OF TITLE 10 to insure
5 persons licensed under article ~~36 240~~ of this title *12* or licensed under ~~article 38 of this title~~
6 ~~and granted authority~~ as advanced practice nurses pursuant to ~~article 3 of title 10, C.R.S.,~~
7 or any other organization authorized to insure such persons in this state when designated by
8 the medical board or nursing board under subsection ~~(5) (6)~~ of this section;

9 (g) (i) The governing board of any authorized entity that has a professional review
10 committee established pursuant to article ~~36 240~~ or article ~~38 255~~ of this title *12*;

11 (h) (j) Any professional review committee established or created by a combination
12 or pooling of any authorized entities;

13 (i) (k) (I) A nonprofit corporation or association consisting of representatives from
14 a statewide professional society and a statewide hospital association. The association must
15 consist of persons licensed under article ~~36 240~~ of this title *12* or licensed under ~~article 38~~
16 ~~of this title and granted authority~~ as advanced practice nurses, hospital administrators, and
17 hospital trustees, with a majority of the representatives being persons licensed under article
18 ~~36 240~~ of this title *12* when the subject of the investigation is a person licensed under article
19 ~~36 240~~ of this title *12*, and at least one of the representatives being a ~~person licensed under~~
20 ~~article 38 of this title and granted authority~~ as an advanced practice nurse when the subject
21 of the investigation is a ~~person licensed under article 38 of this title and granted authority~~
22 as an advanced practice nurse. The association may establish, or contract for, one or more
23 professional review committees to review the care by hospital staff personnel who are
24 licensed under article ~~36 240~~ of this title *12* or licensed under ~~article 38 of this title and~~
25 ~~granted authority~~ as ARE advanced practice nurses, with priority given to small rural hospital
26 staffs. These professional review services must be available statewide on a fee-for-service
27 basis to licensed or certified hospitals at the joint request of the governing board and the
28 medical or nursing staff of the hospital or at the sole request of the governing board of the
29 hospital. If a member being reviewed specializes in a generally recognized specialty of
30 medicine or nursing, at least one of the health care providers on the professional review
31 committee must be a person WHO IS licensed under article ~~36 240~~ of this title *12* or licensed
32 ~~under article 38 of this title and granted authority~~ as IS an advanced practice nurse AND who
33 practices such specialty.

34 (II) For purposes of the introductory portion to this subsection ~~(4) (5)~~ and this
35 ~~paragraph (i)~~ SUBSECTION (5)(k), the bylaws, policies, or procedures must be in compliance
36 with this ~~article~~ PART 2 and approved by the nonprofit corporation or association.

1 (†) (l) The medical or nursing staff of an ambulatory surgical center licensed pursuant
2 to part 1 of article 3 of title 25; ~~C.R.S.~~;

3 (†) (m) A professional services entity organized pursuant to section ~~12-36-134~~
4 **12-240-1**;

5 (†) (n) A provider network that IS ORGANIZED PURSUANT TO PART 3 OF ARTICLE 18
6 OF TITLE 6 AND includes persons licensed under article ~~36 240~~ of this title **12** or licensed
7 under article ~~38~~ of this title and granted authority as advanced practice nurses; and is
8 organized pursuant to part ~~3~~ of article ~~18~~ of title ~~6~~, ~~C.R.S.~~;

9 (†) (o) A health system that includes two or more authorized entities with a common
10 governing board;

11 (†) (p) A trust organization established under article 70 of title 11; ~~C.R.S.~~;

12 (†) (q) An entity licensed pursuant to parts 1 and 4 of article 16 of title 10; ~~C.R.S.~~;

13 (†) (r) An accountable care organization established under the federal "Patient
14 Protection and Affordable Care Act", Pub.L. 111-148, AS AMENDED, or other organization
15 with a similar function;

16 (†) (s) A hospital licensed pursuant to part 1 of article 3 of title 25 ~~C.R.S.~~, or certified
17 pursuant to section 25-1.5-103 (1)(a)(II); ~~C.R.S.~~; and

18 (†) (t) An ambulatory surgical center licensed pursuant to part 1 of article 3 of title
19 25. ~~C.R.S.~~

20 (†) (6) The medical board and the nursing board, with respect to the licensees subject
21 to their jurisdiction, may establish by rule procedures necessary to authorize other health care
22 or physician organizations or professional societies as authorized entities that may establish
23 professional review committees.

