

---

# COLORADO REVISED STATUTES

## Title 12 **Professions and Occupations**

### Article 36 **Medical Practice**

-and-

### Article 36.5 **Professional Review Of Health Care Providers**

Effective July 1, 2011

---

DISCLAIMER: The Colorado Revised Statutes are available on the [internet](#) for public use by the Committee on Legal Services of the Colorado General Assembly through a contractual arrangement with the LexisNexis Group.

The statutes are copyrighted by the state of Colorado (please see §2-5-115, C.R.S.). Any person wishing to reprint and distribute all or a substantial part of the statutes in either printed or electronic format must obtain prior permission of the Committee on Legal Services; permission is not required to reprint fewer than 200 sections of C.R.S. (please see §2-5-118, C.R.S.).

LexisNexis Group customer support can be reached at 1-800-543-6862.

**Table of Contents**

PART 1 GENERAL PROVISIONS ..... 1

12-36-101. Short title..... 1

12-36-102. Legislative declaration. .... 1

12-36-102.5. Definitions..... 1

12-36-103. Colorado medical board - immunity - subject to termination - repeal of article..... 2

12-36-104. Powers and duties of board. .... 4

12-36-104.5. Limitation on authority..... 4

12-36-105. Surety bond. (Repealed)..... 5

12-36-106. Practice of medicine defined - exemptions from licensing requirements - unauthorized practice by physician assistants - penalties - rules - repeal..... 5

12-36-106.3. Collaborative agreements with advanced practice nurses - repeal. (Repealed) ..... 9

12-36-106.4. Collaboration with advanced practice nurses with prescriptive authority - preceptorships - mentorships - board rules. .... 10

12-36-106.5. Child health associates - scope of practice..... 11

12-36-107. Qualifications for licensure. .... 11

12-36-107.2. Distinguished foreign teaching physician license - qualifications..... 12

12-36-107.4. Physician assistant license - qualifications..... 13

12-36-107.5. Colorado resident physicians trained at foreign medical schools. (Repealed)..... 14

12-36-107.6. Foreign medical school graduates - degree equivalence. .... 14

12-36-108. Approved medical college. (Repealed) ..... 14

12-36-109. Approved internship. (Repealed) ..... 14

12-36-110. Approved residency. (Repealed) ..... 14

12-36-110.5. Approved fellowship. (Repealed) ..... 14

12-36-111. Applications for license..... 14

12-36-111.3. Licensing panel. .... 14

12-36-111.5. Michael Skolnik medical transparency act - disclosure of information about licensees - rules. (Repealed) ..... 15

12-36-112. License fee. (Repealed) ..... 15

12-36-113. Examinations. (Repealed) ..... 15

12-36-114. Issuance of licenses - prior practice prohibited..... 15

12-36-114.3. Pro bono license - qualifications - reduced fee - rules. .... 16

12-36-114.5. Reentry license. .... 17

12-36-115. License must be recorded. (Repealed) ..... 17

12-36-116. Refusal of license - issuance subject to probation..... 17

12-36-117. Unprofessional conduct..... 18

12-36-117.5. Prescriptions - requirement to advise patients..... 22

12-36-118. Disciplinary action by board - immunity. .... 22

12-36-118.5. Confidential agreements to limit practice - violation grounds for discipline..... 29

12-36-119. Appeal of final board actions. .... 29

12-36-120. Other licensees of board - disciplinary action. (Repealed) ..... 29

12-36-121. Duplicates of license. (Repealed)..... 30

12-36-122. Physician training licenses. .... 30

12-36-122.5. Intern, resident, or fellow reporting. .... 31

12-36-123. Procedure - registration - fees. .... 32

12-36-123.5. Physicians' and physician assistants' peer health assistance program. .... 32

12-36-124. Certification of licensing. (Repealed) ..... 34

12-36-125. Division of fees - independent advertising or marketing agent. .... 34

12-36-126. Recovery of fees illegally paid. .... 35

12-36-127. Liability of persons other than licensee..... 35

12-36-128. Advertising. (Repealed) ..... 35

12-36-128.5. Public communications and advertisements. (Repealed)..... 35

12-36-129. Unauthorized practice - penalties. .... 35

12-36-130. Moneys collected. (Repealed) ..... 37

12-36-131. Existing licenses. .... 37

12-36-132. Injunctive proceedings. (Repealed)..... 37

12-36-133. Postmortem examinations by licensee - definition - application of this section. .... 37

12-36-134. Professional service corporations, limited liability companies, and registered limited liability partnerships for the practice of medicine - definitions. .... 37

12-36-135. Injuries to be reported - penalty for failure to report - immunity from liability. .... 41

12-36-136. Determination of death. .... 42

12-36-137. Inactive license. .... 42

12-36-138. Rules and regulations - compliance with reporting requirements of federal act. (Repealed) ..... 42

12-36-139. Limitations on liability relating to professional review actions. (Repealed) ..... 42

12-36-140. Protection of medical records - licensee's obligations - verification of compliance - noncompliance grounds for discipline - rules. .... 43

**PART 2 SAFETY TRAINING FOR UNLICENSED X-RAY TECHNICIANS..... 44**

12-36-201 and 12-36-202. (Repealed)..... 44

**ARTICLE 36.5 PROFESSIONAL REVIEW OF HEALTH CARE PROVIDERS..... 45**

**PART 1 PROFESSIONAL REVIEW PROCEEDINGS - PHYSICIANS ..... 45**

12-36.5-101. Legislative declaration. .... 45

12-36.5-102. Definitions. .... 45

12-36.5-103. Use of professional review committees. .... 46

12-36.5-104. Establishment of professional review committees - function - rules. .... 46

12-36.5-104.4. Hospital professional review committees. .... 50

12-36.5-105. Immunity from liability. .... 50

12-36.5-106. Committee on anticompetitive conduct..... 51

12-36.5-107. Repeal of article. .... 54

**PART 2 CONFORMANCE WITH FEDERAL LAW AND REGULATION..... 55**

12-36.5-201. Legislative declaration. .... 55

12-36.5-202. Rules - compliance with reporting requirements of federal act. .... 55

12-36.5-203. Limitations on liability relating to professional review actions..... 55

## **PART 1 GENERAL PROVISIONS**

### **12-36-101. Short title.**

This article shall be known and may be cited as the "Colorado Medical Practice Act".

### **12-36-102. Legislative declaration.**

(1) The general assembly declares it to be in the interests of public health, safety, and welfare to enact laws regulating and controlling the practice of the healing arts to the end that the people shall be properly protected against unauthorized, unqualified, and improper practice of the healing arts in this state, and this article shall be construed in conformity with this declaration of purpose.

(2) Repealed.

### **12-36-102.5. Definitions.**

As used in this article, unless the context otherwise requires:

(1) (a) "Approved fellowship" means a program that meets the following criteria:

(I) Is specialized, clearly defined, and delineated;

(II) Follows the completion of an approved residency;

(III) Provides additional training in a medical specialty or subspecialty; and

(IV) Is either:

(A) Performed in a hospital conforming to the minimum standards for fellowship training established by the accreditation council for graduate medical education or the American osteopathic association, or by a successor of either organization; or

(B) Any other program that is approved by the accreditation council for graduate medical education or the American osteopathic association or a successor of either organization.

(b) "Approved fellowship" includes any other fellowship that the board, upon its own investigation, approves for purposes of issuing a physician training license pursuant to section 12-36-122.

(2) (a) "Approved internship" means an internship:

(I) Of at least one year in a hospital conforming to the minimum standards for intern training established by the accreditation council for graduate medical education or the American osteopathic association or a successor of either organization; or

(II) Approved by either of the organizations specified in subparagraph (I) of this paragraph (a).

(b) "Approved internship" includes any other internship approved by the board upon its own investigation.

(3) (a) "Approved medical college" means a college that:

(I) Conforms to the minimum educational standards for medical colleges as established by the liaison committee on medical education or any successor organization that is the official accrediting body of educational programs leading to the degree of doctor of medicine and recognized for such purpose by the federal department of education and the council on postsecondary accreditation;

(II) Conforms to the minimum education standards for osteopathic colleges as established by the American osteopathic association or any successor organization that is the official accrediting body of education programs leading to the degree of doctor of osteopathy; or

(III) Is approved by either of the organizations specified in subparagraphs (I) and (II) of this paragraph (a).

(b) "Approved medical college" includes any other medical college approved by the board upon its own investigation of the educational standards and facilities of the medical college.

(4) (a) "Approved residency" means a residency:

(I) Performed in a hospital conforming to the minimum standards for residency training established by the accreditation council for graduate medical education or the American osteopathic association or any successor of either organization; or

(II) Approved by either of the organizations specified in subparagraph (I) of this paragraph (a).

(b) "Approved residency" means any other residency approved by the board upon its own investigation.

(5) "Board" means the Colorado medical board created in section 12-36-103 (1).

(6) "License" means the authority to practice medicine or practice as a physician assistant under this article.

(7) "Licensee" means any physician or physician assistant who is licensed pursuant to this article.

(8) "Telemedicine" means the delivery of medical services and any diagnosis, consultation, or treatment using interactive audio, interactive video, or interactive data communication.

**12-36-103. Colorado medical board - immunity - subject to termination - repeal of article.**

(1) (a) (I) There is hereby created the Colorado medical board, referred to in this article as the "board". The board shall consist of sixteen members appointed by the governor and possessing the qualifications specified in this article and as follows:

(A) Eleven physician members;

(B) One member licensed under this article as a physician assistant; and

(C) Four members from the public at large who have no financial or professional association with the medical profession.

(II) The terms of the members of the board shall be four years. For the two physician and one physician assistant appointees added to the board during the calendar year beginning January 1, 2010, the term for one of the physician member appointees shall expire four years after the appointment; the term for the other physician member appointee shall expire three years after the appointment; and the term for the physician assistant appointee shall expire two years after the appointment. Thereafter, the terms of the members of the board shall be four years.

(b) (Deleted by amendment, L. 2003, p. 911, § 12, effective August 6, 2003.)

(2) The board shall be comprised at all times of eight members having the degree of doctor of medicine, three members having the degree of doctor of osteopathy, and one physician assistant, all of whom shall have been licensed in good standing and actively engaged in the practice of their professions in this state for at least three years next preceding their appointments, and four members of the public at large.

(3) If a vacancy in the membership of the board occurs for any cause other than expiration of a term, the governor shall appoint a successor to fill the unexpired portion of the term of the member whose office has been so vacated and shall appoint the new member in the same manner as members for a full term. Members of the board shall remain in office until their successors have been appointed. A member of the board may be removed by the governor for continued neglect of duty, incompetence, or unprofessional or dishonorable conduct.

(4) The board shall elect biennially from its members a president and a vice-president. Meetings of the board or any panel established pursuant to this article shall be held as scheduled by the board in the state of Colorado. Except as provided in section 12-36-118 (6), a majority of the board shall constitute a quorum for the transaction of all business. All meetings of the board shall be deemed to have been duly called and regularly held, and all decisions, resolutions, and proceedings of the board shall be deemed to have been duly authorized, unless the contrary be proved.

(5) (Deleted by amendment, L. 2004, p. 1827, § 67, effective August 4, 2004.)

(6) (a) (I) The provisions of section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the Colorado medical board created by this section.

(II) The review required by this subsection (6) shall include an analysis of physician responsibilities related to recommendations for medical marijuana and the provisions of section 25-1.5-106, C.R.S.

(b) This article is repealed, effective July 1, 2019.

