

CHAPTER 245

PROFESSIONS AND OCCUPATIONS

HOUSE BILL 12-1300

BY REPRESENTATIVE(S) Gardner B., Barker, Ryden, Waller, Holbert, Kerr A., Labuda, Pabon, Summers, Kerr J., Todd;
also SENATOR(S) Aguilar, Boyd, Foster, Guzman, Newell, Schwartz, Tochtrop.

AN ACT

CONCERNING PROFESSIONAL REVIEW COMMITTEES, AND, IN CONNECTION THEREWITH, IMPLEMENTING THE SUNSET REVIEW RECOMMENDATIONS OF THE DEPARTMENT OF REGULATORY AGENCIES AND MAKING AN APPROPRIATION.

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

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

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 This article is repealed, effective ~~July 1, 2012~~ SEPTEMBER 1, 2019.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

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

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

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

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

(g) THE FUNCTIONS OF PROFESSIONAL REVIEW COMMITTEES PURSUANT TO

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

ARTICLE 36.5 OF TITLE 12, C.R.S.

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

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

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

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

(2) The general assembly recognizes that:

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

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

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

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

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

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

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

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

(2.5) "DIVISION" MEANS THE DIVISION OF REGISTRATIONS IN THE DEPARTMENT OF REGULATORY AGENCIES.

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

(4) "JOINT COMMISSION" MEANS THE JOINT COMMISSION OR ITS SUCCESSOR ENTITY.

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

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

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

(I) LETTERS OF REFERENCE;

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

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

(IV) ASSESSMENTS AND PROGRESS REPORTS TO ASSIST IN PROFESSIONAL REVIEW

ACTIVITIES, INCLUDING REPORTS AND ASSESSMENTS DEVELOPED BY INDEPENDENT CONSULTANTS IN CONNECTION WITH PROFESSIONAL REVIEW ACTIVITIES; AND

(V) Recordings or transcripts of proceedings, minutes, formal recommendations, decisions, exhibits, and other similar items or documents RELATED TO PROFESSIONAL REVIEW ACTIVITIES OR THE COMMITTEE ON ANTICOMPETITIVE CONDUCT AND typically constituting the records of administrative proceedings.

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

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

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

12-36.5-103. Use of professional review committees. (1) (a) The general assembly recognizes that:

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

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

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

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

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

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

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

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

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

(2.5) A PROFESSIONAL REVIEW COMMITTEE THAT IS REVIEWING THE COMPETENCE OF, THE QUALITY AND APPROPRIATENESS OF PATIENT CARE PROVIDED BY, OR THE PROFESSIONAL CONDUCT OF, A PERSON LICENSED UNDER ARTICLE 38 OF THIS TITLE AND GRANTED AUTHORITY AS AN ADVANCED PRACTICE NURSE MUST EITHER:

(a) HAVE, AS A VOTING MEMBER, AT LEAST ONE PERSON LICENSED UNDER ARTICLE 38 OF THIS TITLE AND GRANTED AUTHORITY AS AN ADVANCED PRACTICE NURSE WITH A SCOPE OF PRACTICE SIMILAR TO THAT OF THE PERSON WHO IS THE SUBJECT OF THE REVIEW; OR

(b) ENGAGE, TO PERFORM AN INDEPENDENT REVIEW AS APPROPRIATE, AN INDEPENDENT PERSON LICENSED UNDER ARTICLE 38 OF THIS TITLE AND GRANTED AUTHORITY AS AN ADVANCED PRACTICE NURSE WITH A SCOPE OF PRACTICE SIMILAR TO THAT OF THE PERSON WHO IS THE SUBJECT OF THE REVIEW. THE PERSON CONDUCTING THE INDEPENDENT REVIEW MUST BE A PERSON WHO WAS NOT PREVIOUSLY INVOLVED IN THE REVIEW.

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

(4) ~~Any~~ A professional review committee established by any of the following ~~organizations, entities, or professional societies shall be~~ AUTHORIZED ENTITIES IS an approved professional review committee under this article if it operates ~~pursuant to~~ IN COMPLIANCE WITH written bylaws, policies, or procedures that are in compliance with this article and that have been approved by ~~its~~ THE AUTHORIZED ENTITY'S governing board AND IF IT IS REGISTERED WITH THE DIVISION IN ACCORDANCE WITH SECTION 12-36.5-104.6:

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

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

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

(c.5) A SOCIETY OR ASSOCIATION OF ADVANCED PRACTICE NURSES LICENSED AND REGISTERED PURSUANT TO ARTICLE 38 OF THIS TITLE AND RESIDING IN THIS STATE, IF THE ADVANCED PRACTICE NURSE WHOSE SERVICES ARE THE SUBJECT OF THE REVIEW IS A MEMBER OF THE SOCIETY OR ASSOCIATION;

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

(d.5) A SOCIETY OR ASSOCIATION OF ADVANCED PRACTICE NURSES LICENSED AND REGISTERED PURSUANT TO ARTICLE 38 OF THIS TITLE AND PRACTICING IN A SPECIFIED NURSING ROLE AND POPULATION FOCUS, AS DEFINED BY THE NURSING BOARD, WHICH SOCIETY OR ASSOCIATION HAS BEEN DESIGNATED BY THE NURSING BOARD AS THE SPECIFIC NURSING SOCIETY OR ASSOCIATION REPRESENTATIVE OF THOSE ADVANCED PRACTICE NURSES PRACTICING IN THAT NURSING ROLE AND POPULATION FOCUS, IF THE ADVANCED PRACTICE NURSE WHOSE SERVICES ARE THE SUBJECT OF THE REVIEW IS A MEMBER OF THE DESIGNATED NURSING SOCIETY OR ASSOCIATION.

