

Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 12-0356.01 Duane Gall x4335

HOUSE BILL 12-1300

HOUSE SPONSORSHIP

Gardner B., Barker, Ryden, Waller

SENATE SPONSORSHIP

Aguilar,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING PROFESSIONAL REVIEW COMMITTEES, AND, IN**
102 **CONNECTION THEREWITH, IMPLEMENTING THE SUNSET REVIEW**
103 **RECOMMENDATIONS OF THE DEPARTMENT OF REGULATORY**
104 **AGENCIES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Sunset Process - House Judiciary Committee. The bill implements the recommendations made by the department of regulatory

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

HOUSE
Amended 2nd Reading
March 16, 2012

agencies (DORA) pursuant to DORA's 2011 sunset review report of professional review committees and the committee on anticompetitive conduct.

Sections 1 and 2 of the bill continue the functions of professional review committees for 7 years, until 2019.

Sections 3 to 7 of the bill authorize professional review of physician assistants and advanced practice nurses.

Section 6 of the bill also specifies that the sharing of professional review records and information with regulators and other professional review entities does not waive the professional review privilege or violate applicable confidentiality provisions.

Section 8 of the bill requires entities that conduct professional review of physicians or physician assistants to register with the Colorado medical board and report on their activities, and directs the medical board to publish summary data in aggregated form. **Section 9** of the bill requires entities that conduct professional review of the practice of advanced practice nursing to register with the nursing board and report on their activities, and directs the nursing board to publish summary data in aggregated form. If an entity fails to register and report as required, the entity and its governing board lose the qualified immunity that would otherwise apply for acts and omissions occurring during the period of noncompliance.

The bill also corrects inconsistent references to peer review and professional review and makes nonsubstantive clarifications and corrections to statutory language.

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

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

4 **12-36.5-107. Repeal of article.** This article is repealed, effective
5 ~~July 1, 2012~~ SEPTEMBER 1, 2019. Prior to such repeal, THE DEPARTMENT
6 OF REGULATORY AGENCIES SHALL REVIEW the functions of professional
7 review committees and the committee on anticompetitive conduct ~~shall~~
8 ~~be reviewed~~ in accordance with section 24-34-104, C.R.S.

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

1 **24-34-104. General assembly review of regulatory agencies**
2 **and functions for termination, continuation, or reestablishment.**

3 (43) The following agencies, functions, or both, shall terminate on July
4 1, 2012:

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

7 (50.5) The following agencies, functions, or both, shall terminate
8 on September 1, 2019:

9 (e) THE FUNCTIONS OF PROFESSIONAL REVIEW COMMITTEES
10 PURSUANT TO ARTICLE 36.5 OF TITLE 12, C.R.S.

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

13 **12-36.5-101. Legislative declaration.** (1) The general assembly
14 hereby finds, determines, and declares that the Colorado medical board
15 created pursuant to IN article 36 of this title acts AND THE STATE BOARD
16 OF NURSING CREATED IN ARTICLE 38 OF THIS TITLE ACT for the state in its
17 sovereign capacity to govern licensure, discipline, and professional
18 review of persons licensed to practice medicine, LICENSED AS PHYSICIAN
19 ASSISTANTS, AND LICENSED TO PRACTICE NURSING AND GRANTED AN
20 AUTHORITY AS ADVANCED PRACTICE NURSES, RESPECTIVELY, in this state.

21 The general assembly further finds, determines, and declares that:

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

25 (b) It is necessary for the health, safety, and welfare of the people
26 of this state that the ~~Colorado medical board~~ APPROPRIATE REGULATORY
27 BOARDS exercise its THEIR authority to protect the people of this state

1 from the unauthorized practice of medicine and from unprofessional
2 conduct by persons licensed to practice medicine PROVIDE HEALTH CARE
3 under ~~article 36~~ ARTICLES 36 AND 38 of this title.

4 (2) The general assembly recognizes that:

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

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

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

17 (3) The general assembly recognizes that, in the proper exercise
18 of ~~its~~ THEIR authority and responsibilities under this article, the Colorado
19 medical board AND THE STATE BOARD OF NURSING must, to some extent,
20 replace competition with regulation, and that ~~such~~ THE replacement of
21 competition by regulation, particularly with regard to physicians PERSONS
22 LICENSED UNDER ARTICLE 36 OF THIS TITLE OR LICENSED UNDER ARTICLE
23 38 OF THIS TITLE AND GRANTED AN AUTHORITY AS ADVANCED PRACTICE
24 NURSES, is related to a legitimate state interest in the protection of the
25 health, safety, and welfare of the people of this state.