(7) (Deleted by amendment, L. 2010, (HB 10-1260), ch. 403, p. 1948, § 14, effective July 1, 2010.)

**12-36-104. Powers and duties of board.**

(1) In addition to all other powers and duties conferred and imposed upon the board by this article, the board has the following powers and duties to:

(a) Adopt and promulgate, under the provisions of section 24-4-103, C.R.S., such rules and regulations as the board may deem necessary or proper to carry out the provisions and purposes of this article which shall be fair, impartial, and nondiscriminatory;

(b) (I) Make investigations, hold hearings, and take evidence in all matters relating to the exercise and performance of the powers and duties vested in the board.

(II) The board or an administrative law judge shall have the power to administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board. The board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the board.

(III) Upon failure of any witness to comply with such subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board or director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the board or director; to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(c) (Deleted by amendment, L. 2010, (HB 10-1260), ch. 403, p. 1951, § 16, effective July 1, 2010.)

(d) Repealed.

(e) Aid law enforcement in the enforcement of this article and in the prosecution of all persons, firms, associations, or corporations charged with the violation of any of its provisions.

(2) Repealed.

(3) To facilitate the licensure of qualified applicants and address the unlicensed practice of medicine and the unlicensed practice as a physician assistant, the president of the board shall establish a licensing panel in accordance with section 12-36-111.3 to perform licensing functions in accordance with this article and review and resolve matters relating to the unlicensed practice of medicine and unlicensed practice as a physician assistant. Two panel members shall constitute a quorum of the panel. Any action taken by a quorum of the panel shall constitute action by the board.

**12-36-104.5. Limitation on authority.**

The authority granted the board under the provisions of this article shall not be construed to authorize the board to arbitrate or adjudicate fee disputes between licensees or between a licensee and any other party.

**12-36-105. Surety bond. (Repealed)**

**12-36-106. Practice of medicine defined - exemptions from licensing requirements - unauthorized practice by physician assistants - penalties - rules - repeal.**

(1) For the purpose of this article, "practice of medicine" means:

(a) Holding out one's self to the public within this state as being able to diagnose, treat, prescribe for, palliate, or prevent any human disease, ailment, pain, injury, deformity, or physical or mental condition, whether by the use of drugs, surgery, manipulation, electricity, telemedicine, the interpretation of tests, including primary diagnosis of pathology specimens, images, or photographs, or any physical, mechanical, or other means whatsoever;

(b) Suggesting, recommending, prescribing, or administering any form of treatment, operation, or healing for the intended palliation, relief, or cure of any physical or mental disease, ailment, injury, condition, or defect of any person;

(c) The maintenance of an office or other place for the purpose of examining or treating persons afflicted with disease, injury, or defect of body or mind;

(d) Using the title M.D., D.O., physician, surgeon, or any word or abbreviation to indicate or induce others to believe that one is licensed to practice medicine in this state and engaged in the diagnosis or treatment of persons afflicted with disease, injury, or defect of body or mind, except as otherwise expressly permitted by the laws of this state enacted relating to the practice of any limited field of the healing arts;

(e) Performing any kind of surgical operation upon a human being; or

(f) The practice of midwifery, except:

(I) Services rendered by certified nurse-midwives properly licensed and practicing in accordance with the provisions of article 38 of this title; or

(II) (A) Services rendered by a person properly registered as a direct-entry midwife and practicing in accordance with the provisions of article 37 of this title.

(B) This subparagraph (II) is repealed, effective July 1, 2011.

(g) The delivery of telemedicine. Nothing in this paragraph (g) authorizes physicians to deliver services outside their scope of practice or limits the delivery of health services by other licensed professionals, within the professional's scope of practice, using advanced technology, including, but not limited to, interactive audio, interactive video, or interactive data communication.

(2) If a person who does not possess and has not filed a license to practice medicine or practice as a physician assistant in this state, as provided in this article, and who is not exempted from the licensing requirements under this article, performs any of the acts that constitute the practice of medicine as defined in this section, the person shall be deemed to be practicing medicine or practicing as a physician assistant in violation of this article.

(3) A person may engage in, and shall not be required to obtain a license or a physician training license under this article with respect to, any of the following acts:

(a) The gratuitous rendering of services in cases of emergency;

(b) The occasional rendering of services in this state by a physician if the physician:

(I) Is licensed and lawfully practicing medicine in another state or territory of the United States without restrictions or conditions on the physician's license;

(II) Does not have any established or regularly used medical staff membership or clinical privileges in this state;

(III) Is not party to any contract, agreement, or understanding to provide services in this state on a regular or routine basis;

(IV) Does not maintain an office or other place for the rendering of such services;

(V) Has medical liability insurance coverage in the amounts required pursuant to section 13-64-302, C.R.S., for the services rendered in this state; and

(VI) Limits the services provided in this state to an occasional case or consultation.

(c) The practice of dentistry under the conditions and limitations defined by the laws of this state;

(d) The practice of podiatry under the conditions and limitations defined by the laws of this state;

(e) The practice of optometry under the conditions and limitations defined by the laws of this state;

(f) The practice of chiropractic under the conditions and limitations defined by the laws of this state;

(g) The practice of religious worship;

(h) The practice of Christian Science, with or without compensation;

(i) The performance by commissioned medical officers of the armed forces of the United States of America or of the United States public health service or of the United States veterans administration of their lawful duties in this state as such officers;

(j) The rendering of nursing services and delegated medical functions by registered or other nurses in the lawful discharge of their duties as such;

(k) The rendering of services by students currently enrolled in an approved medical college;

(l) The rendering of services, other than the prescribing of drugs, by persons qualified by experience, education, or training, under the personal and responsible direction and supervision of a person licensed under the laws of this state to practice medicine, but nothing in this exemption shall be deemed to extend or limit the scope of any license, and this exemption shall

not apply to persons otherwise qualified to practice medicine but not licensed to so practice in this state;

(m) The practice by persons licensed or registered under any law of this state to practice a limited field of the healing arts not specifically designated in this section, under the conditions and limitations defined by such law;

(n) (Deleted by amendment, L. 2000, p. 30, § 1, effective March 10, 2000.)

(o) (I) The administration and monitoring of medications in facilities as provided in part 3 of article 1.5 of title 25, C.R.S.

(II) Repealed.

(p) The rendering of acupuncture services subject to the conditions and limitations provided in article 29.5 of this title;

(q) (I) The administration of nutrition or fluids through gastrostomy tubes as provided in section 27-10.5-103 (2) (k), C.R.S., as a part of residential or day program services provided through service agencies approved by the department of human services pursuant to section 27-10.5-104.5, C.R.S.;

(II) Repealed.

(r) (I) The administration of topical and aerosol medications within the scope of physical therapy practice as provided in section 12-41-113 (2);

(II) The performance of wound debridement under a physician's order within the scope of physical therapy practice as provided in section 12-41-113 (3);

(s) The rendering of services by an athletic trainer subject to the conditions and limitations provided in article 29.7 of this title;

(t) (I) The rendering of prescriptions by an advanced practice nurse pursuant to section 12-38-111.6.

(II) Repealed.

(II.5) On or after July 1, 2010, a physician who serves as a preceptor or mentor to an advanced practice nurse pursuant to sections 12-36-106.4 and 12-38-111.6 (4.5) shall have a license in good standing without disciplinary sanctions to practice medicine in Colorado and an unrestricted registration by the drug enforcement administration for the same schedules as the collaborating advanced practice nurse.

(III) Repealed.

(IV) It is unlawful and a violation of this article for any person, corporation, or other entity to require payment or employment as a condition of entering into a mentorship relationship with the advanced practice nurse pursuant to sections 12-36-106.4 and 12-38-111.6 (4.5), but the mentor may request reimbursement of reasonable expenses and time spent as a result of the mentorship relationship.

(u) (I) The provision, to a treating physician licensed in this state, of the results of laboratory tests, excluding histopathology tests and cytology tests, performed in a laboratory certified under the federal "Clinical Laboratories Improvement Act of 1967", as amended, 42 U.S.C. sec. 263a, to perform high complexity testing, as such term is used in 42 CFR 493.1701 and any related or successor provision.

(II) The provision, to a pathologist licensed in this state, of the results of histopathology tests and cytology tests performed in a laboratory certified under the federal "Clinical Laboratories Improvement Act of 1967", as amended, 42 U.S.C. sec. 263a, to perform high complexity testing, as such term is used in 42 CFR 493.1701 and any related or successor provision.

(v) The rendering of services by any person serving an approved internship, residency, or fellowship as defined by this article for an aggregate period not to exceed sixty days.

(w) A physician lawfully practicing medicine in another state or territory providing medical services to athletes or team personnel registered to train at the United States olympic training center at Colorado Springs or providing medical services at an event in this state sanctioned by the United States olympic committee. The physician's medical practice shall be contingent upon the requirements and approvals of the United States olympic committee and shall not exceed ninety days per calendar year.

(x) Repealed.

(y) The rendering of services by an emergency medical technician certified pursuant to section 25-3.5-203, C.R.S., as long as the services rendered are consistent with rules adopted by the executive director or chief medical officer, as applicable, pursuant to section 25-3.5-206, C.R.S., defining the duties and functions of emergency medical technicians.

(3.2) Nothing in this section shall be construed to prohibit patient consultation between a practicing physician licensed in Colorado and a practicing physician licensed in another state or jurisdiction.

(3.5) (Deleted by amendment, L. 2009, (SB 09-026), ch. 373, p. 2031, § 2, effective July 1, 2009.)

(4) All licensees designated or referred to in subsection (3) of this section, who are licensed to practice a limited field of the healing arts, shall confine themselves strictly to the field for which they are licensed and to the scope of their respective licenses, and shall not use any title, word, or abbreviation mentioned in paragraph (d) of subsection (1) of this section, except to the extent and under the conditions expressly permitted by the law under which they are licensed.

(5) (a) A person licensed under the laws of this state to practice medicine may delegate to a physician assistant licensed by the board pursuant to section 12-36-107.3 the authority to perform acts that constitute the practice of medicine to the extent and in the manner authorized by rules promulgated by the board, including the authority to prescribe medication, including controlled substances, and dispense only such drugs as designated by the board. Such acts shall be consistent with sound medical practice. Each prescription issued by a physician assistant licensed by the board shall be imprinted with the name of his or her supervising physician. Nothing in this subsection (5) shall limit the ability of otherwise licensed health personnel to

perform delegated acts. The dispensing of prescription medication by a physician assistant shall be subject to the provisions of section 12-22-121 (6).

(b) (I) If the authority to perform an act is delegated pursuant to paragraph (a) of this subsection (5), the act shall not be performed except under the personal and responsible direction and supervision of a person licensed under the laws of this state to practice medicine. A licensed physician may be responsible for the direction and supervision of up to four physician assistants at any one time, and may be responsible for the direction and supervision of more than four physician assistants upon receiving specific approval from the board. The board, by rule, may define what constitutes appropriate direction and supervision of a physician assistant.

(II) For purposes of this subsection (5), "personal and responsible direction and supervision" means that the direction and supervision of a physician assistant is personally rendered by a licensed physician practicing in the state of Colorado and is not rendered through intermediaries. The extent of direction and supervision shall be determined by rules promulgated by the board and as otherwise provided in this paragraph (b); except that, when a physician assistant is performing a delegated medical function in an acute care hospital, the board shall allow supervision and direction to be performed without the physical presence of the physician during the time the delegated medical functions are being implemented if:

(A) Such medical functions are performed where the supervising physician regularly practices or in a designated health manpower shortage area;

(B) The licensed supervising physician reviews the quality of medical services rendered by the physician assistant by reviewing the medical records to assure compliance with the physicians' directions; and

(C) The performance of the delegated medical function otherwise complies with the board's regulations and any restrictions and protocols of the licensed supervising physician and hospital.