(e) An individual practice association or a preferred provider organization ~~comprised~~ CONSISTING OF ~~at least twenty-five physicians~~ PERSONS LICENSED UNDER ARTICLE 36 OF THIS TITLE, OR LICENSED UNDER ARTICLE 38 OF THIS TITLE AND GRANTED AUTHORITY AS ADVANCED PRACTICE NURSES, or a medical group ~~which~~

THAT predominantly serves members of a health maintenance organization licensed pursuant to parts 1 and 4 of article 16 of title 10, C.R.S. A professional review committee established pursuant to this paragraph (e) ~~shall have~~ HAS jurisdiction to review only ~~physicians~~ PERSONS LICENSED UNDER ARTICLE 36 OF THIS TITLE, OR LICENSED UNDER ARTICLE 38 OF THIS TITLE AND GRANTED AUTHORITY AS ADVANCED PRACTICE NURSES, who are members of the association or organization creating and authorizing that committee; except that ~~such~~ THE professional review committee may review the care provided to a particular patient referred by a member of ~~such~~ THE association or organization to another ~~physician~~ PERSON LICENSED UNDER ARTICLE 36 OF THIS TITLE, OR LICENSED UNDER ARTICLE 38 OF THIS TITLE AND GRANTED AUTHORITY AS AN ADVANCED PRACTICE NURSE, who is not a member of ~~such~~ THE association or organization.

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

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

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

(i) (I) A nonprofit corporation or association ~~comprised~~ CONSISTING of representatives from a statewide ~~medical~~ PROFESSIONAL society and a statewide hospital association. ~~Such~~ THE association ~~shall be comprised~~ MUST CONSIST of ~~physicians~~ PERSONS LICENSED UNDER ARTICLE 36 OF THIS TITLE OR LICENSED UNDER ARTICLE 38 OF THIS TITLE AND GRANTED AUTHORITY AS ADVANCED PRACTICE NURSES, hospital administrators, and hospital trustees, with a majority of ~~such~~ THE representatives being ~~physicians~~ PERSONS LICENSED UNDER ARTICLE 36 OF THIS TITLE WHEN THE SUBJECT OF THE INVESTIGATION IS A PERSON LICENSED UNDER ARTICLE 36 OF THIS TITLE, AND AT LEAST ONE OF THE REPRESENTATIVES BEING A PERSON LICENSED UNDER ARTICLE 38 OF THIS TITLE AND GRANTED AUTHORITY AS AN ADVANCED PRACTICE NURSE WHEN THE SUBJECT OF THE INVESTIGATION IS A PERSON LICENSED UNDER ARTICLE 38 OF THIS TITLE AND GRANTED AUTHORITY AS AN ADVANCED PRACTICE NURSE. The association may establish, or contract for, one or more ~~peer~~ PROFESSIONAL review committees to review the care by hospital staff ~~physicians~~ PERSONNEL WHO ARE LICENSED UNDER ARTICLE 36 OF THIS TITLE OR LICENSED UNDER ARTICLE 38 OF THIS TITLE AND GRANTED AUTHORITY AS ADVANCED PRACTICE NURSES, with priority given to small rural ~~medical~~ HOSPITAL staffs. ~~Such peer~~ THESE PROFESSIONAL review services ~~shall~~ MUST be available statewide on a fee-for-service basis to licensed or certified hospitals at the joint request of the governing ~~body~~ BOARD and the medical OR NURSING staff of the hospital or at the sole request of the governing ~~body~~ BOARD of the hospital. If a ~~physician~~ MEMBER being reviewed specializes in a generally recognized specialty of medicine OR NURSING, at least one of the ~~physicians~~ HEALTH CARE PROVIDERS on

the ~~peer~~ PROFESSIONAL review committee ~~shall~~ MUST be a ~~physician practicing~~ PERSON LICENSED UNDER ARTICLE 36 OF THIS TITLE, OR LICENSED UNDER ARTICLE 38 OF THIS TITLE AND GRANTED AUTHORITY AS AN ADVANCED PRACTICE NURSE, WHO PRACTICES such specialty.

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

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

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

(l) A PROVIDER NETWORK THAT INCLUDES PERSONS LICENSED UNDER ARTICLE 36 OF THIS TITLE, OR LICENSED UNDER ARTICLE 38 OF THIS TITLE AND GRANTED AUTHORITY AS ADVANCED PRACTICE NURSES, AND IS ORGANIZED PURSUANT TO PART 3 OF ARTICLE 18 OF TITLE 6, C.R.S.;

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

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

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

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

(q) A HOSPITAL LICENSED PURSUANT TO PART 1 OF ARTICLE 3 OF TITLE 25, C.R.S., OR CERTIFIED PURSUANT TO SECTION 25-1.5-103 (1) (a) (II), C.R.S.; AND

(r) AN AMBULATORY SURGICAL CENTER LICENSED PURSUANT TO PART 1 OF ARTICLE 3 OF TITLE 25, C.R.S.