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

1 **12-36.5-102. Definitions.** As used in this article, unless the
2 context otherwise requires:

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

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

11 (2.5) "DIVISION" MEANS THE DIVISION OF REGISTRATIONS IN THE
12 DEPARTMENT OF REGULATORY AGENCIES.

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

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

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

25 ~~(3) (6) "Professional review committee" means any committee~~
26 authorized under ~~the provisions of~~ this article to review and evaluate the
27 QUALIFICATIONS, COMPETENCE, AND professional conduct of, and the

1 quality and appropriateness of patient care provided by, any ~~physician~~
2 PERSON licensed under article 36 of this title OR LICENSED UNDER ARTICLE
3 38 OF THIS TITLE AND GRANTED AN AUTHORITY AS AN ADVANCED
4 PRACTICE NURSE. "PROFESSIONAL REVIEW COMMITTEE" INCLUDES A
5 GOVERNING BOARD, A HEARING PANEL APPOINTED BY A GOVERNING BODY
6 TO CONDUCT A HEARING UNDER SECTION 12-36.5-104 (7) (a), AND AN
7 INDEPENDENT THIRD PARTY DESIGNATED BY A GOVERNING BOARD UNDER
8 SECTION 12-36.5-104 (8) (b).

9 ~~(4)~~ (7) (a) "Records" means any and all written, ELECTRONIC, or
10 ~~verbal~~ ORAL communications by any person ~~any member of an~~
11 ~~investigative body, or any professional review committee or governing~~
12 ~~board, or the staff thereof~~ arising from any activities of a professional
13 review committee, INCLUDING A GOVERNING BOARD, ESTABLISHED BY AN
14 authorized by ENTITY UNDER this article OR BY THE AGENT OR STAFF
15 THEREOF, including ~~the~~ ANY:

16 (I) REFERENCE;

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

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

22 (IV) ASSESSMENTS AND PROGRESS REPORTS TO ASSIST IN
23 PROFESSIONAL REVIEW ACTIVITIES, INCLUDING REPORTS AND
24 ASSESSMENTS DEVELOPED BY INDEPENDENT CONSULTANTS IN
25 CONNECTION WITH PROFESSIONAL REVIEW ACTIVITIES; AND

26 (V) Recordings or transcripts of proceedings, minutes, formal
27 recommendations, decisions, exhibits, and other similar items or

1 documents RELATED TO PROFESSIONAL REVIEW ACTIVITIES AND typically
2 constituting the records of administrative proceedings.

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

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

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

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

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

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

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

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

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

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

22 (b) Professional review committees, the members who constitute
23 ~~such~~ THE committees, governing boards, AUTHORIZED ENTITIES, and
24 persons who participate directly or indirectly in professional review
25 ~~proceedings~~ ACTIVITIES are granted certain immunities from SUIT AND
26 liability FOR DAMAGES arising from actions ~~which~~ THAT are within the
27 scope of their activities ~~and taken in good faith~~ as provided in section

1 12-36.5-105. ~~Such~~ THESE grants of immunity from SUIT AND liability FOR
2 DAMAGES are ~~declared to be~~ necessary to ensure that professional review
3 committees and governing boards can exercise their professional
4 knowledge and judgment.

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

7 **12-36.5-104. Establishment of professional review committees**

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

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

25 (2.5) A PROFESSIONAL REVIEW COMMITTEE THAT IS REVIEWING
26 THE QUALIFICATIONS AND COMPETENCE OF, THE QUALITY AND
27 APPROPRIATENESS OF PATIENT CARE PROVIDED BY, OR THE PROFESSIONAL

1 CONDUCT OF, A PERSON LICENSED UNDER ARTICLE 38 OF THIS TITLE AND
2 GRANTED AUTHORITY AS AN ADVANCED PRACTICE NURSE MUST EITHER:

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

7 (b) ENGAGE, TO PERFORM AN INDEPENDENT REVIEW AS
8 APPROPRIATE, AN INDEPENDENT PERSON LICENSED UNDER ARTICLE 38 OF
9 THIS TITLE AND GRANTED AUTHORITY AS AN ADVANCED PRACTICE NURSE
10 WITH A SCOPE OF PRACTICE SIMILAR TO THAT OF THE PERSON WHO IS THE
11 SUBJECT OF THE REVIEW.