(III) Repealed.

(c) to (f) (Deleted by amendment, L. 2010, (HB 10-1260), ch. 403, p. 1966, § 35, effective July 1, 2010.)

(g) Pursuant to section 12-36-129 (6), the board may apply for an injunction to enjoin any person from performing delegated medical acts that are in violation of this section or of any rules promulgated by the board.

(h) This subsection (5) shall not apply to any person who performs delegated medical tasks within the scope of the exemption contained in paragraph (l) of subsection (3) of this section.

(i) and (j) (Deleted by amendment, L. 2010, (HB 10-1260), ch. 403, p. 1966, § 35, effective July 1, 2010.)

(k) Repealed. / (Deleted by amendment, L. 2010, (HB 10-1260), ch. 403, p. 1966, § 35, effective July 1, 2010.)

(6) Repealed.

**12-36-106.3. Collaborative agreements with advanced practice nurses - repeal. (Repealed)**

**12-36-106.4. Collaboration with advanced practice nurses with prescriptive authority - preceptorships - mentorships - board rules.**

(1) (a) A physician licensed pursuant to this article may, and is encouraged to, serve as a preceptor or mentor to an advanced practice nurse who is applying for prescriptive authority pursuant to section 12-38-111.6 (4.5). A physician who serves as a preceptor or mentor to an advanced practice nurse seeking prescriptive authority shall:

(I) Be practicing in Colorado and shall have education, training, experience, and active practice that corresponds with the role and population focus of the advanced practice nurse; and

(II) Have a license in good standing without disciplinary sanctions to practice medicine in Colorado and an unrestricted registration by the drug enforcement administration for the same schedules as the advanced practice nurse.

(b) A physician serving as a preceptor or mentor to an advanced practice nurse pursuant to section 12-38-111.6 (4.5) shall not require payment or employment as a condition of entering into the preceptorship or mentorship relationship, but the physician may request reimbursement of reasonable expenses and time spent as a result of the preceptorship or mentorship relationship.

(c) Upon successful completion of a mentorship as described in section 12-38-111.6 (4.5) (b) (I), the physician shall verify by his or her signature that the advanced practice nurse has successfully completed the mentorship within the required period.

(2) While serving as a mentor pursuant to section 12-38-111.6 (4.5) (b) (I), a physician shall assist the advanced practice nurse in developing an articulated plan for safe prescribing, as described in section 12-38-111.6 (4.5) (b) (II) and shall verify through his or her signature that the advanced practice nurse has developed an articulated plan in compliance with said section.

(3) For purposes of an advanced practice nurse who obtained prescriptive authority prior to July 1, 2010, as described in section 12-38-111.6 (4.5) (c), or who has prescriptive authority from another state and obtains prescriptive authority in this state, as described in section 12-38-111.6 (4.5) (d), physicians may, and are encouraged to, assist those advanced practice nurses in developing the articulated plans required by those sections and verifying, through the physician's signature, the development of the required plans. The physician verifying an advanced practice nurse's articulated plan shall be practicing in Colorado and have education, training, experience, and active practice that corresponds with the role and population focus of the advanced practice nurse.

(4) (a) Except as provided in paragraph (b) of this subsection (4), the board shall adopt rules to implement this section, which rules shall take effect on July 1, 2010. The board shall consider the recommendations of the nurse-physician advisory task force for Colorado health care submitted in accordance with section 24-34-109, C.R.S., concerning the role of physicians in collaborating with advanced practice nurses with prescriptive authority. The rules shall be complementary to rules adopted by the state board of nursing pursuant to section 12-38-111.6 (4.5) (f) (I).

(b) (I) The director of the division of registrations in the department of regulatory agencies shall review the rules adopted by the board pursuant to this subsection (4) to determine if the

rules complement the rules of the state board of nursing. If the director determines that the rules of the two boards are not complementary, the director shall adopt rules that supersede and replace the rules of the two boards regarding prescriptive authority of advanced practice nurses and collaboration between advanced practice nurses and physicians, and such rules shall take effect on July 2, 2010.

(II) If the director determines that the two boards have adopted complementary rules regarding the prescriptive authority of advanced practice nurses and collaboration between advanced practice nurses and physicians, the director shall not adopt rules that supersede and replace the rules of the two boards, but the director shall review any amendments to those rules by either board to ensure that the rules remain complementary. If the director determines that an amendment to the rules by the Colorado medical board or the state board of nursing results in rules on prescriptive authority and collaboration that are no longer complementary, the amendment shall not take effect.

**12-36-106.5. Child health associates - scope of practice.**

On and after July 1, 1990, any person who, on June 30, 1990, was certified only as a child health associate under the laws of this state shall, upon application to the board, be granted licensure as a physician assistant. The practice of any such person shall be subject to sections 12-36-106 (5) and 12-36-107.4; except that such practice shall be limited to patients under the age of twenty-one.

**12-36-107. Qualifications for licensure.**

(1) Subject to the other conditions and provisions of this article, a license to practice medicine shall be granted by the board to an applicant only upon the basis of:

(a) The passing by the applicant of an examination approved by the board;

(b) The applicant's passage of examinations conducted by the national board of medical examiners, the national board of examiners for osteopathic physicians and surgeons, the federation of state medical boards, or any successor to said organizations, as approved by the board;

(c) Any combination of the examinations provided in paragraphs (a) and (b) of this subsection (1) approved by the board;

(d) (Deleted by amendment, L. 2010, (HB 10-1260), ch. 403, p. 1959, § 27, effective July 1, 2010.)

(e) (I) Endorsement, if the applicant for licensure by endorsement:

(A) Files an application and pays a fee as prescribed by the board;

(B) Holds a current, valid license in a jurisdiction that requires qualifications substantially equivalent to the qualifications for licensure in this state as specified in this section;

(C) Submits written verification that he or she has actively practiced medicine in another jurisdiction for at least five of the immediately preceding seven years or has otherwise maintained continued competency as determined by the board; and

(D) Submits proof satisfactory to the board that he or she has not been and is not subject to final or pending disciplinary or other action by any state or jurisdiction in which the applicant is or has been previously licensed; except that, if the applicant is or has been subject to such action, the board may review the action to determine whether the underlying conduct warrants refusal of a license pursuant to section 12-36-116.

(II) Upon receipt of all documents required by this paragraph (e), the board shall review the application and make a determination of the applicant's qualification to be licensed by endorsement.

(2) No person shall be granted a license to practice medicine as provided by subsection (1) of this section unless such person:

(a) Is at least twenty-one years of age;

(b) Is a graduate of an approved medical college; and

(c) Has completed either an approved internship of at least one year or at least one year of postgraduate training approved by the board.

(3) to (5) Repealed.

#### **12-36-107.2. Distinguished foreign teaching physician license - qualifications.**

(1) Notwithstanding any other provision of this article, an applicant of noteworthy and recognized professional attainment who is a graduate of a foreign medical school and who is licensed in a foreign jurisdiction, if that jurisdiction has a licensing procedure, may be granted a distinguished foreign teaching physician license to practice medicine in this state, upon application to the board in the manner determined by the board, if the following conditions are met:

(a) The applicant has been invited by a medical school in this state to serve as a full-time member of its academic faculty for the period of his or her appointment, at a rank equal to an associate professor or higher;

(b) The applicant's medical practice is limited to that required by his or her academic position, the limitation is so designated on the license in accordance with board procedure, and the medical practice is also limited to the core teaching hospitals affiliated with the medical school, as identified by the board, on which the applicant is serving as a faculty member.

(2) An applicant who meets the qualifications and conditions set forth in subsection (1) of this section but is not offered the rank of associate professor or higher may be granted a temporary license, for one year only, to practice medicine in this state, as a member of the academic faculty, at the discretion of the board and in the manner determined by the board. If the applicant is granted a temporary license, he or she shall practice only under the direct supervision of a person who has the rank of associate professor or higher.

(3) A distinguished foreign teaching physician license is effective and in force only while the holder is serving on the academic staff of a medical school. The license expires one year after the date of issuance and may be renewed annually only after the board has specifically determined that the conditions specified in subsection (1) of this section will continue during the ensuing period of licensure. The board may require an applicant for licensure under this section to present himself or herself to the board for an interview. The board may withdraw licensure granted under this section prior to the expiration of the license for unprofessional conduct as defined in section 12-36-117.

(4) The board may establish and charge a fee for a distinguished foreign teaching physician license pursuant to section 24-34-105, C.R.S., not to exceed the amount of the fee for renewal of a physician's license.

(5) The board shall promulgate rules specifying standards related to the qualification and supervision of distinguished foreign teaching physicians.

**12-36-107.4. Physician assistant license - qualifications.**

(1) To be licensed as a physician assistant under this article, an applicant shall be at least twenty-one years of age and shall have:

(a) Successfully completed an education program for physician assistants that conforms to standards approved by the board, which standards may be established by utilizing the assistance of any responsible accrediting organization;

(b) Successfully completed the national certifying examination for physician assistants that is administered by the national commission on certification of physician assistants or a successor organization or successfully completed any other examination approved by the board; and

(c) Submitted an application to the board in the manner designated by the board and paid the appropriate fee established by the board pursuant to section 24-34-105, C.R.S.

(2) The board may determine whether any applicant for licensure as a physician assistant possesses education, experience, or training in health care that is sufficient to be accepted in lieu of the qualifications required for licensure under subsection (1) of this section.

(3) A person applying for a license to practice as a physician assistant in this state shall notify the board, in connection with his or her application for licensure, of the commission of any act that would be grounds for disciplinary action against a licensed physician assistant under section 12-36-117, along with an explanation of the circumstances of the act. The board may deny licensure to any applicant as set forth in section 12-36-116.

(4) A person licensed as a physician assistant shall not perform any act that constitutes the practice of medicine within a hospital or nursing care facility that is licensed pursuant to part 1 of article 3 of title 25, C.R.S., or that is required to obtain a certificate of compliance pursuant to section 25-1.5-103 (1) (a) (II), C.R.S., without authorization from the governing board of the hospital or nursing care facility. The governing board may grant, deny, or limit a physician assistant's authorization based on its own established procedures.

(5) The board may take any disciplinary action with respect to a physician assistant license as it may with respect to the license of a physician, in accordance with section 12-36-118.

(6) The board shall license and keep a record of physician assistants who have been licensed pursuant to this section. A licensed physician assistant shall renew his or her license in accordance with section 12-36-123.

**12-36-107.5. Colorado resident physicians trained at foreign medical schools. (Repealed)**

**12-36-107.6. Foreign medical school graduates - degree equivalence.**

(1) For graduates of schools other than those approved by the liaison committee for medical education or the American osteopathic association, or the successor of either entity, the board may require three years of postgraduate clinical training approved by the board. An applicant whose foreign medical school is not an approved medical college is eligible for licensure at the discretion of the board if the applicant meets all other requirements for licensure and holds specialty board certification, current at the time of application for licensure, conferred by a regular member board of the American board of medical specialties or the American osteopathic association. The factors to be considered by the board in the exercise of its discretion in determining the qualifications of such applicants shall include the following:

- (a) The information available to the board relating to the medical school of the applicant; and
- (b) The nature and length of the post-graduate training completed by the applicant.

(2) Repealed.