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

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

(I) The qualifications AND COMPETENCE of any ~~physician licensed under article 36 of this title~~ PERSON LICENSED UNDER ARTICLE 36 OF THIS TITLE OR LICENSED UNDER ARTICLE 38 OF THIS TITLE AND GRANTED AUTHORITY AS AN ADVANCED

PRACTICE NURSE who seeks to subject himself or herself to the authority of any ~~organization, entity, or professional society listed in subsection (4) of this section or any organization or professional society that has been authorized by the medical board to establish a professional review committee pursuant to subsection (5) of this section~~ AUTHORIZED ENTITY; or

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

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

(7) The written bylaws, policies, or procedures of any professional review committee ~~shall~~ FOR PERSONS LICENSED UNDER ARTICLE 36 OF THIS TITLE OR LICENSED UNDER ARTICLE 38 OF THIS TITLE AND GRANTED AUTHORITY AS ADVANCED PRACTICE NURSES MUST provide for at least the following:

(a) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (a), if the findings of any investigation indicate that ~~the physician~~ A PERSON LICENSED UNDER ARTICLE 36 OF THIS TITLE OR LICENSED UNDER ARTICLE 38 OF THIS TITLE AND GRANTED AUTHORITY AS AN ADVANCED PRACTICE NURSE, AND who is the subject of the investigation, is lacking in qualifications OR COMPETENCY, has provided substandard or inappropriate patient care, or has exhibited inappropriate professional conduct AND THE PROFESSIONAL REVIEW COMMITTEE TAKES OR RECOMMENDS AN ACTION TO ADVERSELY AFFECT THE PERSON'S MEMBERSHIP, AFFILIATION, OR PRIVILEGES WITH THE AUTHORIZED ENTITY, the professional review committee shall hold a hearing ~~unless the physician waives his right to a hearing, to consider the findings except that,~~ AND RECOMMENDATIONS UNLESS THE PERSON WAIVES, IN WRITING, THE RIGHT TO A HEARING OR IS GIVEN NOTICE OF A HEARING AND FAILS TO APPEAR.

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

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

(c) The ~~physician who is the subject of any investigation, shall be given reasonable notice of such hearing~~ AUTHORIZED ENTITY SHALL GIVE TO THE SUBJECT OF ANY INVESTIGATION UNDER THIS SUBSECTION (7) REASONABLE NOTICE OF THE HEARING, AND OF ANY FINDING OR RECOMMENDATION THAT WOULD ADVERSELY AFFECT THE PERSON'S MEMBERSHIP, AFFILIATION, OR PRIVILEGES WITH THE

AUTHORIZED ENTITY, and ~~shall have~~ THE SUBJECT OF THE INVESTIGATION HAS a right to be present, to be represented by legal counsel at ~~such~~ THE hearing, and to offer evidence in his OR HER own behalf.

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

(e) THE PROFESSIONAL REVIEW COMMITTEE SHALL GIVE a copy of ~~such~~ THE recommendations ~~shall be given~~ to the subject ~~physician~~ OF THE INVESTIGATION, who then ~~shall have~~ HAS the right to appeal ~~the findings and recommendations of the professional review committee~~ to the governing board to which the recommendations are made WITH REGARD TO ANY FINDING OR RECOMMENDATION THAT WOULD ADVERSELY AFFECT HIS OR HER MEMBERSHIP, AFFILIATION, OR PRIVILEGES WITH THE AUTHORIZED ENTITY.

(f) THE PROFESSIONAL REVIEW COMMITTEE SHALL FORWARD a copy of any recommendations made pursuant to paragraph (d) of this subsection (7) ~~shall be promptly forwarded~~ to the medical board IF THE SUBJECT OF THE INVESTIGATION IS LICENSED UNDER ARTICLE 36 OF THIS TITLE, OR TO THE NURSING BOARD IF THE SUBJECT OF THE INVESTIGATION IS LICENSED UNDER ARTICLE 38 OF THIS TITLE AND GRANTED AUTHORITY AS AN ADVANCED PRACTICE NURSE.

(8) (a) All governing boards shall adopt written bylaws, policies, or procedures UNDER which ~~provide that a physician~~ PERSON LICENSED UNDER ARTICLE 36 OF THIS TITLE OR LICENSED UNDER ARTICLE 38 OF THIS TITLE AND GRANTED AUTHORITY AS AN ADVANCED PRACTICE NURSE who is the subject of an adverse recommendation by a professional review committee may appeal to the governing board ~~Such~~ FOLLOWING A HEARING IN ACCORDANCE WITH SUBSECTION (7) OF THIS SECTION. THE bylaws, policies, or procedures ~~shall~~ MUST provide that the ~~physician shall~~ PERSON be given reasonable notice of his OR HER right to appeal and, unless waived by the ~~physician shall have~~ PERSON, HAS the right to appear before the governing board, to be represented by legal counsel, and to offer ~~such~~ THE argument on the record as he OR SHE deems appropriate.