24 (†) (7) (a) A professional review committee acting pursuant to this part ~~1~~ **2** may
25 investigate or cause to be investigated:

26 (I) The qualifications and competence of any person licensed under article ~~36 240~~
27 of this title **12** or licensed under article ~~38~~ of this title and granted authority as an ANY
28 advanced practice nurse who seeks to subject himself or herself to the authority of any
29 authorized entity; or

30 (II) The quality or appropriateness of patient care rendered by, or the professional
31 conduct of, any person licensed under article ~~36 240~~ of this title **12** or licensed under article
32 ~~38~~ of this title and granted authority as an ANY advanced practice nurse who is subject to the
33 authority of the authorized entity.

34 (b) The professional review committee shall conduct the investigation in conformity
35 with written bylaws, policies, or procedures adopted by the authorized entity's governing
36 board.

1 ~~(7)~~ (8) The written bylaws, policies, or procedures of any professional review
2 committee for persons licensed under article ~~36~~ **240** of this title ~~12~~ or licensed under article
3 ~~38 of this title and granted authority~~ as advanced practice nurses must provide for at least
4 the following:

5 (a) (I) Except as provided in ~~subparagraph (II) of this paragraph~~ (a) SUBSECTION
6 (8)(a)(II) OF THIS SECTION, if the findings of any investigation indicate that a person licensed
7 under article ~~36~~ **240** of this title ~~12~~ or licensed under article ~~38 of this title and granted~~
8 ~~authority~~ as an advanced practice nurse ~~and~~ who is the subject of the investigation is
9 lacking in qualifications or competency, has provided substandard or inappropriate patient
10 care, or has exhibited inappropriate professional conduct and the professional review
11 committee takes or recommends an action to adversely affect the person's membership,
12 affiliation, or privileges with the authorized entity, the professional review committee shall
13 hold a hearing to consider the findings and recommendations unless the person waives, in
14 writing, the right to a hearing or is given notice of a hearing and fails to appear.

15 (II) If the professional review committee is submitting its findings and
16 recommendations to another professional review committee for review, only one hearing is
17 necessary prior to any appeal before the governing board.

18 (b) A person who has participated in the course of an investigation is disqualified as
19 a member of the professional review committee that conducts a hearing pursuant to
20 ~~paragraph (a) of this subsection~~ ~~(7)~~ SUBSECTION (8)(a) OF THIS SECTION, but the person may
21 participate as a witness in the hearing.

22 (c) The authorized entity shall give to the subject of any investigation under this
23 subsection ~~(7)~~ (8) reasonable notice of the hearing and of any finding or recommendation
24 that would adversely affect the person's membership, affiliation, or privileges with the
25 authorized entity, and the subject of the investigation has a right to be present, to be
26 represented by legal counsel at the hearing, and to offer evidence in ~~his or her~~ THE PERSON'S
27 own behalf.

28 (d) After the hearing, the professional review committee that conducted the hearing
29 shall make any recommendations it deems necessary to the governing board, unless
30 otherwise provided by federal law or regulation.

31 (e) The professional review committee shall give a copy of the recommendations to
32 the subject of the investigation, who then has the right to appeal to the governing board to
33 which the recommendations are made with regard to any finding or recommendation that
34 would adversely affect his or her membership, affiliation, or privileges with the authorized
35 entity.

36 (f) The professional review committee shall forward a copy of any recommendations

1 made pursuant to ~~paragraph (d) of this subsection (7)~~ SUBSECTION (8)(d) OF THIS SECTION
2 promptly to the medical board if the subject of the investigation is licensed under article 36
3 **240** of this title **12**, or to the nursing board if the subject of the investigation is ~~licensed~~
4 ~~under article 38 of this title and granted authority~~ as an advanced practice nurse.

5 ~~(8)~~ (9) (a) All governing boards shall adopt written bylaws, policies, or procedures
6 under which a person WHO IS licensed under article 36 **240** of this title **12** or ~~licensed under~~
7 ~~article 38 of this title and granted authority~~ as IS an advanced practice nurse AND who is the
8 subject of an adverse recommendation by a professional review committee may appeal to
9 the governing board following a hearing in accordance with subsection ~~(7)~~ (8) of this
10 section. The bylaws, policies, or procedures must provide that the person be given
11 reasonable notice of his or her right to appeal and, unless waived by the person, has the right
12 to appear before the governing board, to be represented by legal counsel, and to offer the
13 argument on the record as ~~he or she~~ THAT THE PERSON deems appropriate.