**12-36-108. Approved medical college. (Repealed)**

**12-36-109. Approved internship. (Repealed)**

**12-36-110. Approved residency. (Repealed)**

**12-36-110.5. Approved fellowship. (Repealed)**

**12-36-111. Applications for license.**

(1) Every person desiring a license to practice medicine shall make application to the board, such application to be verified by oath and to be in such form as shall be prescribed by the board. Such application shall be accompanied by the license fee and such documents, affidavits, and certificates as are necessary to establish that the applicant possesses the qualifications prescribed by this article, apart from any required examination by the board. The burden of proof shall be upon the applicant, but the board may make such independent investigation as it may deem advisable to determine whether the applicant possesses such qualifications and whether the applicant has at any time committed any of the acts or offenses defined in this article as unprofessional conduct.

(2) Repealed.

**12-36-111.3. Licensing panel.**

(1) (a) The president of the board shall establish a licensing panel consisting of three members of the board as follows:

(I) One panel member shall be a licensed physician having the degree of doctor of medicine;

(II) One panel member shall be a licensed physician having the degree of doctor of osteopathy; and

(III) One panel member shall be a public member of the board.

(b) The president may rotate the licensing panel membership and the membership on the inquiry and hearing panels established pursuant to section 12-36-118 so that all members of the board, including the board president, may serve on each of the board panels.

(c) If the president determines that the board lacks a member to serve on the licensing panel that meets the criteria specified in paragraph (a) of this subsection (1), the president may appoint another board member to fill the vacancy on the panel.

(2) The licensing panel shall review and make determinations on applications for a license under this article.

(3) The licensing panel shall review and resolve matters relating to the unlicensed practice of medicine. If it appears to the licensing panel, based upon credible evidence in a written complaint by any person or upon credible evidence in a motion of the licensing panel, that a person is practicing or has practiced medicine or as a physician assistant without a license as required by this article, the licensing panel may issue an order to cease and desist the unlicensed practice. The order shall set forth the particular statutes and rules that have been violated, the facts alleged to have constituted the violation, and the requirement that all unlicensed practices immediately cease. The respondent may request a hearing on a cease-and-desist order in accordance with section 12-36-118 (14) (b). The provisions of section 12-36-118 (10), exempting board disciplinary proceedings and records from open meetings and public records requirements, shall not apply to a hearing or any other proceeding held by the licensing panel pursuant to this subsection (3) regarding the unlicensed practice of medicine. The procedures specified in section 12-36-118 (15), (16), (17), and (18) shall apply to allegations and orders regarding the unlicensed practice of medicine before the licensing panel.

**12-36-111.5. Michael Skolnik medical transparency act - disclosure of information about licensees - rules. (Repealed)**

**12-36-112. License fee. (Repealed)**

**12-36-113. Examinations. (Repealed)**

**12-36-114. Issuance of licenses - prior practice prohibited.**

(1) If the board determines that an applicant possesses the qualifications required by this article, the board shall issue to the applicant a license to practice medicine.

(2) Prior to the approval of such license, the applicant shall not engage in the practice of medicine in this state, and any person who practices medicine in this state without first obtaining approval of such license shall be deemed to have violated the provisions of this article.

(3) All holders of a license to practice medicine granted by the board, or by the state board of medical examiners as constituted under any prior law of this state, shall be accorded equal rights and privileges under all laws of the state of Colorado, shall be subject to the same duties and obligations, and shall be authorized to practice medicine, as defined by this article in all its branches.

**12-36-114.3. Pro bono license - qualifications - reduced fee - rules.**

(1) Notwithstanding any other provision of this article, the board may issue a pro bono license to a physician to practice medicine in this state for not more than sixty days in a calendar year if the physician:

(a) (I) Holds an active and unrestricted license to practice medicine in Colorado and is in active practice in this state;

(II) Has been on inactive status pursuant to section 12-36-137 for not more than two years; or

(III) Holds an active and unrestricted license to practice medicine in another state or territory of the United States;

(b) Attests to the board that he or she:

(I) Does not charge for his or her services; except that the facility at which the services are provided may charge on a not-for-profit basis for the provision of services; or

(II) Works for and may be compensated by an organization that does not charge Colorado patients for its services;

(c) Has never had a license to practice medicine in this state or in another state or territory revoked or suspended, as verified by the applicant in the manner prescribed by the board;

(d) Is not the subject of an unresolved complaint;

(e) Maintains commercial professional liability insurance coverage in accordance with section 13-64-301, C.R.S.; and

(f) Pays the fee established by the board.

(2) The board shall establish and charge an application fee for an initial and renewal pro bono license, not to exceed one-half the amount of the fee for a renewal of a physician's license and not to exceed the cost of administering the license.

(3) A pro bono license is subject to the renewal requirements set forth in section 12-36-123.

(4) A physician granted a pro bono license under this section shall not simultaneously hold a full license to practice medicine issued under this article.

(5) A physician granted a pro bono license under this section is subject to discipline by the board for committing unprofessional conduct, as defined in section 12-36-117, or any other act prohibited by this article.

(6) The board may refrain from issuing a pro bono license in accordance with section 12-36-116.

(7) The board may adopt rules as necessary to implement this section.

**12-36-114.5. Reentry license.**

(1) Notwithstanding any other provision of this article, the board may issue a reentry license to a physician or physician assistant who has not actively practiced medicine or practiced as a physician assistant, as applicable, for the two-year period immediately preceding the filing of an application for a reentry license, or who has not otherwise maintained continued competency during such period, as determined by the board. The board may charge a fee for a reentry license.

(2) (a) In order to qualify for a reentry license, the physician or physician assistant shall submit to evaluations, assessments, and an educational program as required by the board. The board may work with a private entity that specializes in physician and physician assistant assessment to:

(I) Determine the applicant's competency and areas in which improvement is needed, if any;

(II) Develop an educational program specific to the applicant; and

(III) Upon completion of the educational program, conduct an evaluation to determine the applicant's competency.

(b) (I) If, based on the assessment, the board determines that the applicant requires a period of supervised practice, the board may issue a reentry license, allowing the applicant to practice medicine or as a physician assistant, as applicable, under supervision as specified by the board.

(II) After satisfactory completion of the period of supervised practice, as determined by the board, the reentry licensee may apply to the board for conversion of the reentry license to a full license to practice medicine or to practice as a physician assistant, as applicable, under this article.

(c) If, based on the assessment and after completion of an educational program, if prescribed, the board determines that the applicant is competent and qualified to practice medicine or to practice as a physician assistant, as specified in this article, without supervision, the board may convert the reentry license to a full license to practice medicine or to practice as a physician assistant, as applicable, under this article.

(3) A reentry license shall be valid for no more than three years and shall not be renewable.

**12-36-115. License must be recorded. (Repealed)**

**12-36-116. Refusal of license - issuance subject to probation.**

(1) The board may refrain from issuing a license or may grant a license subject to terms of probation if the board determines that an applicant for a license:

(a) Does not possess the qualifications required by this article;

(b) Has engaged in unprofessional conduct, as defined in section 12-36-117;

(c) Has been disciplined in another state or foreign jurisdiction with respect to his or her license to practice medicine or license to practice as a physician assistant; or

(d) Has not actively practiced medicine or practiced as a physician assistant for the two-year period immediately preceding the filing of such application or otherwise maintained continued competency during such period, as determined by the board.

(2) For purposes of this section, "discipline" includes any matter that must be reported pursuant to 45 CFR 60.8 and is substantially similar to unprofessional conduct, as defined in section 12-36-117.

(3) An applicant whose application is denied or whose license is granted subject to terms of probation may seek review pursuant to section 24-4-104 (9), C.R.S.; except that, if an applicant accepts a license that is subject to terms of probation, such acceptance shall be in lieu of and not in addition to the remedies set forth in section 24-4-104 (9), C.R.S.

**12-36-117. Unprofessional conduct.**

(1) "Unprofessional conduct" as used in this article means:

(a) Resorting to fraud, misrepresentation, or deception in applying for, securing, renewing, or seeking reinstatement of a license to practice medicine or a license to practice as a physician assistant in this state or any other state, in applying for professional liability coverage, required pursuant to section 13-64-301, C.R.S., or privileges at a hospital, or in taking the examination provided for in this article;

(b) Procuring, or aiding or abetting in procuring, criminal abortion;

(c) to (e) Repealed.

(f) Any conviction of an offense of moral turpitude, a felony, or a crime that would constitute a violation of this article. For purposes of this paragraph (f), "conviction" includes the entry of a plea of guilty or nolo contendere or the imposition of a deferred sentence.

(g) Administering, dispensing, or prescribing any habit-forming drug or any controlled substance as defined in section 12-22-303 (7), other than in the course of legitimate professional practice;

(h) Any conviction of violation of any federal or state law regulating the possession, distribution, or use of any controlled substance, as defined in section 12-22-303 (7), and, in determining if a license should be denied, revoked, or suspended, or if the licensee should be placed on probation, the board shall be governed by section 24-5-101, C.R.S. For purposes of this paragraph (h), "conviction" includes the entry of a plea of guilty or nolo contendere or the imposition of a deferred sentence.

(i) Habitual or excessive use or abuse of alcohol, a habit-forming drug, or a controlled substance as defined in section 12-22-303 (7);

(j) Repealed.

(k) The aiding or abetting, in the practice of medicine, of any person not licensed to practice medicine as defined under this article or of any person whose license to practice medicine is suspended;

(l) Repealed.

(m) (I) Except as otherwise provided in sections 12-36-134, 25-3-103.7, and 25-3-314, C.R.S., practicing medicine as the partner, agent, or employee of, or in joint venture with, any person who does not hold a license to practice medicine within this state, or practicing medicine as an employee of, or in joint venture with, any partnership or association any of whose partners or associates do not hold a license to practice medicine within this state, or practicing medicine as an employee of or in joint venture with any corporation other than a professional service corporation for the practice of medicine as described in section 12-36-134. Any licensee holding a license to practice medicine in this state may accept employment from any person, partnership, association, or corporation to examine and treat the employees of such person, partnership, association, or corporation.

(II) (A) Nothing in this paragraph (m) shall be construed to permit a professional services corporation for the practice of medicine, as described in section 12-36-134, to practice medicine.

(B) Nothing in this paragraph (m) shall be construed to otherwise create an exception to the corporate practice of medicine doctrine.

(n) Violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this article;

(o) Failing to notify the board, as required by section 12-36-118.5 (1), of a physical or mental illness or condition that impacts the licensee's ability to perform a medical service with reasonable skill and with safety to patients, failing to act within the limitations created by a physical or mental illness or condition that renders the licensee unable to perform a medical service with reasonable skill and with safety to the patient, or failing to comply with the limitations agreed to under a confidential agreement entered pursuant to section 12-36-118.5;

(p) Any act or omission which fails to meet generally accepted standards of medical practice;

(q) Repealed.

(r) Engaging in a sexual act with a patient during the course of patient care or within six months immediately following the termination of the licensee's professional relationship with the patient. "Sexual act", as used in this paragraph (r), means sexual contact, sexual intrusion, or sexual penetration as defined in section 18-3-401, C.R.S.