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

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

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

(b) Notwithstanding the provisions of paragraph (a) of this subsection (10), ~~such~~

SUBJECT TO SUBSECTION (13) OF THIS SECTION, THE RECORDS ~~shall be~~ ARE subject to subpoena and available for use:

(I) By the committee on anticompetitive conduct;

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

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

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

(V) BY CMS IN ACCORDANCE WITH ITS AUTHORITY OVER FEDERAL HEALTH CARE PROGRAM PARTICIPATION BY AN AUTHORIZED ENTITY;

~~(IV)~~ (VI) By ~~a~~ AN AUTHORIZED ENTITY OR governing board seeking judicial review;

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

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

(11) (a) EXCEPT AS PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (11), THE RECORDS OF AN AUTHORIZED ENTITY OR ITS PROFESSIONAL REVIEW COMMITTEE MAY BE DISCLOSED TO:

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

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

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

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

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

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

(12) THE RECORDS OF AN AUTHORIZED ENTITY OR ITS PROFESSIONAL REVIEW COMMITTEE OR GOVERNING BOARD MAY BE SHARED BY AND AMONG AUTHORIZED ENTITIES AND THEIR PROFESSIONAL REVIEW COMMITTEES AND GOVERNING BOARDS CONCERNING THE COMPETENCE, PROFESSIONAL CONDUCT OF, OR THE QUALITY AND APPROPRIATENESS OF PATIENT CARE PROVIDED BY, A HEALTH CARE PROVIDER WHO SEEKS TO SUBJECT HIMSELF OR HERSELF TO, OR IS CURRENTLY SUBJECT TO, THE AUTHORITY OF THE AUTHORIZED ENTITY.

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

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

~~(12)~~ (14) Investigations, examinations, hearings, meetings, ~~or any~~ AND other proceedings of a professional review committee or governing board conducted pursuant to ~~the provisions of~~ this part 1 ~~shall be~~ ARE exempt from ~~the provisions of~~ any law requiring that proceedings be conducted publicly or that the ~~minutes or~~ records, INCLUDING ANY MINUTES, be open to public inspection.

~~(13)~~ (15) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (10), (11), OR (12) OF THIS SECTION, all proceedings, recommendations, records, and reports involving professional review committees or governing boards ~~shall be~~ ARE confidential.

~~(14)~~ (16) A professional review committee or governing board ~~which~~ THAT is constituted and conducts its reviews and activities ~~pursuant to the provisions of~~ IN ACCORDANCE WITH this part 1 is ~~declared not to be~~ an unlawful conspiracy in violation of section 6-4-104 or 6-4-105, C.R.S.

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

follows:

12-36.5-104.4. Hospital professional review committees. (1) The quality and appropriateness of patient care rendered by ~~physicians~~ PERSONS LICENSED UNDER ARTICLE 36 OF THIS TITLE, LICENSED UNDER ARTICLE 38 OF THIS TITLE AND GRANTED AUTHORITY AS ADVANCED PRACTICE NURSES, and other licensed health care professionals so influence the total quality of patient care that a review of care provided in a hospital is ineffective without concomitantly reviewing THE overall COMPETENCE, PROFESSIONAL CONDUCT OF, OR THE quality and appropriateness of care rendered by, ~~physicians and other licensed health care professionals~~ SUCH PERSONS.

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

12-36.5-104.6. Governing boards to register with division - annual reports - aggregation and publication of data - definition - rules. (1) AS USED IN THIS SECTION, "ADVERSELY AFFECTING" HAS THE SAME MEANING AS SET FORTH IN 45 CFR 60.3; EXCEPT THAT IT DOES NOT INCLUDE A PRECAUTIONARY SUSPENSION OR ANY PROFESSIONAL REVIEW ACTION AFFECTING A PERSON LICENSED UNDER ARTICLE 36 OF THIS TITLE, OR LICENSED UNDER ARTICLE 38 OF THIS TITLE AND GRANTED AUTHORITY AS AN ADVANCED PRACTICE NURSE, FOR A PERIOD OF THIRTY DAYS OR LESS.

(2) EACH GOVERNING BOARD THAT ESTABLISHES OR USES ONE OR MORE PROFESSIONAL REVIEW COMMITTEES TO REVIEW THE PRACTICE OF PERSONS LICENSED UNDER ARTICLE 36 OF THIS TITLE OR LICENSED UNDER ARTICLE 38 OF THIS TITLE AND GRANTED AUTHORITY AS ADVANCED PRACTICE NURSES SHALL:

(a) REGISTER WITH THE DIVISION IN A FORM SATISFACTORY TO THE DIVISION ON OR BEFORE JULY 1, 2013, IF THE GOVERNING BOARD HAS ONE OR MORE EXISTING PROFESSIONAL REVIEW COMMITTEES, OR, IF THE GOVERNING BOARD FIRST ESTABLISHES A PROFESSIONAL REVIEW COMMITTEE ON OR AFTER JULY 1, 2013, WITHIN THIRTY DAYS AFTER APPROVING THE WRITTEN BYLAWS, POLICIES, OR PROCEDURES FOR THE PROFESSIONAL REVIEW COMMITTEE;

(b) IN ADDITION TO ANY OTHER STATE OR FEDERAL REPORTING REQUIREMENTS:

(I) REPORT ANNUALLY TO THE MEDICAL BOARD, IN A FORM SATISFACTORY TO THE MEDICAL BOARD, THE NUMBER OF FINAL PROFESSIONAL REVIEW ACTIONS IN EACH OF THE FOLLOWING CATEGORIES RELATING TO INDIVIDUALS LICENSED UNDER ARTICLE 36 OF THIS TITLE:

(A) ADVERSELY AFFECTING THE INDIVIDUAL;