14 (b) The bylaws may provide that a committee of not fewer than three members of the
15 governing board may hear the appeal. Also, the bylaws may allow for an appeal to be heard
16 by an independent third party designated by a governing board under this ~~paragraph (b)~~
17 SUBSECTION (9)(b).

18 ~~(9)~~ (10) All governing boards that are required to report their final actions to the
19 medical board or the nursing board, as appropriate, are not otherwise relieved of their
20 obligations by virtue of this ~~article~~ PART 2.

21 ~~(10)~~ (11) (a) Except as specified in ~~paragraph (b) of this subsection (10)~~ SUBSECTION
22 (11)(b) OF THIS SECTION, the records of an authorized entity, its professional review
23 committee, and its governing board are not subject to subpoena or discovery and are not
24 admissible in any civil suit.

25 (b) Subject to subsection ~~(13)~~ (14) of this section, the records are subject to subpoena
26 and available for use:

27 ~~(I) Repealed.~~

28 ~~(II)~~ (I) By either party in an appeal or de novo proceeding brought pursuant to this
29 part ~~1~~ 2;

30 ~~(III)~~ (II) By a person licensed under article 36 **240** of this title **12** or ~~licensed under~~
31 ~~article 38 of this title and granted authority~~ as an advanced practice nurse in a suit seeking
32 judicial review of an action by the governing board;

33 ~~(IV)~~ (III) By the ~~Colorado~~ department of public health and environment in
34 accordance with its authority to issue or continue a health facility license or certification for
35 an authorized entity;

36 ~~(V)~~ (IV) By CMS in accordance with its authority over federal health care program

1 participation by an authorized entity;

2 ~~(V)~~ (V) By an authorized entity or governing board seeking judicial review;

3 ~~(VI)~~ (VI) By the medical board within the scope of its authority over licensed
4 physicians and physician assistants; and

5 ~~(VII)~~ (VII) By the nursing board within the scope of its authority over advanced
6 practice nurses.

7 ~~(11)~~ (12) (a) Except as provided in ~~paragraph (b) of this subsection~~ ~~(11)~~ SUBSECTION
8 (12)(b) OF THIS SECTION, the records of an authorized entity or its professional review
9 committee may be disclosed to:

10 (I) The medical board, as requested by the medical board acting within the scope of
11 its authority or as required or appropriate under this ~~article~~ PART 2 or article ~~36~~ **240** of this
12 title **12**;

13 (II) The nursing board, as requested by the nursing board acting within the scope of
14 its authority or as required or appropriate under this ~~article~~ PART 2 or article ~~38~~ **255** of this
15 title **12**;

16 (III) The Colorado department of public health and environment acting within the
17 scope of its health facility licensing authority or as the agent of CMS;

18 (IV) CMS, in connection with the survey and certification processes for federal
19 health care program participation by an authorized entity; and

20 (V) The joint commission or other entity granted deeming authority by CMS, in
21 connection with a survey or review for accreditation.

22 (b) The medical board, nursing board, and ~~Colorado~~ department of public health and
23 environment shall not make further disclosures of any records disclosed by an authorized
24 entity or its professional review committee under this section.

25 ~~(12)~~ (13) The records of an authorized entity or its professional review committee
26 or governing board may be shared by and among authorized entities and their professional
27 review committees and governing boards concerning the competence, professional conduct
28 of, or the quality and appropriateness of patient care provided by, a health care provider who
29 seeks to subject himself or herself to, or is currently subject to, the authority of the
30 authorized entity.