(s) Refusal of an attending physician to comply with the terms of a declaration executed by a patient pursuant to the provisions of article 18 of title 15, C.R.S., and failure of the attending physician to transfer care of said patient to another physician;

(t) (I) Violation of abuse of health insurance pursuant to section 18-13-119, C.R.S.; or

(II) Advertising through newspapers, magazines, circulars, direct mail, directories, radio, television, or otherwise that the licensee will perform any act prohibited by section 18-13-119 (3), C.R.S.;

(u) Violation of any valid board order or any rule or regulation promulgated by the board in conformance with law;

(v) Dispensing, injecting, or prescribing an anabolic steroid as defined in section 18-18-102 (3), C.R.S., for the purpose of the hormonal manipulation that is intended to increase muscle mass, strength, or weight without a medical necessity to do so or for the intended purpose of improving performance in any form of exercise, sport, or game;

(w) Dispensing or injecting an anabolic steroid as defined in section 18-18-102 (3), C.R.S., unless such anabolic steroid is dispensed from a pharmacy prescription drug outlet pursuant to a prescription order or is dispensed by any practitioner in the course of his professional practice;

(x) Prescribing, distributing, or giving to a family member or to oneself except on an emergency basis any controlled substance as defined in section 18-18-204, C.R.S., or as contained in schedule II of 21 U.S.C. sec. 812, as amended;

(y) Failing to report to the board, within thirty days after an adverse action, that an adverse action has been taken against the licensee by another licensing agency in another state or country, a peer review body, a health care institution, a professional or medical society or association, a governmental agency, a law enforcement agency, or a court for acts or conduct that would constitute grounds for disciplinary or adverse action as described in this article;

(z) Failing to report to the board, within thirty days, the surrender of a license or other authorization to practice medicine in another state or jurisdiction or the surrender of membership on any medical staff or in any medical or professional association or society while under investigation by any of those authorities or bodies for acts or conduct similar to acts or conduct that would constitute grounds for action as described in this article;

(aa) Failing to accurately answer the questionnaire accompanying the renewal form as required pursuant to section 12-36-123 (1) (b);

(bb) (I) Engaging in any of the following activities and practices: Willful and repeated ordering or performance, without clinical justification, of demonstrably unnecessary laboratory tests or studies; the administration, without clinical justification, of treatment which is demonstrably unnecessary; the failure to obtain consultations or perform referrals when failing to do so is not consistent with the standard of care for the profession; or ordering or performing, without clinical justification, any service, X ray, or treatment which is contrary to recognized standards of the practice of medicine as interpreted by the board.

(II) In determining which activities and practices are not consistent with the standard of care or are contrary to recognized standards of the practice of medicine, the board shall utilize, in addition to its own expertise, the standards developed by recognized and established accreditation or review organizations that meet requirements established by the board by rule.

Such determinations shall include but not be limited to appropriate ordering of laboratory tests and studies, appropriate ordering of diagnostic tests and studies, appropriate treatment of the medical condition under review, appropriate use of consultations or referrals in patient care, and appropriate creation and maintenance of patient records.

(cc) Falsifying or repeatedly making incorrect essential entries or repeatedly failing to make essential entries on patient records;

(dd) Committing a fraudulent insurance act, as defined in section 10-1-128, C.R.S.;

(ee) Failing to establish and continuously maintain financial responsibility, as required in section 13-64-301, C.R.S.;

(ff) Repealed.

(gg) Failing to respond in an honest, materially responsive, and timely manner to a complaint issued pursuant to section 12-36-118 (4);

(hh) Advertising in a manner that is misleading, deceptive, or false;

(ii) Repealed.

(jj) Any act or omission in the practice of telemedicine that fails to meet generally accepted standards of medical practice;

(kk) Entering into or continuing in a mentorship relationship with an advanced practice nurse pursuant to sections 12-36-106.4 and 12-38-111.6 (4.5) that fails to meet generally acceptable standards of medical practice;

(ll) Verifying by signature the articulated plan developed by an advanced practice nurse pursuant to sections 12-36-106.4 and 12-38-111.6 (4.5) if the articulated plan fails to comply with the requirements of section 12-38-111.6 (4.5) (b) (II);

(mm) Failure to comply with the requirements of section 14 of article XVIII of the state constitution, section 25-1.5-106, C.R.S., or the rules promulgated by the state health agency pursuant to section 25-1.5-106 (3), C.R.S.

(1.5) (a) A licensee shall not be subject to disciplinary action by the board solely for prescribing controlled substances for the relief of intractable pain.

(b) For the purposes of this subsection (1.5), "intractable pain" means a pain state in which the cause of the pain cannot be removed and which in the generally accepted course of medical practice no relief or cure of the cause of the pain is possible or none has been found after reasonable efforts including, but not limited to, evaluation by the attending physician and one or more physicians specializing in the treatment of the area, system, or organ of the body perceived as the source of the pain.

(2) The discipline of a license to practice medicine or of a license to practice as a physician assistant in another state, territory, or country shall be deemed to be unprofessional conduct. For purposes of this subsection (2), "discipline" includes any sanction required to be reported pursuant to 45 CFR 60.8. This subsection (2) shall apply only to discipline that is based upon an

act or omission in such other state, territory, or country that is defined substantially the same as unprofessional conduct pursuant to subsection (1) of this section.

(3) (a) For purposes of this section, "alternative medicine" means those health care methods of diagnosis, treatment, or healing that are not generally used but that provide a reasonable potential for therapeutic gain in a patient's medical condition that is not outweighed by the risk of such methods. A licensee who practices alternative medicine shall inform each patient in writing, during the initial patient contact, of such licensee's education, experience, and credentials related to the alternative medicine practiced by such licensee. The board shall not take disciplinary action against a licensee solely on the grounds that such licensee practices alternative medicine.

(b) Nothing in paragraph (a) of this subsection (3) shall be construed to prevent disciplinary action against a licensee for practicing medicine or practicing as a physician assistant in violation of this article.

**12-36-117.5. Prescriptions - requirement to advise patients.**

(1) A physician licensed under this article, or a physician assistant licensed by the board who has been delegated the authority to prescribe medication, may advise the physician's or the physician assistant's patients of their option to have the symptom or purpose for which a prescription is being issued included on the prescription order.

(2) A physician's or a physician assistant's failure to advise a patient under subsection (1) of this section shall not be grounds for any disciplinary action against the physician's or the physician assistant's professional license issued under this article. Failure to advise a patient pursuant to subsection (1) of this section shall not be grounds for any civil action against a physician or physician's assistant in a negligence or tort action, nor shall such failure be evidence in any civil action against a physician or a physician's assistant.

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

(1) (a) The president of the board shall divide those members of the board other than the president into two panels of six members each, four of whom shall be physician members.

(b) Each panel shall act as both an inquiry and a hearings panel. Members of the board may be assigned from one panel to the other by the president. The president may be a member of both panels, but in no event shall the president or any other member who has considered a complaint as a member of a panel acting as an inquiry panel take any part in the consideration of a formal complaint involving the same matter.

(c) All matters referred to one panel for investigation shall be heard, if referred for formal hearing, by the other panel or a committee of such panel. However, in its discretion, either inquiry panel may elect to refer a case for formal hearing to a qualified administrative law judge in lieu of a hearings panel of the board, for an initial decision pursuant to section 24-4-105, C.R.S.

(d) The initial decision of an administrative law judge may be reviewed pursuant to section 24-4-105 (14) and (15), C.R.S., by the filing of exceptions to the initial decision with the hearings panel which would have heard the case if it had not been referred to an administrative law judge or by review upon the motion of such hearings panel. The respondent or the board's

counsel shall file such exceptions.

(2) Investigations shall be under the supervision of the panel to which they are assigned. The persons making such investigation shall report the results thereof to the assigning panel for appropriate action.

(3) (a) In the discharge of its duties, the board may enlist the assistance of other licensees. Licensees have the duty to report to the board any licensee known, or upon information and belief, to have violated any of the provisions of section 12-36-117 (1); except that no licensee who is treating another licensee for a mental disability or habitual intemperance or excessive use of any habit-forming drug shall have a duty to report his or her patient unless, in the opinion of the treating licensee, the impaired licensee presents a danger to himself, herself, or others.

(b) Any member of the board, any member of the board's staff, any person acting as a witness or consultant to the board, any witness testifying in a proceeding authorized under this part 1, and any person who lodges a complaint pursuant to this part 1 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 the making of a complaint or report or participating in any investigative or administrative proceeding pursuant to this section shall be immune from any liability, civil or criminal, that otherwise might result by reason of such participation.

(4) (a) (I) Written complaints relating to the conduct of a licensee licensed or authorized to practice medicine in this state may be made by any person or may be initiated by an inquiry panel of the board on its own motion. The licensee complained of shall be given notice by first-class mail of the nature of the complaint and shall be given thirty days to answer or explain in writing the matters described in such complaint. Upon receipt of the licensee's answer or at the conclusion of thirty days, whichever occurs first, the inquiry panel may take further action as set forth in subparagraph (II) of this paragraph (a).

(II) The inquiry panel may then conduct a further investigation, which may be made by one or more members of the inquiry panel, one or more licensees who are not members of the board, a member of the staff of the board, a professional investigator, or any other person or organization as the inquiry panel directs. Any such investigation shall be entirely informal.

(b) The board shall cause an investigation to be made when the board is informed of:

(I) Disciplinary actions taken by hospitals to suspend or revoke the privileges of a physician and reported to the board pursuant to section 25-3-107, C.R.S.;

(II) Disciplinary actions taken as a result of a professional review proceeding pursuant to part 1 of article 36.5 of this title against a physician. Such disciplinary actions shall be promptly reported to the board.

(III) An instance of a medical malpractice settlement or judgment against a licensee reported to the board pursuant to section 10-1-120, C.R.S.; or

(IV) Licensees who have been allowed to resign from hospitals for medical misconduct.

Such hospitals shall report the same.

(c) On completion of an investigation, the inquiry panel shall make a finding that:

(I) The complaint is without merit and no further action need be taken with reference thereto;

(II) There is no reasonable cause to warrant further action with reference thereto;

(II.5) The investigation discloses an instance of conduct that does not warrant formal action by the board and should be dismissed but in which the inquiry panel has noticed indications of possible errant conduct by the licensee that could lead to serious consequences if not corrected. In such a case, a confidential letter of concern shall be sent to the licensee against whom the complaint was made.

(III) (A) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the board, does not warrant formal action by the board but that should not be dismissed as being without merit, a letter of admonition may be issued and sent, by certified mail, to the licensee.

(B) When a letter of admonition is sent by the board, by certified mail, to a licensee, such licensee shall be advised that he or she has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(C) If the request for adjudication is timely made, the letter of admonition shall be deemed vacated and the matter shall be processed by means of formal disciplinary proceedings.

(IV) (A) The investigation discloses facts that warrant further proceedings by formal complaint, as provided in subsection (5) of this section, in which event the complaint shall be referred to the attorney general for preparation and filing of a formal complaint.

(B) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(d) All proceedings pursuant to this subsection (4) shall be expeditiously and informally conducted so that no licensee is subjected to unfair and unjust charges and that no complainant is deprived of his or her right to a timely, fair, and proper investigation of his or her complaint.

(e) Repealed.

(5) (a) to (d) (Deleted by amendment, L. 95, p. 1062, § 13, effective July 1, 1995.)

(e) All formal complaints shall be heard and determined in accordance with paragraph (f) of this subsection (5) and section 24-4-105, C.R.S. Except as provided in subsection (1) of this section, all formal hearings shall be conducted by the hearings panel. The licensee may be present in person and by counsel, if so desired, to offer evidence and be heard in his or her own defense. At formal hearings, the witnesses shall be sworn and a complete record shall be made of all proceedings and testimony.

(f) Except as provided in subsection (1) of this section, an administrative law judge shall preside at the hearing and shall advise the hearings panel, as requested, on legal matters in connection with the hearing. The administrative law judge shall provide advice or assistance as

requested by the hearings panel in connection with its preparations of its findings and recommendations or conclusions to be made. The administrative law judge may administer oaths and affirmations, sign and issue subpoenas, and perform other duties as authorized by the hearings panel.