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

16 (4) ~~Any~~ A professional review committee established by any of
17 the following ~~organizations, entities, or professional societies shall be~~
18 AUTHORIZED ENTITIES IS an approved professional review committee
19 under this article if it operates ~~pursuant to~~ IN SUBSTANTIAL COMPLIANCE
20 WITH written bylaws, policies, or procedures that are in compliance with
21 this article and that have been approved by ~~its~~ THE AUTHORIZED ENTITY'S
22 governing board AND IF, AT ALL TIMES AFTER JULY 1, 2013, IT IS
23 REGISTERED WITH THE DIVISION IN ACCORDANCE WITH SECTION
24 12-36.5-104.6:

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

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

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

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

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

23 (d.5) A SOCIETY OR ASSOCIATION OF ADVANCED PRACTICE NURSES
24 LICENSED AND REGISTERED PURSUANT TO ARTICLE 38 OF THIS TITLE AND
25 PRACTICING IN A SPECIFIED NURSING ROLE AND POPULATION FOCUS, AS
26 DEFINED BY THE NURSING BOARD, WHICH SOCIETY OR ASSOCIATION HAS
27 BEEN DESIGNATED BY THE NURSING BOARD AS THE SPECIFIC NURSING

1 SOCIETY OR ASSOCIATION REPRESENTATIVE OF THOSE ADVANCED
2 PRACTICE NURSES PRACTICING IN THAT NURSING ROLE AND POPULATION
3 FOCUS, IF THE ADVANCED PRACTICE NURSE WHOSE SERVICES ARE THE
4 SUBJECT OF THE REVIEW IS A MEMBER OF THE DESIGNATED NURSING
5 SOCIETY OR ASSOCIATION.

6 (e) An individual practice association or a preferred provider
7 organization ~~comprised~~ CONSISTING of at least twenty-five physicians
8 PERSONS LICENSED UNDER ARTICLE 36 OF THIS TITLE, OR LICENSED UNDER
9 ARTICLE 38 OF THIS TITLE AND GRANTED AUTHORITY AS ADVANCED
10 PRACTICE NURSES, or a medical group ~~which~~ THAT predominantly serves
11 members of a health maintenance organization licensed pursuant to parts
12 1 and 4 of article 16 of title 10, C.R.S. A professional review committee
13 established pursuant to this paragraph (e) ~~shall have~~ HAS jurisdiction to
14 review only physicians who are members of the association or
15 organization creating and authorizing that committee; except that ~~such~~
16 THE professional review committee may review the care provided to a
17 particular patient referred by a member of ~~such~~ THE association or
18 organization to another physician who is not a member of ~~such~~ THE
19 association or organization.

20 (f) A corporation authorized to insure ~~physicians~~ PERSONS
21 LICENSED UNDER ARTICLE 36 OF THIS TITLE OR LICENSED UNDER ARTICLE
22 38 OF THIS TITLE AND GRANTED AUTHORITY AS ADVANCED PRACTICE
23 NURSES pursuant to article 3 of title 10, C.R.S., or any other ~~corporation~~
24 ORGANIZATION authorized to insure ~~such physicians~~ PERSONS in this state
25 when designated by the medical board OR NURSING BOARD under
26 subsection (5) of this section;