31 ~~(13)~~ (14) Responding to a subpoena or disclosing or sharing of otherwise privileged
32 records and information pursuant to subsection ~~(10)~~, ~~(11)~~, or ~~(12)~~ **(11)**, **(12)**, OR **(13)** of this
33 section does not constitute a waiver of the privilege specified in ~~paragraph (a) of subsection~~
34 ~~(10)~~ SUBSECTION (11)(a) of this section or a violation of the confidentiality requirements of
35 subsection ~~(15)~~ **(16)** of this section. Records provided to any governmental agency,
36 including the department of public health and environment, ~~the committee on~~

1 ~~anticompetitive conduct~~, the medical board, and the nursing board pursuant to subsection
2 ~~(10) (11)~~ or ~~(11) (12)~~ of this section are not public records subject to the "Colorado Open
3 Records Act", part 2 of article 72 of title 24. ~~C.R.S.~~ A person providing the records to an
4 authorized entity or its professional review committee or governing board, the department
5 of public health and environment, the committee on anticompetitive conduct, the medical
6 board, the nursing board, CMS, the joint commission, or other governmental agency is
7 entitled to the same immunity from liability as provided under section ~~12-36.5-105~~
8 **12-30-207** for the disclosure of the records.

9 ~~(14)~~ (15) Investigations, examinations, hearings, meetings, and other proceedings
10 of a professional review committee or governing board conducted pursuant to this part ~~1~~ **2**
11 are exempt from any law requiring that proceedings be conducted publicly or that the
12 records, including any minutes, be open to public inspection.

13 ~~(15)~~ (16) Except as otherwise provided in subsection ~~(10), (11), or (12) (11), (12)~~
14 ~~OR (13)~~ of this section, all proceedings, recommendations, records, and reports involving
15 professional review committees or governing boards are confidential.

16 ~~(16)~~ (17) A professional review committee or governing board that is constituted and
17 conducts its reviews and activities in accordance with this part ~~1~~ **2** is not an unlawful
18 conspiracy in violation of section 6-4-104 or 6-4-105. ~~C.R.S.~~

19 **12-30-205. [Formerly 12-36.5-104.4] Hospital professional review committees.**

20 (1) The quality and appropriateness of patient care rendered by persons licensed under
21 article 36 **240** of this title **12**, ~~licensed under article 38 of this title and granted authority as~~
22 advanced practice nurses, and other licensed health care professionals so influence the total
23 quality of patient care that a review of care provided in a hospital is ineffective without
24 concomitantly reviewing the overall competence, professional conduct of, or the quality and
25 appropriateness of care rendered by, such persons.

26 (2) (a) (I) Whenever a professional review committee created pursuant to section
27 ~~12-36.5-104~~ **12-30-204** reasonably believes that the quality or appropriateness of care
28 provided by other licensed health care professionals may have adversely affected the
29 outcome of patient care, the professional review committee shall:

30 (A) Refer the matter to a hospital ~~committee~~ QUALITY MANAGEMENT PROGRAM
31 created pursuant to section 25-3-109; ~~C.R.S.~~; or

32 (B) Consult with a representative of the other licensed health care professional's
33 profession.

34 (II) A professional review committee established pursuant to this ~~article~~ PART 2 may
35 meet and act in collaboration with a ~~committee~~ HOSPITAL QUALITY MANAGEMENT PROGRAM
36 established pursuant to section 25-3-109. ~~C.R.S.~~

1 (b) All matters considered in collaboration with or referred to a committee pursuant
2 to this subsection (2) and all records and proceedings related thereto shall remain
3 confidential, and the committee members, governing board, witnesses, and complainants
4 shall be ARE subject to the immunities and privileges as set forth in this article PART 2.

5 (3) Nothing in this section shall be IS deemed to extend the authority or jurisdiction
6 of the medical board to any individual not otherwise subject to the jurisdiction of the board.

7 **12-30-206. [Formerly 12-36.5-104.6] Governing boards to register with division**
8 **- annual reports - aggregation and publication of data - definition - rules.** (1) As used
9 in this section, "adversely affecting" has the same meaning as set forth in 45 CFR 60.3;
10 except that it does not include a precautionary suspension or any professional review action
11 affecting, FOR A PERIOD OF THIRTY OR FEWER DAYS, a person licensed under article ~~36 240~~
12 of this title **12** or licensed under article 38 of this title and granted authority as an advanced
13 practice nurse. ~~for a period of thirty days or less.~~

14 (2) Each governing board that establishes or uses one or more professional review
15 committees to review the practice of persons licensed under article ~~36 240~~ of this title **12** or
16 licensed under article 38 of this title and granted authority as OF advanced practice nurses
17 shall:

18 (a) Register with the division in a form satisfactory to the division on or before July
19 1, 2013, if the governing board has one or more existing professional review committees,
20 or, if the governing board first establishes a professional review committee on or after July
21 1, 2013, within thirty days after approving the written bylaws, policies, or procedures for the
22 professional review committee;