(B) IN WHICH AN AUTHORIZED ENTITY ACCEPTED THE INDIVIDUAL'S SURRENDER OF CLINICAL PRIVILEGES, MEMBERSHIP, OR AFFILIATION WHILE THE INDIVIDUAL WAS UNDER INVESTIGATION;

(C) IN WHICH AN AUTHORIZED ENTITY ACCEPTED THE INDIVIDUAL'S SURRENDER OF CLINICAL PRIVILEGES, MEMBERSHIP, OR AFFILIATION IN RETURN FOR NOT CONDUCTING AN INVESTIGATION; AND

(D) IN WHICH THE PROFESSIONAL REVIEW COMMITTEE MADE RECOMMENDATIONS REGARDING THE INDIVIDUAL FOLLOWING A HEARING PURSUANT TO SECTION 12-36.5-104 (7) (d).

(II) REPORT ANNUALLY TO THE NURSING BOARD, IN A FORM SATISFACTORY TO THE NURSING BOARD, THE NUMBER OF FINAL PROFESSIONAL REVIEW ACTIONS IN EACH OF THE FOLLOWING CATEGORIES RELATING TO INDIVIDUALS LICENSED UNDER ARTICLE 38 OF THIS TITLE AND GRANTED AUTHORITY AS ADVANCED PRACTICE NURSES:

(A) ADVERSELY AFFECTING THE INDIVIDUAL;

(B) IN WHICH AN AUTHORIZED ENTITY ACCEPTED THE INDIVIDUAL'S SURRENDER OF CLINICAL PRIVILEGES, MEMBERSHIP, OR AFFILIATION WHILE THE INDIVIDUAL WAS UNDER INVESTIGATION;

(C) IN WHICH AN AUTHORIZED ENTITY ACCEPTED THE INDIVIDUAL'S SURRENDER OF CLINICAL PRIVILEGES, MEMBERSHIP, OR AFFILIATION IN RETURN FOR NOT CONDUCTING AN INVESTIGATION; AND

(D) IN WHICH THE PROFESSIONAL REVIEW COMMITTEE MADE RECOMMENDATIONS REGARDING THE INDIVIDUAL FOLLOWING A HEARING PURSUANT TO SECTION 12-36.5-104 (7) (d).

(c) (I) REPORT TO THE DIVISION, IN A DE-IDENTIFIED MANNER, ON ITS PROFESSIONAL REVIEW ACTIVITIES DURING THE IMMEDIATELY PRECEDING CALENDAR YEAR IN A FORM SATISFACTORY TO THE DIVISION. THESE REPORTS MUST INCLUDE AGGREGATE DATA, WHICH IS LIMITED TO THE FOLLOWING:

(A) THE NUMBER OF INVESTIGATIONS COMPLETED DURING THE YEAR;

(B) THE NUMBER OF INVESTIGATIONS THAT RESULTED IN NO ACTION;

(C) THE NUMBER OF INVESTIGATIONS THAT RESULTED IN WRITTEN INVOLUNTARY REQUIREMENTS FOR IMPROVEMENT SENT TO THE SUBJECT OF THE INVESTIGATION BY THE AUTHORIZED ENTITY; AND

(D) THE NUMBER OF INVESTIGATIONS THAT RESULTED IN WRITTEN AGREEMENTS FOR IMPROVEMENT BETWEEN THE SUBJECT OF THE INVESTIGATION AND THE AUTHORIZED ENTITY.

(II) (A) THE MEDICAL BOARD AND THE NURSING BOARD SHALL FORWARD THE REPORTS RECEIVED PURSUANT TO SUB-SUBPARAGRAPHS (I) AND (II), RESPECTIVELY, OF PARAGRAPH (b) OF THIS SUBSECTION (2) TO THE DIVISION IN A DE-IDENTIFIED MANNER.

(B) THE DIVISION SHALL NOT PUBLISH ANY INFORMATION IDENTIFYING THE GOVERNING BOARD OR AUTHORIZED ENTITY MAKING A REPORT UNDER PARAGRAPH (b) OF THIS SUBSECTION (2) OR THIS PARAGRAPH (c), AND SUCH REPORTS AND INFORMATION ARE NOT PUBLIC RECORDS UNDER THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24, C.R.S.

(III) REPORTS SUBMITTED PURSUANT TO THIS PARAGRAPH (c) MUST INCLUDE ONLY INVESTIGATIONS IN WHICH NO FINAL ACTION ADVERSELY AFFECTING THE SUBJECT OF THE INVESTIGATION WAS TAKEN OR RECOMMENDED.

(3) (a) THE DIVISION SHALL PUBLISH THE DATA PROVIDED PURSUANT TO PARAGRAPHS (b) AND (c) OF SUBSECTION (2) OF THIS SECTION IN AGGREGATE FORM AND WITHOUT INDIVIDUALLY IDENTIFIABLE INFORMATION CONCERNING THE GOVERNING BOARD, THE AUTHORIZED ENTITY, OR ANY PERSON LICENSED UNDER ARTICLE 36 OF THIS TITLE, OR LICENSED UNDER ARTICLE 38 OF THIS TITLE AND GRANTED AUTHORITY AS AN ADVANCED PRACTICE NURSE, WHO WAS SUBJECT TO REVIEW.