27 (g) THE governing ~~boards~~ BOARD of any AUTHORIZED entity ~~which~~

1 THAT has a professional review committee established pursuant to article
2 36 OR ARTICLE 38 of this title;

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

7 (i) (I) A nonprofit corporation or association ~~comprised~~
8 CONSISTING of representatives from a statewide ~~medical~~ PROFESSIONAL
9 society and a statewide hospital association. ~~Such~~ THE association ~~shall~~
10 ~~be comprised~~ MUST CONSIST of ~~physicians~~ PERSONS LICENSED UNDER
11 ARTICLE 36 OF THIS TITLE OR LICENSED UNDER ARTICLE 38 OF THIS TITLE
12 AND GRANTED AUTHORITY AS ADVANCED PRACTICE NURSES, hospital
13 administrators, and hospital trustees, with a majority of ~~such~~ THE
14 representatives being ~~physicians~~ PERSONS LICENSED UNDER ARTICLE 36 OF
15 THIS TITLE OR LICENSED UNDER ARTICLE 38 OF THIS TITLE AND GRANTED
16 AUTHORITY AS ADVANCED PRACTICE NURSES. The association may
17 establish, or contract for, one or more ~~peer~~ PROFESSIONAL review
18 committees to review the care by hospital staff ~~physicians~~ HEALTH CARE
19 PROVIDERS, with priority given to small rural ~~medical~~ HOSPITAL staffs.
20 ~~Such peer~~ THESE PROFESSIONAL review services ~~shall~~ MUST be available
21 statewide on a fee-for-service basis to licensed or certified hospitals at the
22 joint request of the governing ~~body~~ BOARD and the medical OR NURSING
23 staff of the hospital or at the sole request of the governing ~~body~~ BOARD
24 of the hospital. If a ~~physician~~ MEMBER being reviewed specializes in a
25 generally recognized specialty of medicine OR NURSING, at least one of
26 the ~~physicians~~ HEALTH CARE PROVIDERS on the ~~peer~~ PROFESSIONAL
27 review committee ~~shall~~ MUST be a ~~physician practicing~~ PERSON LICENSED

1 UNDER ARTICLE 36 OF THIS TITLE, OR LICENSED UNDER ARTICLE 38 OF THIS
2 TITLE AND GRANTED AUTHORITY AS AN ADVANCED PRACTICE NURSE, WHO
3 PRACTICES such specialty.

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

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

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

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

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

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

19 (o) AN ENTITY LICENSED PURSUANT TO PARTS 1 AND 4 OF ARTICLE
20 16 OF TITLE 10, C.R.S.;

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

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

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

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

8 (I) The qualifications AND COMPETENCE of any ~~physician licensed~~
9 ~~under article 36 of this title~~ PERSON LICENSED UNDER ARTICLE 36 OF THIS
10 TITLE OR LICENSED UNDER ARTICLE 38 OF THIS TITLE AND GRANTED
11 AUTHORITY AS AN ADVANCED PRACTICE NURSE who seeks to subject
12 himself or herself to the authority of any ~~organization, entity, or~~
13 ~~professional society listed in subsection (4) of this section or any~~
14 ~~organization or professional society that has been authorized by the~~
15 ~~medical board to establish a professional review committee pursuant to~~
16 ~~subsection (5) of this section~~ AUTHORIZED ENTITY; or

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

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

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

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

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

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

1 as a witness in ~~such~~ THE hearing.

2 (c) The ~~physician who is the subject of any investigation, shall be~~
3 ~~given reasonable notice of such hearing~~ AUTHORIZED ENTITY SHALL GIVE
4 TO THE SUBJECT OF ANY INVESTIGATION UNDER THIS SUBSECTION (7)
5 REASONABLE NOTICE OF THE HEARING, AND OF ANY FINDING OR
6 RECOMMENDATION THAT WOULD ADVERSELY AFFECT THE PERSON'S
7 MEMBERSHIP, AFFILIATION, OR PRIVILEGES WITH THE AUTHORIZED ENTITY,
8 and ~~shall have~~ THE SUBJECT OF THE INVESTIGATION HAS a right to be
9 present, to be represented by legal counsel at ~~such~~ THE hearing, and to
10 offer evidence in his OR HER own behalf.

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

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

23 (f) THE PROFESSIONAL REVIEW COMMITTEE SHALL FORWARD a
24 copy of any recommendations made pursuant to paragraph (d) of this
25 subsection (7) ~~shall be promptly forwarded~~ to the medical board IF THE
26 SUBJECT OF THE INVESTIGATION IS LICENSED UNDER ARTICLE 36 OF THIS
27 TITLE, OR TO THE NURSING BOARD IF THE SUBJECT OF THE INVESTIGATION

1 IS LICENSED UNDER ARTICLE 38 OF THIS TITLE AND GRANTED AUTHORITY
2 AS AN ADVANCED PRACTICE NURSE.

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

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

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

25 (10) (a) EXCEPT AS SPECIFIED IN PARAGRAPH (b) OF THIS
26 SUBSECTION (10), the records of ~~a~~ AN AUTHORIZED ENTITY AND ITS
27 professional review committee, ~~a~~ ITS governing board, or the committee

1 on anticompetitive conduct shall ARE not be subject to subpoena or
2 discovery and shall ARE not be admissible in any civil suit. brought
3 against a physician who is the subject of such records.