(g) (I) To warrant a finding of unprofessional conduct, the charges shall be established as specified in section 24-4-105 (7), C.R.S. Except as provided in subsection (1) of this section, the hearings panel shall make a report of its findings and conclusions which, when approved and signed by a majority of those members of the hearings panel who have conducted the hearing pursuant to paragraphs (e) and (f) of this subsection (5), shall be and become the action of the board.

(II) If it is found that the charges are unproven, the hearings panel, or an administrative law judge sitting in lieu of the hearings panel pursuant to subsection (1) of this section, shall enter an order dismissing the complaint.

(III) If the hearings panel finds the charges proven and orders that discipline be imposed, it shall also determine the extent of such discipline, which shall be in the form of a letter of admonition, suspension for a definite or indefinite period, or revocation of license to practice. The hearings panel also may impose a fine of up to five thousand dollars per violation. In determining appropriate disciplinary action, the hearings panel shall first consider sanctions that are necessary to protect the public. Only after the panel has considered such sanctions may it consider and order requirements designed to rehabilitate the licensee or applicant. If discipline other than revocation of a license to practice is imposed, the hearings panel may also order that the licensee be granted probation and allowed to continue to practice during the period of such probation. The hearings panel may also include in any disciplinary order that allows the licensee to continue to practice such conditions as the panel may deem appropriate to assure that the licensee is physically, mentally, morally, and otherwise qualified to practice medicine or practice as a physician assistant in accordance with generally accepted professional standards of practice, including any or all of the following:

(A) Submission by the respondent to such examinations as the hearings panel may order to determine his physical or mental condition or his professional qualifications;

(B) The taking by him of such therapy or courses of training or education as may be needed to correct deficiencies found either in the hearing or by such examinations;

(C) The review or supervision of his practice as may be necessary to determine the quality of his practice and to correct deficiencies therein; and

(D) The imposition of restrictions upon the nature of his practice to assure that he does not practice beyond the limits of his capabilities.

(III.5) Any moneys collected pursuant to subparagraph (III) of this paragraph (g) shall be transmitted to the state treasurer, who shall credit the same to the general fund.

(IV) Upon the failure of the licensee to comply with any conditions imposed by the hearings panel pursuant to subparagraph (III) of this paragraph (g), unless due to conditions beyond the licensee's control, the hearings panel may order suspension of the licensee's license to practice medicine or practice as a physician assistant in this state until such time as the licensee complies with such conditions.

(V) In making any of the orders provided in subparagraphs (III) and (IV) of this paragraph (g), the hearings panel may take into consideration the licensee's prior disciplinary record. If the hearings panel does take into consideration any prior discipline of the licensee, its findings and recommendations shall so indicate.

(VI) In all cases of revocation, suspension, or probation, the board shall enter in its records the facts of such revocation, suspension, or probation and of any subsequent action of the board with respect thereto.

(VII) to (IX) (Deleted by amendment, L. 79, p. 512, § 14, effective July 1, 1979.)

(X) In all cases involving alleged violations of section 12-36-117 (1) (mm), the board shall promptly notify the executive director of the department of public health and environment of its findings, including whether it found that the physician violated section 12-36-117 (1) (mm) and any restrictions it placed on the physician with respect to recommending the use of medical marijuana.

(h) The attorney general shall prosecute those charges which have been referred to him by the inquiry panel pursuant to subparagraph (IV) of paragraph (c) of subsection (4) of this section. The board may direct the attorney general to perfect an appeal.

(i) Any person whose license to practice medicine or to practice as a physician assistant is revoked or who surrenders his or her license to avoid discipline shall not be eligible to apply for any license for two years after the date the license is revoked or surrendered. The two-year waiting period applies to any person whose license to practice medicine, to practice as a physician assistant, or to practice any other health care occupation is revoked by any other legally qualified board or regulatory entity.

(6) A majority of the members of the board, three members of the inquiry panel, or three members of the hearings panel shall constitute a quorum. The action of a majority of those present comprising such quorum shall be the action of the board, the inquiry panel, or the hearings panel.

(7) (Deleted by amendment, L. 2010, (HB 10-1260), Ch. 403, p. 1951, § 17, effective July 1, 2010.)

(8) If any licensee is determined to be mentally incompetent or insane by a court of competent jurisdiction and a court enters, pursuant to part 3 or part 4 of article 14 of title 15 or section 27-65-109 (4) or 27-65-127, C.R.S., an order specifically finding that the mental incompetency or insanity is of such a degree that the licensee is incapable of continuing to practice medicine or practice as a physician assistant, his or her license shall automatically be suspended by the board, and, anything in this article to the contrary notwithstanding, such suspension shall continue until the licensee is found by such court to be competent to practice medicine or practice as a physician assistant.

(9) (a) If the board has reasonable cause to believe that a licensee is unable to practice with reasonable skill and safety to patients because of a condition described in section 12-36-117 (1) (i) or (1) (o), it may require such licensee to submit to mental or physical examinations by physicians designated by the board. If a licensee fails to submit to such mental or physical examinations, the board may suspend the license until the required examinations are conducted.

(b) Every licensee shall be deemed, by so practicing or by applying for annual registration of such person's license, to have consented to submit to mental or physical examinations when directed in writing by the board. Further, such person shall be deemed to have waived all objections to the admissibility of the examining physician's testimony or examination reports on the ground of privileged communication. Subject to applicable federal law, such licensee shall be deemed to have waived all objections to the production of medical records to the board from health care providers that may be necessary for the evaluations described in paragraph (a) of this subsection (9).

(c) The results of any mental or physical examination ordered by the board shall not be used as evidence in any proceeding other than before the board.

(10) (a) Investigations, examinations, hearings, meetings, or any other proceedings of the board conducted pursuant to this section shall be exempt from any law requiring that proceedings of the board be conducted publicly or that the minutes or records of the board with respect to action of the board taken pursuant to this section be open to public inspection. This subsection (10) shall not apply to investigations, examinations, hearings, meetings, or any other proceedings or records of the licensing panel created pursuant to section 12-36-111.3 related to the unlicensed practice of medicine.

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

(11) A licensee who, at the request of the board, examines another licensee shall be immune from suit for damages by the person examined if the examining person conducted the examination and made his or her findings or diagnosis in good faith.

(12) (Deleted by amendment, L. 95, p. 1062, § 13, effective July 1, 1995.)

(13) Within thirty days after the board takes final action, which is of public record, to revoke or suspend a license or to place a licensee on probation based on competence or professional conduct, the board shall send notice of the final action to any hospital in which the licensee has clinical privileges, as indicated by the licensee.

(14) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person or in its own motion, that a licensee is acting in a manner that is an imminent threat to the health and safety of the public, the board may issue an order to cease and desist such activity. The order shall set forth the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (14), the respondent may request a hearing on the question of whether acts or practices in violation of this part 1 have occurred. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(15) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this part 1, then, in addition to any specific powers granted pursuant to this part 1, the board may issue to such

person an order to show cause as to why the board should not issue a final order directing such person to cease and desist from the unlawful act or unlicensed practice.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (15) shall be promptly notified by the board of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the board for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order is issued. Personal service or mailing of an order or document pursuant to this subsection (15) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the board as provided in paragraph (b) of this subsection (15). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (15) does not appear at the hearing, the board may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (15) and such other evidence related to the matter as the board deems appropriate. The board shall issue the order within ten days after the board's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the board reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required license or has or is about to engage in acts or practices constituting violations of this part 1, a final cease-and-desist order may be issued directing such person to cease and desist from further unlawful acts or unlicensed practices.

(IV) The board shall provide notice, in the manner set forth in paragraph (b) of this subsection (15), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom such order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

(16) If it appears to the board, based upon credible evidence presented to the board, that a person has engaged in or is about to engage in any unlicensed act or practice, any act or practice constituting a violation of this part 1, any rule promulgated pursuant to this part 1, any order issued pursuant to this part 1, or any act or practice constituting grounds for administrative sanction pursuant to this part 1, the board may enter into a stipulation with such person.

(17) If any person fails to comply with a final cease-and-desist order or a stipulation, the board may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring, and if so requested such attorney shall bring, suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

(18) A person aggrieved by the final cease-and-desist order may seek judicial review of the board's determination or of the board's final order as provided in section 12-36-119.

(19) If a physician has a restriction placed on his or her license, the restriction shall, if practicable, state whether the restriction prohibits the physician from making a medical marijuana recommendation.

**12-36-118.5. Confidential agreements to limit practice - violation grounds for discipline.**

(1) If a physician or physician assistant suffers from a physical or mental illness or condition that renders the licensee unable to practice medicine or practice as a physician assistant with reasonable skill and with safety to patients, the physician or physician assistant shall notify the board of the illness or condition in a manner and within a period determined by the board. The board may require the licensee to submit to an examination or refer the licensee to a peer health assistance program pursuant to section 12-36-123.5 to evaluate the extent of the illness or condition and its impact on the licensee's ability to practice with reasonable skill and with safety to patients.

(2) (a) Upon determining that a physician or physician assistant with a physical or mental illness or condition is able to render limited medical services with reasonable skill and with safety to patients, the board may enter into a confidential agreement with the physician or physician assistant in which the physician or physician assistant agrees to limit his or her practice based on the restrictions imposed by the illness or condition, as determined by the board.

(b) As part of the agreement, the licensee shall be subject to periodic reevaluations or monitoring as determined appropriate by the board. The board may refer the licensee to the peer assistance health program for reevaluation or monitoring.

(c) The parties may modify or dissolve the agreement as necessary based on the results of a reevaluation or of monitoring.

(3) By entering into an agreement with the board pursuant to this section to limit his or her practice, the licensee shall not be deemed to be engaging in unprofessional conduct, and the agreement shall be considered an administrative action and shall not constitute a restriction or discipline by the board. However, if the licensee fails to comply with the terms of an agreement entered into pursuant to this section, such failure constitutes unprofessional conduct pursuant to section 12-36-117 (1) (o), and the licensee shall be subject to discipline in accordance with section 12-36-118.

(4) This section shall not apply to a licensee subject to discipline for unprofessional conduct as described in section 12-36-117 (1) (i).

**12-36-119. Appeal of final board actions.**

When the board refuses to grant a license, imposes disciplinary action pursuant to section 12-36-118, or places a licensee on probation, such action may be reviewed by the court of appeals pursuant to section 24-4-106 (11), C.R.S., unless the licensee has accepted a license subject to terms of probation as set forth in section 12-36-116 (3).

**12-36-120. Other licensees of board - disciplinary action. (Repealed)**

**12-36-121. Duplicates of license. (Repealed)**

**12-36-122. Physician training licenses.**

(1) Any person serving an approved internship, residency, or fellowship, as defined by this article, in a hospital in this state may do so for an aggregate period of up to six years under the authority of a physician training license issued pursuant to this subsection and without a license to practice medicine issued pursuant to section 12-36-107 or 12-36-107.6.

(2) No person shall be granted a physician training license unless such person meets the following criteria:

(a) The person has been accepted into and demonstrates the intention to participate in an approved internship, residency, or fellowship, as defined by this article; and

(b) The person is not otherwise licensed to practice medicine in this state.