(b) THE DIVISION SHALL MAINTAIN AND SHALL PUBLISH ON-LINE, THROUGH ITS WEB SITE, A CURRENT LIST OF ALL GOVERNING BOARDS THAT ARE REGISTERED IN ACCORDANCE WITH THIS SECTION AND THAT OTHERWISE ARE IN COMPLIANCE WITH THIS ARTICLE.

(4) THE DIVISION SHALL ADOPT RULES TO IMPLEMENT THIS SECTION AND MAY COLLECT A REASONABLE REGISTRATION FEE TO RECOVER ITS DIRECT AND INDIRECT COSTS OF ADMINISTERING THE REGISTRATION AND PUBLICATION SYSTEMS REQUIRED BY THIS SECTION.

(5) FOR PURPOSES OF THIS SECTION, AN INVESTIGATION OCCURS WHEN THE AUTHORIZED ENTITY OR ITS PROFESSIONAL REVIEW COMMITTEE NOTIFIES THE SUBJECT OF THE INVESTIGATION IN WRITING THAT AN INVESTIGATION HAS COMMENCED.

(6) THE MEDICAL BOARD AND THE NURSING BOARD SHALL NOT INITIATE AN INVESTIGATION OR ISSUE A SUBPOENA BASED SOLELY ON THE DATA REPORTED PURSUANT TO PARAGRAPH (c) OF SUBSECTION (2) OF THIS SECTION.

(7) (a) A GOVERNING BOARD THAT FAILS TO REGISTER WITH THE DIVISION PURSUANT TO PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION IS NOT ENTITLED TO ANY IMMUNITY AFFORDED UNDER THIS ARTICLE UNTIL THE DATE THAT THE GOVERNING BOARD SO REGISTERS. A GOVERNING BOARD'S FAILURE TO REGISTER DOES NOT AFFECT ANY IMMUNITY, CONFIDENTIALITY, OR PRIVILEGE AFFORDED TO AN INDIVIDUAL PARTICIPATING IN PROFESSIONAL REVIEW ACTIVITIES.

(b) A GOVERNING BOARD'S FAILURE TO REPORT AS REQUIRED BY THIS SECTION DOES NOT AFFECT ANY IMMUNITY, CONFIDENTIALITY, OR PRIVILEGE AFFORDED TO THE GOVERNING BOARD UNDER THIS ARTICLE.

SECTION 9. In Colorado Revised Statutes, **amend** 12-36.5-105 as follows:

12-36.5-105. Immunity from liability. (1) A member of a professional review committee, A GOVERNING BOARD OR ANY COMMITTEE OR THIRD PARTY DESIGNATED BY THE GOVERNING BOARD UNDER SECTION 12-36.5-104 (8) (b) AND ANY PERSON SERVING ON THE STAFF OF THAT COMMITTEE, BOARD, PANEL, OR THIRD PARTY, a witness OR CONSULTANT before a professional review committee, ~~or~~ AND any person who files a complaint or otherwise participates in the professional review process ~~shall be~~ IS immune from suit AND LIABILITY FOR DAMAGES in any civil or criminal

action, including antitrust actions, brought by a ~~physician who is the subject of the review by such professional review committee, if such member made a reasonable effort to obtain the facts of the matter as to which he acted, acted in the reasonable belief that the action taken by him was warranted by the facts, and otherwise acted in good faith within the scope of such professional review committee process and if such witness or participant acted in good faith within the scope of such professional review committee process~~ PERSON LICENSED UNDER ARTICLE 36 OF THIS TITLE OR LICENSED UNDER ARTICLE 38 OF THIS TITLE WHO IS THE SUBJECT OF THE REVIEW BY SUCH PROFESSIONAL REVIEW COMMITTEE UNLESS, IN CONNECTION WITH THE PROFESSIONAL REVIEW PROCESS, THE PERSON PROVIDED FALSE INFORMATION AND KNEW THAT THE INFORMATION WAS FALSE.

(2) The governing board ~~the individual members of such board~~ and the AUTHORIZED entity that has established a ~~peer~~ PROFESSIONAL review committee pursuant to section 12-36.5-104 ~~the board's staff, any person acting as a witness or consultant to the board, any witness testifying in a proceeding authorized under this article, and any person who lodges a complaint pursuant to this article shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as board member, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this article shall be immune from any civil or criminal liability that may result from such participation.~~ IS IMMUNE FROM SUIT AND LIABILITY FOR DAMAGES IN ANY CIVIL OR CRIMINAL ACTION, INCLUDING ANTITRUST ACTIONS, BROUGHT BY A PERSON LICENSED UNDER ARTICLE 36 OF THIS TITLE OR LICENSED UNDER ARTICLE 38 OF THIS TITLE WHO IS THE SUBJECT OF THE REVIEW BY SUCH PROFESSIONAL REVIEW COMMITTEE IF THE PROFESSIONAL REVIEW ACTION WAS TAKEN WITHIN THE SCOPE OF THE PROFESSIONAL REVIEW PROCESS AND WAS TAKEN:

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

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

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

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

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

12-36.5-106. Committee on anticompetitive conduct - rules. (2) The

committee ~~shall be composed~~ CONSISTS of five persons, none of whom ~~shall be~~ IS a member of the medical board, APPOINTED AS FOLLOWS:

(a) THE MEDICAL BOARD SHALL APPOINT four members of the committee, ~~shall~~ WHO MUST be licensed to practice medicine UNDER ARTICLE 36 OF THIS TITLE, OR LICENSED UNDER ARTICLE 38 OF THIS TITLE AND GRANTED AUTHORITY AS ADVANCED PRACTICE NURSES, and actively engaged in the practice of medicine PRACTICING in this state. ~~and shall be appointed by the medical board. No~~ A member APPOINTED PURSUANT TO THIS PARAGRAPH (a) shall NOT practice in the same medical subspecialty as any other member ~~nor~~ AND SHALL NOT conduct his or her primary practice in the same county as any other member.