23 (b) In addition to any other state or federal reporting requirements:

24 (I) Report annually to the medical board, in a form satisfactory to the medical board,
25 the number of final professional review actions in each of the following categories relating
26 to individuals licensed under article ~~36 240~~ of this title **12**:

27 (A) Adversely affecting the individual;

28 (B) In which an authorized entity accepted the individual's surrender of clinical
29 privileges, membership, or affiliation while the individual was under investigation;

30 (C) In which an authorized entity accepted the individual's surrender of clinical
31 privileges, membership, or affiliation in return for not conducting an investigation; and

32 (D) In which the professional review committee made recommendations regarding
33 the individual following a hearing pursuant to section ~~12-36.5-104(7)(d)~~. **12-30-204 (8)(d)**;

34 (II) Report annually to the nursing board, in a form satisfactory to the nursing board,
35 the number of final professional review actions in each of the following categories relating
36 to ~~individuals licensed under article 38 of this title and granted authority as~~ advanced

1 practice nurses:

2 (A) Adversely affecting the individual;

3 (B) In which an authorized entity accepted the individual's surrender of clinical
4 privileges, membership, or affiliation while the individual was under investigation;

5 (C) In which an authorized entity accepted the individual's surrender of clinical
6 privileges, membership, or affiliation in return for not conducting an investigation; and

7 (D) In which the professional review committee made recommendations regarding
8 the individual following a hearing pursuant to section ~~12-36.5-104(7)(d)~~. **12-30-204(8)(d)**;

9 (c) (I) Report to the division, in a de-identified manner, on its professional review
10 activities during the immediately preceding calendar year in a form satisfactory to the
11 division. These reports must include aggregate data, which is limited to the following:

12 (A) The number of investigations completed during the year;

13 (B) The number of investigations that resulted in no action;

14 (C) The number of investigations that resulted in written involuntary requirements
15 for improvement sent to the subject of the investigation by the authorized entity; and

16 (D) The number of investigations that resulted in written agreements for
17 improvement between the subject of the investigation and the authorized entity.

18 (II) (A) The medical board and the nursing board shall forward the reports received
19 pursuant to ~~sub-subparagraphs (I) and (H)~~ SUBSECTIONS (2)(b)(I) AND (2)(b)(II) OF THIS
20 SECTION, respectively, ~~of paragraph (b) of this subsection (2)~~ to the division in a
21 de-identified manner.

22 (B) The division shall not publish any information identifying the governing board
23 or authorized entity making a report under ~~paragraph (b) of this subsection (2) or this~~
24 ~~paragraph (c)~~ SUBSECTION (2)(b) OF THIS SECTION OR THIS SUBSECTION (2)(c), and ~~such~~ THE
25 reports and information are not public records under the "Colorado Open Records Act", part
26 2 of article 72 of title 24. ~~C.R.S.~~

27 (III) Reports submitted pursuant to this ~~paragraph (c)~~ SUBSECTION (2)(c) must
28 include only investigations in which no final action adversely affecting the subject of the
29 investigation was taken or recommended.

30 (3) (a) The division shall publish the data provided pursuant to ~~paragraphs (b) and~~
31 ~~(c) of subsection (2)~~ SUBSECTIONS (2)(b) AND (2)(c) of this section in aggregate form and
32 without individually identifiable information concerning the governing board, the authorized
33 entity, or any person WHO WAS SUBJECT TO REVIEW AND IS licensed under article ~~36~~ **240** of
34 this title **12** or ~~licensed under article 38 of this title and granted authority as~~ IS an advanced
35 practice nurse. ~~who was subject to review.~~

36 (b) The division shall maintain and shall publish online, through its website, a

1 current list of all governing boards that are registered in accordance with this section and
2 that otherwise are in compliance with this ~~article~~ PART 2.

3 (4) The division shall adopt rules to implement this section and may collect a
4 reasonable registration fee to recover its direct and indirect costs of administering the
5 registration and publication systems required by this section.

6 (5) For purposes of this section, an investigation occurs when the authorized entity
7 or its professional review committee notifies the subject of the investigation in writing that
8 an investigation has commenced.

9 (6) The medical board and the nursing board shall not initiate an investigation or
10 issue a subpoena based solely on the data reported pursuant to ~~paragraph (c)~~ of subsection
11 ~~(2)~~ **(2)(c)** of this section.