(3) The board may refrain from issuing a physician training license, or may grant a physician training license subject to terms or probation, for any of the reasons listed in section 12-36-116 (1) (a), (1) (b), or (1) (c). An applicant whose physician training license is denied or is granted subject to terms of probation may seek review pursuant to section 24-4-104 (9), C.R.S.; except that, if an applicant accepts a physician training license that is subject to terms of probation, such acceptance shall be in lieu of and not in addition to the remedies set forth in section 24-4-104 (9), C.R.S.

(4) Except as provided in subsection (3) of this section, the board shall issue a physician training license upon receipt of a statement from the approved internship, residency, or fellowship program stating that the applicant meets the criteria set forth in subsection (2) of this section and that the approved internship, residency, or fellowship accepts responsibility for the applicant's training while in the program. The statement shall be signed by the program director, clinical director, or other physician responsible for the training of the applicant. The statement shall be submitted to the board no later than thirty days prior to the date on which the applicant begins the approved internship, residency, or fellowship in this state.

(5) Where feasible, the applicant shall submit a completed application, on a form approved by the board, on or before the date on which the applicant begins the approved internship, residency, or fellowship in this state. Any physician training license granted pursuant to this section shall expire if a completed application is not received by the board sixty days after the applicant begins the approved internship, residency, or fellowship in this state. The board may establish and charge an application and renewal fee not to exceed fifty dollars for such physician training licenses pursuant to section 24-34-105, C.R.S. Such applicants and renewal applicants shall not be required to pay any fee pursuant to section 12-36-123.5.

(6) Except as otherwise provided in this section, such physician training license shall be subject to renewal as set forth in section 12-36-123 (1) (a) and (1) (b). In no event shall any person hold a Colorado physician training license for more than an aggregate period of six years.

(7) A physician training licensee may practice medicine as defined by this article with the following restrictions:

(a) A physician training licensee shall be authorized to practice medicine only under the supervision of a physician licensed to practice medicine pursuant to section 12-36-107 or 12-36-107.6 and only as necessary for the physician training licensee's participation in the approved internship, residency, or fellowship designated on the licensee's application for a physician training license.

(b) (I) A physician training license shall expire:

(A) Within sixty days under the circumstances described in subsection (5) of this section;

(B) At the time the physician training licensee ceases to participate in the approved internship, residency, or fellowship program identified on the licensee's application form; or

(C) At the time the physician training licensee obtains any other license to practice medicine issued by the board.

(II) If a physician training licensee entered an approved internship, residency, or fellowship other than the approved internship, residency, or fellowship indicated on the licensee's application, the licensee shall file a new application with the board pursuant to subsections (4) and (5) of this section.

(c) A physician training licensee shall not have the authority to delegate the rendering of medical services to a person who is not licensed to practice medicine pursuant to section 12-36-106 (3) (l) and shall not have the authority to supervise physician assistants as provided by section 12-36-106 (5).

(d) The issuance of a physician training license shall not be construed to require the board to issue the physician training licensee a license to practice medicine pursuant to section 12-36-107 or 12-36-107.6.

(8) A physician training licensee may be disciplined for unprofessional conduct as defined in section 12-36-117, pursuant to the procedures outlined in section 12-36-118.

(9) Repealed.

(10) Licensed physicians responsible for the supervision of interns, residents, or fellows in graduate training programs shall report to the board no later than thirty days after a physician training licensee has been terminated or has resigned from the approved internship, residency, or fellowship.

**12-36-122.5. Intern, resident, or fellow reporting.**

(1) Notwithstanding any provision of 12-36-118 (10) to the contrary, the board shall inform the licensed physicians responsible for the supervision of an intern, resident, or fellow of any complaint received in writing relating to the intern, resident, or fellow. The board shall also inform the program sponsoring such intern, resident, or fellow of actions of the board regarding such complaint.

(2) The board in its discretion may release records that are not otherwise privileged or confidential by law to the licensed physicians responsible for the supervision of an intern,

resident, or fellow, but only if such physician agrees in writing not to redisclose such records or the information contained therein for use outside of any proceeding within the program or practice site.

(3) Licensed physicians responsible for the supervision of interns, residents, or fellows in graduate training programs shall promptly report to the board anything concerning a licensee in the graduate training program that would constitute a violation of this article. The physicians shall also report to the board any licensee who has not progressed satisfactorily in the program because the licensee has been dismissed, suspended, or placed on probation for reasons that constitute unprofessional conduct as defined in section 12-36-117, unless the conduct has been reported to the peer health assistance program pursuant to section 12-36-123.5.

**12-36-123. Procedure - registration - fees.**

(1) (a) All licenses shall be renewed or reinstated pursuant to a schedule established by the director of the division of registrations within the department of regulatory agencies and shall be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director of the division may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S., and shall increase renewal fees consistent with section 24-34-109 (4), C.R.S., to fund the division's costs in administering and staffing the nurse-physician advisory task force for Colorado health care created in section 24-34-109 (1), C.R.S. If a person fails to renew his or her license pursuant to the schedule established by the director of the division of registrations, such license shall expire. A person whose license has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

(b) The board shall design a questionnaire to accompany the renewal form for the purpose of determining whether a licensee has acted in violation of this article or been disciplined for any action that might be considered a violation of this article or might make the licensee unfit to practice medicine with reasonable care and safety. If an applicant fails to answer the questionnaire accurately, such failure shall constitute unprofessional conduct under section 12-36-117 (1) (aa).

(c) Applicants for relicensure shall not be required to attend and complete continuing medical education programs, except as directed by the board to correct deficiencies of training or education as directed under section 12-36-118 (5) (g) (III) (B).

(2) (Deleted by amendment, L. 2004, p. 1829, § 70, effective August 4, 2004.)

(3) (Deleted by amendment, L. 95, p. 1067, § 16, effective July 1, 1995.)

**12-36-123.5. Physicians' and physician assistants' peer health assistance program.**

(1) to (3) Repealed.

(3.5) (a) (Deleted by amendment, L. 95, p. 1068, § 17, effective July 1, 1995.)

(b) (I) As a condition of physician and physician assistant licensure and renewal in this state, every applicant shall pay, pursuant to paragraphs (d) and (e) of this subsection (3.5), an amount

set by the board not to exceed sixty-one dollars per year, which maximum amount may be adjusted on January 1, 2011, and annually thereafter by the board to reflect:

(A) Changes in the United States bureau of labor statistics consumer price index for the Denver-Boulder consolidated metropolitan statistical area for all urban consumers, all goods, or its successor index;

(B) Overall utilization of the program; and

(C) Differences in program utilization by physicians and physician assistants.

(II) Based on differences in utilization rates between physicians and physician assistants, the board may establish a different fee amount for physicians than the amount charged physician assistants.

(III) The fee imposed pursuant to this paragraph (b) shall be used to support designated providers that have been selected by the board to provide assistance to physicians and physician assistants needing help in dealing with physical, emotional, or psychological problems that may be detrimental to their ability to practice medicine.

(c) The board shall select one or more peer health assistance programs as designated providers. To be eligible for designation by the board a peer health assistance program shall:

(I) Provide for the education of physicians and physician assistants with respect to the recognition and prevention of physical, emotional, and psychological problems and provide for intervention when necessary or under circumstances which may be established by rules promulgated by the board;

(II) Offer assistance to a physician or physician assistant in identifying physical, emotional, or psychological problems;

(III) Evaluate the extent of physical, emotional, or psychological problems and refer the physician or physician assistant for appropriate treatment;

(IV) Monitor the status of a physician or physician assistant who has been referred for treatment;

(V) Provide counseling and support for the physician or physician assistant and for the family of any physician or physician assistant referred for treatment;

(VI) Agree to receive referrals from the board;

(VII) Agree to make their services available to all licensed Colorado physicians and licensed Colorado physician assistants.

(d) The administering entity shall be a qualified, nonprofit private foundation that is qualified under section 501 (c) (3) of the federal "Internal Revenue Code of 1986", as amended, and shall be dedicated to providing support for charitable, benevolent, educational, and scientific purposes that are related to medicine, medical education, medical research and science, and other medical charitable purposes.

(e) The responsibilities of the administering entity shall be:

(I) To collect the required annual payments, either directly or through the board pursuant to paragraph (e.5) of this subsection (3.5);

(II) To verify to the board, in a manner acceptable to the board, the names of all physician and physician assistant applicants who have paid the fee set by the board;

(III) To distribute the moneys collected, less expenses, to the approved designated provider, as directed by the board;

(IV) To provide an annual accounting to the board of all amounts collected, expenses incurred, and amounts disbursed; and

(V) To post a surety performance bond in an amount specified by the board to secure performance under the requirements of this section. The administering entity may recover the actual administrative costs incurred in performing its duties under this section in an amount not to exceed ten percent of the total amount collected.

(e.5) The board may collect the required annual payments payable to the administering entity for the benefit of the administering entity and shall transfer all such payments to the administering entity. All required annual payments collected by or due to the board for each fiscal year are custodial funds that are not subject to appropriation by the general assembly, and the distribution of the payments to the administering entity or expenditure of the payments by the administering entity does not constitute state fiscal year spending for purposes of section 20 of article X of the state constitution.

(f) No later than June 30, 1994, the board shall transfer the balance in the fund, if any, to the administering entity chosen by the board pursuant to paragraphs (d) and (e) of this subsection (3.5).

(4) (Deleted by amendment, L. 95, p. 1068, § 17, effective July 1, 1995.)

(5) Nothing in this section shall be construed to create any liability on the board or the state of Colorado for the actions of the board in making grants to peer assistance programs, and no civil action may be brought or maintained against the board or the state for an injury alleged to have been the result of the activities of any state-funded peer assistance program or the result of an act or omission of a physician or physician assistant participating in or referred by a state-funded peer assistance program.

(6) Repealed.

**12-36-124. Certification of licensing. (Repealed)**

**12-36-125. Division of fees - independent advertising or marketing agent.**

(1) (a) If any person holding a license issued by the board or by the state board of medical examiners as constituted under any prior law of this state divides any fee or compensation received or charged for services rendered by him or her as such licensee or agrees to divide any such fee or compensation with any person, firm, association, or corporation as pay or

compensation to such other person for sending or bringing any patient or other person to such licensee, or for recommending such licensee to any person, or for being instrumental in any manner in causing any person to engage such licensee in his or her professional capacity; or if any such licensee shall either directly or indirectly pay or compensate or agree to pay or compensate any person, firm, association, or corporation for sending or bringing any patient or other person to such licensee for examination or treatment, or for recommending such licensee to any person, or for being instrumental in causing any person to engage such licensee in his or her professional capacity; or if any such licensee, in his or her professional capacity and in his or her own name or behalf, shall make or present a bill or request a payment for services rendered by any person other than the licensee, such licensee commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(b) Notwithstanding the provisions of paragraph (a) of subsection (1) of this section, a licensee may pay an independent advertising or marketing agent compensation for the advertising or marketing services rendered on the licensee's behalf by such agent, including compensation which is paid for the results or performance of such services on a per patient basis.

(c) As used in this subsection (1), "independent advertising or marketing agent" means a person, firm, association, or corporation which performs advertising or other marketing services on behalf of licensees, including referrals of patients to licensees resulting from patient-initiated responses to such advertising or marketing services.

(2) Violation of the provisions of this section shall constitute grounds for the suspension or revocation of a license or the placing of the holder thereof on probation.

(3) Repealed.

**12-36-126. Recovery of fees illegally paid.**

If any licensee, in violation of section 12-36-125, divides or agrees to divide any fee or compensation received by him for services rendered in his professional capacity with any person whomsoever, the person who has paid such fee or compensation to such licensee may recover the amount unlawfully paid or agreed to be paid from either the licensee or from the person to whom such fee or compensation has been paid, by an action to be instituted within two years from the date on which such fee or compensation was so divided or agreed to be divided.