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

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

(7) ~~Any physician~~ A PERSON LICENSED UNDER ARTICLE 36 OF THIS TITLE, OR LICENSED UNDER ARTICLE 38 OF THIS TITLE AND GRANTED AUTHORITY AS AN ADVANCED PRACTICE NURSE, AND who is the subject of a final action by a governing board, which action results in the denial, termination, or restriction of privileges at or membership ~~in~~ or participation in an organization, and who believes that ~~such~~ THE action resulted from unreasonable anticompetitive conduct ~~shall have, as his sole and exclusive remedy,~~ MAY SEEK direct review of the record by the committee. ~~such~~ THE review, ~~shall be~~ WHICH IS THE PERSON'S EXCLUSIVE REMEDY, IS limited to the sole issue of whether ~~such~~ THE final board action resulted from unreasonable anticompetitive conduct. Failure to exhaust this administrative remedy before the committee ~~shall preclude~~ PRECLUDES the right of de novo review on the merits of the issue of unreasonable anticompetitive conduct.

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

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

(a) ~~Review shall be initiated~~ THE AGGRIEVED PERSON MUST INITIATE THE REVIEW by filing a verified complaint with the committee, no later than thirty days after receipt of a notice of final action by the governing board, alleging, with specificity,

all facts disclosed in the record and all additional facts known to the complainant ~~which~~ THAT would support his OR HER allegation that the final action taken by the governing board resulted from unreasonable anticompetitive conduct.

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

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

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

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

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

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

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

(c) As a condition of filing a complaint under paragraph (a) of subsection (9) of this section, the complainant shall post a cash bond or equivalent liquid security of three thousand dollars to cover anticipated costs ~~which~~ THAT may be assessed against him OR HER. Within thirty days ~~of~~ AFTER receipt of service of a complaint

on a governing board, or concurrently with the filing of an answer, whichever is earlier, the governing board shall post a cash bond or equivalent liquid security of three thousand dollars to cover anticipated costs ~~which~~ THAT may be assessed against it as a party. The committee may enforce this latter requirement through the district court.

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

(13) (a) ~~Any~~ A member of the committee, ~~any~~ A member of the committee's staff, ~~any~~ A person acting as a witness or consultant to the committee, ~~any~~ A witness testifying in a proceeding authorized under this article, and ~~any~~ A person who lodges a complaint pursuant to this article ~~shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as committee member, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this article shall be immune from any civil or criminal liability that may result from such participation~~ IS IMMUNE FROM SUIT IN ANY CIVIL OR CRIMINAL ACTION, INCLUDING ANTITRUST ACTIONS, AND IS IMMUNE FROM LIABILITY FOR DAMAGES UNLESS, IN CONNECTION WITH THE PROFESSIONAL REVIEW PROCESS, THE PERSON PROVIDED FALSE INFORMATION AND KNEW THAT THE INFORMATION WAS FALSE.

(b) THE COMMITTEE IS IMMUNE FROM SUIT IN ANY CIVIL OR CRIMINAL ACTION, INCLUDING ANTITRUST ACTIONS, AND IS IMMUNE FROM LIABILITY FOR DAMAGES IF THE PROFESSIONAL REVIEW ACTION WAS TAKEN WITHIN THE SCOPE OF THE PROFESSIONAL REVIEW PROCESS AND WAS TAKEN:

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

(II) AFTER AN OBJECTIVELY REASONABLE EFFORT TO OBTAIN THE FACTS OF THE MATTER;

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

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

SECTION 11. In Colorado Revised Statutes, **amend** 12-36.5-202 as follows:

12-36.5-202. Rules - compliance with reporting requirements of federal act.
~~Upon implementation of~~ THE MEDICAL BOARD AND NURSING BOARD MAY

PROMULGATE RULES TO COMPLY WITH THE REPORTING REQUIREMENTS OF the federal "Health Care Quality Improvement Act of 1986", as amended, 42 U.S.C. secs. 11101 through 11152, and ~~upon implementation of~~ MAY PARTICIPATE IN the federal data bank. ~~the medical board shall promulgate rules to comply with such act which rules are consistent with the standards and the reporting requirements of such act.~~

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

12-36.5-203. Limitations on liability relating to professional review actions.