4 (b) Notwithstanding the provisions of paragraph (a) of this
5 subsection (10), such SUBJECT TO SUBSECTION (13) OF THIS SECTION, THE
6 records shall be ARE subject to subpoena and available for use:

7 (I) By the committee on anticompetitive conduct;

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

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

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

18 (V) BY THE CMS IN ACCORDANCE WITH ITS EVALUATION PROCESS
19 FOR FEDERAL HEALTH CARE PROGRAM PARTICIPATION BY AN AUTHORIZED
20 ENTITY;

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

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

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

26 (11) (a) EXCEPT AS PROVIDED IN PARAGRAPH (b) OF THIS
27 SUBSECTION (11), THE RECORDS OF AN AUTHORIZED ENTITY OR ITS

1 PROFESSIONAL REVIEW COMMITTEE MAY BE DISCLOSED TO:

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

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

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

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

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

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

21 (12) THE RECORDS OF AN AUTHORIZED ENTITY OR ITS
22 PROFESSIONAL REVIEW COMMITTEE OR GOVERNING BOARD MAY BE
23 SHARED BY AND AMONG AUTHORIZED ENTITIES AND THEIR PROFESSIONAL
24 REVIEW COMMITTEES AND GOVERNING BOARDS CONCERNING THE
25 QUALIFICATIONS, COMPETENCE, AND PROFESSIONAL CONDUCT OF, AND
26 QUALITY AND APPROPRIATENESS OF PATIENT CARE PROVIDED BY, A
27 HEALTH CARE PROVIDER WHO SEEKS TO SUBJECT HIMSELF OR HERSELF TO,

1 OR IS CURRENTLY SUBJECT TO, THE AUTHORITY OF THE AUTHORIZED
2 ENTITY.

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

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

25 ~~(12) (14) Investigations, examinations, hearings, meetings, or any~~
26 ~~AND other proceedings of a professional review committee or governing~~
27 ~~board conducted pursuant to the provisions of this part 1 shall be ARE~~

1 exempt from the provisions of any law requiring that proceedings be
2 conducted publicly or that the minutes or records, INCLUDING ANY
3 MINUTES, be open to public inspection.

4 (13) (15) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (10),
5 (11), OR (12) OF THIS SECTION, all proceedings, recommendations, records,
6 and reports involving professional review committees or governing
7 boards shall be ARE confidential.

8 (14) (16) A professional review committee or governing board
9 which THAT is constituted and conducts its reviews and activities pursuant
10 to the provisions of SUBSTANTIALLY IN ACCORDANCE WITH this part 1 is
11 declared not to be an unlawful conspiracy in violation of section 6-4-104
12 or 6-4-105, C.R.S.

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

15 **12-36.5-104.4. Hospital professional review committees.**

16 (1) The quality and appropriateness of patient care rendered by
17 physicians PERSONS LICENSED UNDER ARTICLE 36 OF THIS TITLE, LICENSED
18 UNDER ARTICLE 38 OF THIS TITLE AND GRANTED AUTHORITY AS
19 ADVANCED PRACTICE NURSES, and other licensed health care professionals
20 so influence the total quality of patient care that a review of care provided
21 in a hospital is ineffective without concomitantly reviewing THE overall
22 QUALIFICATIONS, COMPETENCE, AND PROFESSIONAL CONDUCT OF, AND
23 THE quality and appropriateness of care rendered by, physicians and other
24 licensed health care professionals SUCH PERSONS.