12 (7) (a) A governing board that fails to register with the division pursuant to
13 ~~paragraph (a)~~ of subsection ~~(2)~~ **(2)(a)** of this section is not entitled to any immunity afforded
14 under this ~~article~~ PART 2 until the date that the governing board so registers. A governing
15 board's failure to register does not affect any immunity, confidentiality, or privilege afforded
16 to an individual participating in professional review activities.

17 (b) A governing board's failure to report as required by this section does not affect
18 any immunity, confidentiality, or privilege afforded to the governing board under this ~~article~~
19 PART 2.

20 **12-30-207. [Formerly 12-36.5-105] Immunity from liability.** (1) A member of a
21 professional review committee, a governing board or any committee or third party
22 designated by the governing board under section ~~12-36.5-104(8)(b)~~ **12-30-204 (9)(b)** and
23 any person serving on the staff of that committee, board, panel, or third party, a witness or
24 consultant before a professional review committee, and any person who files a complaint or
25 otherwise participates in the professional review process, is immune from suit and liability
26 for damages in any civil or criminal action, including antitrust actions, brought by a person
27 licensed under article ~~36 240~~ of this title **12** or ~~licensed under article 38 of this title~~ AN
28 ADVANCED PRACTICE NURSE who is the subject of the review by ~~such~~ THE professional
29 review committee unless, in connection with the professional review process, the person
30 provided false information and knew that the information was false.

31 (2) The governing board and the authorized entity that has established a professional
32 review committee pursuant to section ~~12-36.5-104~~ **12-30-204** is immune from suit and
33 liability for damages in any civil or criminal action, including antitrust actions, brought by
34 a person licensed under article ~~36 240~~ of this title **12** or ~~licensed under article 38 of this title~~
35 AN ADVANCED PRACTICE NURSE who is the subject of the review by such professional review
36 committee if the professional review action was taken within the scope of the professional

1 review process and was taken:

2 (a) In the objectively reasonable belief that the action was in the furtherance of
3 quality health care;

4 (b) After an objectively reasonable effort to obtain the facts of the matter;

5 (c) In the objectively reasonable belief that the action taken was warranted by the
6 facts; and

7 (d) In accordance with procedures that, under the circumstances, were fair to the
8 person licensed under article ~~36 240~~ of this title ~~12~~ or licensed under article ~~38~~ of this title
9 and granted authority as an THE advanced practice nurse.

10 **12-30-208. Conformance with federal law and regulation - legislative**
11 **declaration - rules - limitations on liability - definition.** (1) [Formerly 12-36.5-201] The
12 general assembly hereby finds, determines, and declares that the enactment of this ~~part 2~~
13 SECTION is necessary in order for the state to comply with the provisions of the federal
14 "Health Care Quality Improvement Act of 1986", as amended, 42 U.S.C. SECS. 11101 TO
15 11152. It is the intent of the general assembly that the provisions of this ~~part 2~~ SECTION are
16 to be interpreted as being complementary to the OTHER provisions of ~~part 1~~ of IN this article
17 PART 2. The provisions of this ~~part 2~~ SECTION are intended to be responsive to specific
18 requirements of the federal "Health Care Quality Improvement Act of 1986", as amended.
19 If the provisions of this ~~part 2~~ SECTION conflict with the OTHER provisions of ~~part 1~~ of this
20 article PART 2, other than with respect to the specific requirements of the federal "Health
21 Care Quality Improvement Act of 1986", as amended, the OTHER provisions of ~~part 1~~ of this
22 article shall PART 2 prevail.

23 (2) [Formerly 12-36.5-202] The medical board and nursing board may promulgate
24 rules to comply with the reporting requirements of the federal "Health Care Quality
25 Improvement Act of 1986", as amended, ~~42 U.S.C. secs. 11101 through 11152~~; and may
26 participate in the federal data bank.