(1) The following persons ~~shall~~ ARE IMMUNE FROM SUIT AND not ~~be~~ liable for damages in any civil action with respect to their participation in, assistance to, or reporting of information to a professional review ~~body~~ COMMITTEE in connection with a professional review action in this state, and such persons ~~shall~~ ARE not ~~be~~ liable for damages in ~~any~~ A civil action with respect to their participation in, assistance to, or reporting of information to a professional review ~~body~~ ~~which~~ COMMITTEE THAT meets the standards of and is in conformity with ~~the provisions~~ of the federal "Health Care Quality Improvement Act of 1986", as amended, 42 U.S.C. secs. 11101 through 11152: ~~upon implementation of such act by the federal government:~~

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

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

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

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

(2) (a) ~~Notwithstanding any other provision of law, no person, whether as a witness or otherwise, who provides information to a professional review body regarding the competence or professional conduct of a physician shall be held, by reason of having provided such information, liable in damages in any civil action unless such information is false and the person providing it knew that such information was false.~~ NOTWITHSTANDING SUBSECTION (1) OF THIS SECTION, NOTHING IN THIS ARTICLE RELIEVES AN AUTHORIZED ENTITY THAT IS A HEALTHCARE FACILITY LICENSED OR CERTIFIED PURSUANT TO PART 1 OF ARTICLE 3 OF TITLE 25, C.R.S., OR CERTIFIED PURSUANT TO SECTION 25-1.5-103, C.R.S., OF LIABILITY TO AN INJURED PERSON OR WRONGFUL DEATH CLAIMANT FOR THE FACILITY'S INDEPENDENT NEGLIGENCE IN THE CREDENTIALING OR PRIVILEGING PROCESS FOR A PERSON LICENSED UNDER ARTICLE 36 OF THIS TITLE OR LICENSED UNDER ARTICLE 38 OF THIS TITLE AND GRANTED AUTHORITY AS AN ADVANCED PRACTICE NURSE WHO PROVIDED HEALTH CARE SERVICES FOR THE INJURED OR DECEASED PERSON AT THE FACILITY. FOR PURPOSES OF THIS SECTION, THE FACILITY'S PARTICIPATION IN THE CREDENTIALING PROCESS OR THE PRIVILEGING PROCESS DOES NOT CONSTITUTE THE

CORPORATE PRACTICE OF MEDICINE.

(b) NOTHING IN THIS SECTION AFFECTS THE CONFIDENTIALITY OR PRIVILEGE OF ANY RECORDS SUBJECT TO SECTION 12-36.5-104 (10) OR OF INFORMATION OBTAINED AND MAINTAINED IN ACCORDANCE WITH A QUALITY MANAGEMENT PROGRAM AS DESCRIBED IN SECTION 25-3-109, C.R.S. THE EXCEPTIONS TO CONFIDENTIALITY OR PRIVILEGE AS SET FORTH IN SECTIONS 25-3-109 (4), C.R.S., AND 12-36.5-104 (10) APPLY.

(c) THIS SUBSECTION (2), AS AMENDED, APPLIES TO ACTIONS FILED ON OR AFTER JULY 1, 2012.

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

(a) "Professional review action" means an action or recommendation of a professional review ~~body which~~ COMMITTEE THAT is taken or made in the conduct of professional review activity and ~~which~~ THAT is based on the QUALITY AND APPROPRIATENESS OF PATIENT CARE PROVIDED BY, OR THE competence or professional conduct of, an individual ~~physician~~ PERSON LICENSED UNDER ARTICLE 36 OF THIS TITLE OR LICENSED UNDER ARTICLE 38 OF THIS TITLE AND GRANTED AUTHORITY AS AN ADVANCED PRACTICE NURSE, which ~~conduct~~ ACTION affects or may affect adversely the PERSON'S clinical privileges of or membership in ~~a professional society of the physician~~ AN AUTHORIZED ENTITY. "Professional review action" includes a formal decision by the professional review ~~body~~ COMMITTEE not to take an action or make a recommendation as provided in this paragraph (a) and also includes professional review activities relating to a professional review action. An action ~~shall~~ IS not ~~be considered to be~~ based upon the competence or professional conduct of a ~~physician~~ PERSON if the action is primarily based on:

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

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

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

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

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

(b) "Professional review body" means a health care entity and the governing body

~~or any committee of a health care entity which conducts professional review actions and includes any committee of the medical staff of such an entity when assisting the governing body in a professional review activity.~~

SECTION 13. In Colorado Revised Statutes, 12-36-118, **amend** (10) (b) as follows:

12-36-118. Disciplinary action by board - immunity - rules. (10) (b) For purposes of the records related to a complaint filed pursuant to this section against a licensee, the board ~~shall be~~ IS considered a professional review committee, the records related to the complaint ~~shall~~ include all records described in section 12-36.5-102 ~~(4)~~ (7), and section 12-36.5-104 ~~(10)~~ ~~shall apply~~ (11) APPLIES to those records.

SECTION 14. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the division of registrations cash fund created in section 24-34-105 (2) (b) (I), Colorado Revised Statutes, not otherwise appropriated, to the department of regulatory agencies, for the fiscal year beginning July 1, 2012, the sum of \$9,175, or so much thereof as may be necessary, to be allocated for the implementation of this act as follows:

- (a) \$6,222 for the division of registrations for personal services;
- (b) \$682 for the division of registrations for operating expenses; and
- (c) \$2,271 for the purchase of legal services.

(2) In addition to any other appropriation, there is hereby appropriated to the department of law, for the fiscal year beginning July 1, 2012, the sum of \$2,271, or so much thereof as may be necessary, for the provision of legal services for the department of regulatory agencies related to the implementation of this act. Said sum is from reappropriated funds received from the department of regulatory agencies out of the appropriation made in paragraph (c) of subsection (1) of this section.

SECTION 15. Effective date. This act takes effect July 1, 2012.

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

Approved: June 4, 2012