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

27 **12-36.5-104.6. Governing boards to register with division -**

1 **annual reports - aggregation and publication of data - rules.**

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

7 (a) REGISTER WITH THE DIVISION IN A FORM SATISFACTORY TO THE
8 MEDICAL BOARD ON OR BEFORE JULY 1, 2013, IF THE GOVERNING BOARD
9 HAS EXISTING PROFESSIONAL REVIEW COMMITTEES, OR, IF THE GOVERNING
10 BOARD ESTABLISHES A PROFESSIONAL REVIEW COMMITTEE ON OR AFTER
11 JULY 1, 2013, WITHIN THIRTY DAYS AFTER APPROVING THE WRITTEN
12 BYLAWS, POLICIES, OR PROCEDURES FOR THE PROFESSIONAL REVIEW
13 COMMITTEE; AND

14 (b) (I) REPORT ON ITS PROFESSIONAL REVIEW ACTIVITIES DURING
15 THE IMMEDIATELY PRECEDING CALENDAR YEAR IN A FORM SATISFACTORY
16 TO THE DIVISION. THESE REPORTS MUST INCLUDE AGGREGATE DATA ON
17 THE NUMBER AND TYPE OF CASES REVIEWED AND THE RESULTS OF SUCH
18 REVIEWS. AS USED IN THIS PARAGRAPH (b), "AGGREGATE DATA"
19 INCLUDES, WITHOUT LIMITATION, NONIDENTIFIABLE INFORMATION ABOUT
20 PROFESSIONAL REVIEW ACTIVITIES CONDUCTED BY THE AUTHORIZED
21 PROFESSIONAL REVIEW ENTITY THAT IS NOT OTHERWISE REPORTABLE
22 PURSUANT TO FEDERAL OR STATE LAW.

23 (II) THE DIVISION SHALL NOT PUBLISH ANY INFORMATION
24 IDENTIFYING THE PROFESSIONAL REVIEW COMMITTEE OR AUTHORIZED
25 ENTITY MAKING A REPORT UNDER THIS PARAGRAPH (b), AND THE IDENTITY
26 INFORMATION IS NOT A PUBLIC RECORD UNDER THE "COLORADO OPEN
27 RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24, C.R.S.

1 (III) REPORTS SUBMITTED PURSUANT TO THIS PARAGRAPH (b)
2 MUST INCLUDE ONLY INVESTIGATIONS IN WHICH NO FINAL ACTION
3 ADVERSELY AFFECTING THE SUBJECT OF THE INVESTIGATION, AS
4 "ADVERSELY AFFECTING" IS DEFINED IN 45 CFR 60.3, WAS TAKEN OR
5 RECOMMENDED.

6 (2) (a) THE DIVISION SHALL PUBLISH THE DATA PROVIDED
7 PURSUANT TO PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION IN
8 AGGREGATE FORM AND WITHOUT INDIVIDUALLY IDENTIFIABLE
9 INFORMATION CONCERNING THE LICENSED PROFESSIONALS SUBJECT TO
10 REVIEW.

11 (b) THE DIVISION SHALL MAINTAIN AND SHALL PUBLISH ON LINE,
12 THROUGH ITS WEB SITE, A CURRENT LIST OF ALL PROFESSIONAL REVIEW
13 COMMITTEES THAT ARE REGISTERED IN ACCORDANCE WITH THIS SECTION
14 AND THAT OTHERWISE ARE IN COMPLIANCE WITH THIS ARTICLE.

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

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

21 **12-36.5-105. Immunity from suit and liability.** (1) A member
22 of a professional review committee, GOVERNING BOARD, HEARING PANEL,
23 OR INDEPENDENT THIRD PARTY DESIGNATED BY A GOVERNING BOARD
24 UNDER SECTION 12-36.5-104 (8) (b); A PERSON SERVING ON THE STAFF OF
25 THAT COMMITTEE, BOARD, PANEL, OR THIRD PARTY; a witness OR
26 CONSULTANT before a professional review committee; ~~or~~ AND any person
27 who files a complaint or otherwise participates in the professional review

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

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

1 ~~result from such participation~~ IS IMMUNE FROM SUIT IN ANY CIVIL OR
2 CRIMINAL ACTION, INCLUDING ANTITRUST ACTIONS, AND IS IMMUNE FROM
3 LIABILITY FOR DAMAGES IF THE PROFESSIONAL REVIEW ACTION WAS
4 TAKEN WITHIN THE SCOPE OF THE PROFESSIONAL REVIEW PROCESS AND
5 WAS TAKEN:

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

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

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

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

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

19 **12-36.5-106. Committee on anticompetitive conduct - rules.**

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

23 (a) THE MEDICAL BOARD SHALL APPOINT four members of the
24 committee, ~~shall~~ WHO MUST be licensed ~~to practice medicine~~ UNDER
25 ARTICLE 36 OF THIS TITLE, OR LICENSED UNDER ARTICLE 38 OF THIS TITLE
26 AND GRANTED AUTHORITY AS ADVANCED PRACTICE NURSES, and actively
27 ~~engaged in the practice of medicine~~ PRACTICING in this state. ~~and shall be~~

1 ~~appointed by the medical board. No~~ A member APPOINTED PURSUANT TO
2 THIS PARAGRAPH (a) shall NOT practice in the same medical subspecialty
3 as any other member ~~nor~~ AND SHALL NOT conduct his or her primary
4 practice in the same county as any other member.

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

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

19 (7) ~~Any physician~~ A PERSON LICENSED UNDER ARTICLE 36 OF THIS
20 TITLE, OR LICENSED UNDER ARTICLE 38 OF THIS TITLE AND GRANTED
21 AUTHORITY AS AN ADVANCED PRACTICE NURSE, AND who is the subject of
22 a final action by a governing board, which action results in the denial,
23 termination, or restriction of privileges at or membership ~~in~~ or
24 participation in an organization, and who believes that ~~such~~ THE action
25 resulted from unreasonable anticompetitive conduct ~~shall have, as his sole~~
26 ~~and exclusive remedy,~~ MAY SEEK direct review of the record by the
27 committee. ~~such~~ THE review, ~~shall be~~ WHICH IS THE PERSON'S EXCLUSIVE

1 REMEDY, IS limited to the sole issue of whether ~~such~~ THE final board
2 action resulted from unreasonable anticompetitive conduct. Failure to
3 exhaust this administrative remedy before the committee ~~shall preclude~~
4 PRECLUDES the right of de novo review on the merits of the issue of
5 unreasonable anticompetitive conduct.

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

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

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

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

27 (e) If the committee finds THAT no ~~such~~ probable cause exists, it

1 shall dismiss the complaint, which dismissal ~~shall constitute~~ CONSTITUTES
2 final administrative action.

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

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

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

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

27 (b) Following final administrative action by the committee, ~~any~~

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

7 (c) As a condition of filing a complaint under paragraph (a) of
8 subsection (9) of this section, the complainant shall post a cash bond or
9 equivalent liquid security of three thousand dollars to cover anticipated
10 costs ~~which~~ THAT may be assessed against him OR HER. Within thirty days
11 of AFTER receipt of service of a complaint on a governing board, or
12 concurrently with the filing of an answer, whichever is earlier, the
13 governing board shall post a cash bond or equivalent liquid security of
14 three thousand dollars to cover anticipated costs ~~which~~ THAT may be
15 assessed against it as a party. The committee may enforce this latter
16 requirement through the district court.

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

21 (13) (a) ~~Any~~ A member of the committee, ~~any~~ A member of the
22 committee's staff, ~~any~~ A person acting as a witness or consultant to the
23 committee, ~~any~~ A witness testifying in a proceeding authorized under this
24 article, and ~~any~~ A person who lodges a complaint pursuant to this article
25 shall be immune from liability in any civil action brought against him or
26 her for acts occurring while acting in his or her capacity as committee
27 member, staff, consultant, or witness, respectively, if such individual was

1 acting in good faith within the scope of his or her respective capacity,
2 made a reasonable effort to obtain the facts of the matter as to which he
3 or she acted, and acted in the reasonable belief that the action taken by
4 him or her was warranted by the facts. Any person participating in good
5 faith in lodging a complaint or participating in any investigative or
6 administrative proceeding pursuant to this article shall be immune from
7 any civil or criminal liability that may result from such participation IS
8 IMMUNE FROM SUIT IN ANY CIVIL OR CRIMINAL ACTION, INCLUDING
9 ANTITRUST ACTIONS, AND IS IMMUNE FROM LIABILITY FOR DAMAGES
10 UNLESS, IN CONNECTION WITH THE PROFESSIONAL REVIEW PROCESS, THE
11 PERSON PROVIDED FALSE INFORMATION AND KNEW THAT THE
12 INFORMATION WAS FALSE.