27 (3) [Formerly 12-36.5-203] ~~(1)~~ (a) The following persons are immune from suit and
28 not liable for damages in any civil action with respect to their participation in, assistance to,
29 or reporting of information to a professional review committee in connection with a
30 professional review action in this state, and such persons are not liable for damages in a civil
31 action with respect to their participation in, assistance to, or reporting of information to a
32 professional review committee that meets the standards of and is in conformity with the
33 federal "Health Care Quality Improvement Act of 1986", as amended: ~~42 U.S.C. secs. 11101~~
34 ~~through 11152~~:

35 (a) (I) An authorized entity, professional review committee, or governing board;

36 (b) (II) Any person acting as a member of or staff to the authorized entity,

1 professional review committee, or governing board;

2 (c) (III) A witness, consultant, or other person who provided information to the
3 authorized entity, professional review committee, or governing board; and

4 (d) (IV) Any person who participates with or assists the professional review
5 committee or governing board with respect to the professional review activities.

6 ~~(2)(a)~~ (b) (I) Notwithstanding subsection ~~(1)~~ **(3)(a)** of this section, nothing in this
7 ~~article~~ SECTION relieves an authorized entity that is a health care facility licensed or certified
8 pursuant to part 1 of article 3 of title 25 ~~C.R.S.~~, or certified pursuant to section 25-1.5-103
9 ~~C.R.S.~~, **(1)(a)(II)** of liability to an injured person or wrongful death claimant for the facility's
10 independent negligence in the credentialing or privileging process for a person licensed
11 under article 36 **240** of this title **12** or licensed under article 38 of this title and granted
12 authority as an advanced practice nurse who provided health care services for the injured or
13 deceased person at the facility. For purposes of this ~~section~~ SUBSECTION (3), the facility's
14 participation in the credentialing process or the privileging process does not constitute the
15 corporate practice of medicine.

16 (b) (II) Nothing in this ~~section~~ SUBSECTION (3) affects the confidentiality or privilege
17 of any records subject to section ~~12-36.5-104(10)~~ **12-30-204(11)** or of information obtained
18 and maintained in accordance with a quality management program as described in section
19 25-3-109. ~~C.R.S.~~ The exceptions to confidentiality or privilege as set forth in sections
20 25-3-109 (4), C.R.S., and ~~12-36.5-104(10)~~ **12-30-204(11)** apply.

21 (e) (III) This subsection ~~(2)~~ **(3)(b)**, as amended, applies to actions filed on or after
22 July 1, 2012.

23 ~~(3)~~ (c) For the purposes of this ~~section~~ SUBSECTION (3), unless the context otherwise
24 requires,

25 (a) "professional review action" means an action or recommendation of a
26 professional review committee that is taken or made in the conduct of professional review
27 activity and that is based on the quality and appropriateness of patient care provided by, or
28 the competence or professional conduct of, an individual person licensed under article 36
29 **240** of this title **12** or licensed under article 38 of this title and granted authority as an
30 advanced practice nurse, which action affects or may affect adversely the person's clinical
31 privileges of or membership in an authorized entity. "Professional review action" includes
32 a formal decision by the professional review committee not to take an action or make a
33 recommendation as provided in this ~~paragraph~~ ~~(a)~~ SUBSECTION (3)(c) and also includes
34 professional review activities relating to a professional review action. An action is not based
35 upon the competence or professional conduct of a person if the action is primarily based on:

36 (I) The person's association or lack of association with a professional society or

1 association;

2 (II) The person's fees or ~~his or her~~ advertising or engaging in other competitive acts
3 intended to solicit or retain business;

4 (III) The person's association with, supervision of, delegation of authority to, support
5 for, training of, or participation in a private group practice with a member or members of a
6 particular class of health care practitioners or professionals;

7 (IV) The person's participation in prepaid group health plans, salaried employment,
8 or any other manner of delivering health services whether on a fee-for-service basis or other
9 basis;

10 (V) Any other matter that does not relate to the quality and appropriateness of patient
11 care provided by, or the competence or professional conduct of, a person licensed under
12 article 36 **240** of this title **12** or ~~licensed under article 38 of this title and granted authority~~
13 ~~as an advanced practice nurse.~~

14 ~~(b) (Deleted by amendment, L. 2012.)~~

15 **12-30-209. [Formerly 12-36.5-107] Repeal of part.** This ~~article~~ PART 2 is repealed,
16 effective September 1, 2019. Prior to ~~such~~ ITS repeal, the ~~department of regulatory agencies~~
17 ~~shall review~~ the functions of professional review committees ~~and the committee on~~
18 ~~anticompetitive conduct~~ ARE SCHEDULED FOR REVIEW in accordance with section 24-34-104.
19 C.R.S.