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

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

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

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

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

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

3 **12-36.5-202. Rules - compliance with reporting requirements**
4 **of federal act.** ~~Upon implementation of THE MEDICAL BOARD AND~~
5 ~~NURSING BOARD MAY PROMULGATE RULES TO COMPLY WITH THE~~
6 ~~REPORTING REQUIREMENTS OF the federal "Health Care Quality~~
7 ~~Improvement Act of 1986", as amended, 42 U.S.C. secs. 11101 through~~
8 ~~11152, and upon implementation of MAY PARTICIPATE IN the federal data~~
9 ~~bank. the medical board shall promulgate rules to comply with such act~~
10 ~~which rules are consistent with the standards and the reporting~~
11 ~~requirements of such act.~~

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

14 **12-36.5-203. Limitations on liability relating to professional**
15 **review actions.** (1) The following persons ~~shall~~ ARE IMMUNE FROM SUIT
16 AND not be liable for damages in ~~any~~ A civil OR CRIMINAL action with
17 respect to their participation in, assistance to, or reporting of information
18 to a professional review ~~body~~ COMMITTEE in connection with a
19 professional review action in this state, and ~~such~~ THE persons ~~shall~~ ARE
20 IMMUNE FROM SUIT AND not be liable for damages in ~~any~~ A civil action
21 with respect to their participation in, assistance to, or reporting of
22 information to a professional review ~~body which~~ COMMITTEE THAT meets
23 the standards of and is in conformity with ~~the provisions of the federal~~
24 "Health Care Quality Improvement Act of 1986", as amended, 42 U.S.C.
25 secs. 11101 through 11152: ~~upon implementation of such act by the~~
26 ~~federal government:~~

27 (a) ~~The~~ AN AUTHORIZED ENTITY, professional review ~~body~~

1 COMMITTEE, OR GOVERNING BOARD;

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

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

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

11 (2) ~~Notwithstanding any other provision of law, no person,~~
12 ~~whether as a witness or otherwise, who provides information to a~~
13 ~~professional review body regarding the competence or professional~~
14 ~~conduct of a physician shall be held, by reason of having provided such~~
15 ~~information, liable in damages in any civil action unless such information~~
16 ~~is false and the person providing it knew that such information was false.~~

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

19 (a) "Professional review action" means an action or
20 recommendation of a professional review ~~body~~ ~~which~~ COMMITTEE THAT
21 is taken or made in the conduct of professional review activity and ~~which~~
22 THAT is based on the QUALITY AND APPROPRIATENESS OF PATIENT CARE
23 PROVIDED BY, AND THE QUALIFICATIONS, competence, or professional
24 conduct of, an individual ~~physician~~ PERSON LICENSED UNDER ARTICLE 36
25 OF THIS TITLE OR LICENSED UNDER ARTICLE 38 OF THIS TITLE AND
26 GRANTED AN AUTHORITY AS AN ADVANCED PRACTICE NURSE, which
27 ~~conduct~~ ACTION affects or may affect adversely the PERSON'S clinical

1 privileges of or membership in a professional society of the physician AN
2 AUTHORIZED ENTITY. "Professional review action" includes a formal
3 decision by the professional review body COMMITTEE not to take an action
4 or make a recommendation as provided in this paragraph (a) and also
5 includes professional review activities relating to a professional review
6 action. An action shall IS not be considered to be based upon the
7 competence or professional conduct of a physician PERSON if the action
8 is primarily based on:

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

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

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

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

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

26 (b) "Professional review body" means a health care entity and the
27 governing body or any committee of a health care entity which conducts

1 professional review actions and includes any committee of the medical
2 staff of such an entity when assisting the governing body in a professional
3 review activity.

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

6 **12-36-118. Disciplinary action by board - immunity - rules.**

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

12 **SECTION 14. Effective date.** (1) Except as otherwise provided
13 in subsection (2) of this section, this act takes effect July 1, 2012.

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

16 **SECTION 15. Safety clause.** The general assembly hereby finds,
17 determines, and declares that this act is necessary for the immediate
18 preservation of the public peace, health, and safety.