**12-36-127. Liability of persons other than licensee.**

If any person, firm, association, or corporation receives, either directly or indirectly, any pay or compensation given or paid in violation of section 12-36-125, such person, firm, association, or corporation, and the officers and directors thereof, commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

**12-36-128. Advertising. (Repealed)**

**12-36-128.5. Public communications and advertisements. (Repealed)**

**12-36-129. Unauthorized practice - penalties.**

(1) Any person who practices or offers or attempts to practice medicine or practice as a physician assistant within this state without an active license issued under this article commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first offense, and, any person committing a second or subsequent offense commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(2) Any person who engages in any of the following activities commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.:

(a) Presents as his or her own the diploma, license, certificate, or credentials of another;

(b) Gives either false or forged evidence of any kind to the board or any board member in connection with an application for a license to practice medicine or practice as a physician assistant;

(c) Practices medicine or practices as a physician assistant under a false or assumed name; or

(d) Falsely impersonates another licensee of a like or different name.

(2.5) Any person who violates section 12-36-117 (1) (w) commits a class 5 felony, and any person committing a second or subsequent violation commits a class 3 felony; and such persons shall be punished as provided in section 18-1.3-401, C.R.S.

(3) No action may be maintained against an individual who has been the recipient of services constituting the unlawful practice of medicine or the unlawful practice of a physician assistant for the breach of a contract involving the unlawful practice of medicine or the unlawful practice of a physician assistant or the recovery of compensation for services rendered under such a contract.

(4) When an individual has been the recipient of services constituting the unlawful practice of medicine or the unlawful practice of a physician assistant, whether or not the individual knew that the rendition of the services was unlawful:

(a) The individual or the individual's personal representative is entitled to recover the amount of any fee paid for the services; and

(b) The individual or the individual's personal representative may also recover a reasonable attorney fee as fixed by the court, to be assessed as part of the costs of the action.

(5) (a) No specialty society, association of physicians, or licensed physician may discriminate against any person licensed to practice medicine if such physician is qualified for membership in the specialty society or association. If board certification or eligibility in a specialty is a membership requirement, certification or eligibility by either the American board of medical specialties or the American osteopathic association based upon the applicant's training as a doctor of medicine or doctor of osteopathy, is sufficient. Notwithstanding any other remedies provided under this article, a licensed physician who is discriminated against in violation of this section shall have a private right of action against the licensed physician or specialty society or association that so discriminates.

(b) Any licensed physician, specialty society, or association of physicians held liable for a violation of this subsection (5) shall pay the costs and reasonable attorney fees incurred by the aggrieved physician associated with his pursuit of any claim for relief authorized by this subsection (5).

(6) (a) The board may, in the name of the people of the state of Colorado and through the attorney general of the state of Colorado, apply for an injunction in any court of competent jurisdiction to enjoin any person from committing any act prohibited by this article.

(b) If the board establishes that the defendant has been or is committing an act prohibited by this article, the court shall enter a decree perpetually enjoining the defendant from further committing the act.

(c) An injunctive proceeding may be brought pursuant to this section in addition to, and not in lieu of, all penalties and other remedies provided in this article.

**12-36-130. Moneys collected. (Repealed)**

**12-36-131. Existing licenses.**

(1) Nothing in this article shall be construed to invalidate or affect the license of any person holding a valid, unrevoked, and unsuspended license to practice medicine in this state on July 1, 1951, except as otherwise provided by this article.

(2) Nothing in this article shall be construed to invalidate the license of any person holding a valid, unrevoked, and unsuspended license on June 30, 1979, to practice medicine in this state or to affect any disciplinary proceeding or appeal pending on June 30, 1979, or any appointment to the board, the inquiry panel, or the hearings panel made on or before June 30, 1979.

**12-36-132. Injunctive proceedings. (Repealed)**

**12-36-133. Postmortem examinations by licensee - definition - application of this section.**

(1) As used in this section, "person or persons" shall include any individual, partnership, corporation, body politic, or association.

(2) Consent for a licensee to conduct a postmortem examination of the body of a deceased person shall be deemed sufficient when given by whichever one of the following assumes custody of the body for purposes of burial: Father, mother, husband, wife, child, guardian, next of kin, or, in the absence of any of the foregoing, a friend or a person charged by law with the responsibility for burial. If two or more such persons assume custody of the body, the consent of one of them shall be deemed sufficient.

(3) Nothing in this section shall be construed as a repeal of any provision of part 6 of article 10 of title 30, C.R.S.

**12-36-134. Professional service corporations, limited liability companies, and registered limited liability partnerships for the practice of medicine - definitions.**

(1) Persons licensed to practice medicine by the board may form professional service corporations for such persons' practice of medicine under the "Colorado Business Corporation Act", articles 101 to 117 of title 7, C.R.S., if such corporations are organized and operated in accordance with the provisions of this section. The articles of incorporation of such corporations shall contain provisions complying with the following requirements:

(a) The name of the corporation shall contain the words "professional company" or "professional corporation" or abbreviations thereof.

(b) The corporation is organized solely for the purpose of permitting individuals to conduct the practice of medicine through a corporate entity, so long as all the individuals are actively licensed physicians or physician assistants in the state of Colorado.

(c) The corporation may exercise the powers and privileges conferred upon corporations by the laws of Colorado only in furtherance of and subject to its corporate purpose.

(d) (I) Except as specified in subparagraph (II) of this paragraph (d), all shareholders of the corporation are persons licensed by the board to practice medicine in the state of Colorado who at all times own their shares in their own right; except that one or more persons licensed by the board as a physician assistant may be a shareholder of the corporation as long as the physician shareholders maintain majority ownership of the corporation. The shareholders shall be individuals who, except for illness, accident, time spent in the armed services, on vacations, and on leaves of absence not to exceed one year, are actively engaged in the practice of medicine or as a physician assistant in the offices of the corporation.

(II) If a person licensed to practice medicine who was a shareholder of the corporation dies, an heir to the deceased shareholder may become a shareholder of the corporation for up to two years, regardless of whether the heir is licensed to practice medicine. Unless the deceased shareholder was the only shareholder of the corporation, the heir who becomes a shareholder shall be a nonvoting shareholder in all matters concerning the corporation. If the heir of the deceased shareholder ceases to be a shareholder, the shares shall be disposed of pursuant to paragraph (e) of this subsection (1).

(e) Provisions shall be made requiring any shareholder who ceases to be or for any reason is ineligible to be a shareholder to dispose of all his shares forthwith, either to the corporation or to any person having the qualifications described in paragraph (d) of this subsection (1).

(f) The president shall be a shareholder and a director and, to the extent possible, all other directors and officers shall be persons having the qualifications described in paragraph (d) of this subsection (1). Lay directors, officers, and heirs of deceased shareholders shall not exercise any authority whatsoever over the independent medical judgment of persons licensed by the board to practice medicine in this state. Notwithstanding sections 7-108-103 to 7-108-106, C.R.S., relating to the terms of office and classification of directors, a professional service corporation for the practice of medicine may provide in the articles of incorporation or the bylaws that the directors may have terms of office of up to six years and that the directors may be divided into classes, with the terms of each class staggered to provide for the periodic election of less than all the directors. Nothing in this article shall be construed to cause a professional service corporation to be vicariously liable to a patient or third person for the professional negligence or other

tortious conduct of a physician who is a shareholder or employee of a professional service corporation.

(f.5) An heir to a deceased shareholder who becomes a shareholder shall be liable only to the same extent as the deceased shareholder would have been in his or her capacity as a shareholder, had he or she lived and remained a shareholder, for all acts, errors, and omissions of the employees of the corporation.

(g) The articles of incorporation provide and all shareholders of the corporation agree that all shareholders of the corporation are jointly and severally liable for all acts, errors, and omissions of the employees of the corporation or that all shareholders of the corporation are jointly and severally liable for all acts, errors, and omissions of the employees of the corporation, except during periods of time when each licensee who is a shareholder or any employee of the corporation has a professional liability policy insuring himself or herself and all employees who are not licensed pursuant to this article who act at his or her direction, in the amount of fifty thousand dollars for each claim and an aggregate top limit of liability per year for all claims of one hundred fifty thousand dollars, or the corporation maintains in good standing professional liability insurance that meets the following minimum standards:

(I) The insurance insures the corporation against liability imposed upon the corporation by law for damages resulting from any claim made against the corporation arising out of the performance of professional services for others by those officers and employees of the corporation who are licensees.

(II) The policies insure the corporation against liability imposed upon it by law for damages arising out of the acts, errors, and omissions of all nonprofessional employees.

(III) The insurance is in an amount for each claim of at least fifty thousand dollars multiplied by the number of licensees employed by the corporation. The policy may provide for an aggregate top limit of liability per year for all claims of one hundred fifty thousand dollars also multiplied by the number of licensees employed by the corporation, but no firm shall be required to carry insurance in excess of three hundred thousand dollars for each claim with an aggregate top limit of liability for all claims during the year of nine hundred thousand dollars.

(IV) The policy may provide that it does not apply to: Any dishonest, fraudulent, criminal, or malicious act or omission of the insured corporation or any stockholder or employee thereof; the conduct of any business enterprise, as distinguished from the practice of medicine, in which the insured corporation under this section is not permitted to engage but which nevertheless may be owned by the insured corporation or in which the insured corporation may be a partner or which may be controlled, operated, or managed by the insured corporation in its own or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith; when not resulting from breach of professional duty, bodily injury to, or sickness, disease, or death of any person, or to injury to or destruction of any tangible property, including the loss of use thereof; and such policy may contain reasonable provisions with respect to policy periods, territory, claims, conditions, and other usual matters.

(2) Repealed.

(3) The corporation shall do nothing that, if done by a licensee employed by the corporation, would violate the standards of professional conduct as provided for in section 12-36-117. Any violation of this section by the corporation is grounds for the board to revoke or suspend the license of the person or persons responsible for the violation.

(4) Nothing in this section diminishes or changes the obligation of each licensee employed by the corporation to conduct his or her practice in accordance with the standards of professional conduct provided for in section 12-36-117. Any licensee who, by act or omission, causes the corporation to act or fail to act in a way that violates the standards of professional conduct, including any provision of this section, is personally responsible for such act or omission and is subject to discipline for the act or omission.

(5) Nothing in this section modifies the physician-patient privilege specified in section 13-90-107 (1) (d), C.R.S.

(6) A professional service corporation may adopt a pension, profit-sharing (whether cash or deferred), health and accident, insurance, or welfare plan for all or part of its employees including lay employees if such plan does not require or result in the sharing of specific or identifiable fees with lay employees, and if any payments made to lay employees, or into any such plan in behalf of lay employees, are based upon their compensation or length of service, or both, rather than the amount of fees or income received.

(7) (a) Corporations shall not practice medicine. Nothing in this section shall be construed to abrogate a cause of action against a professional corporation for its independent acts of negligence.

(b) Employment of a physician in accordance with section 25-3-103.7, C.R.S., shall not be considered the corporate practice of medicine.

(8) As used in this section, unless the context otherwise requires:

(a) "Articles of incorporation" includes operating agreements of limited liability companies and partnership agreements of registered limited liability partnerships.

(b) "Corporation" includes a limited liability company organized under the "Colorado Limited Liability Company Act", article 80 of title 7, C.R.S., and a limited liability partnership registered under section 7-60-144 or 7-64-1002, C.R.S.; except that the name of an entity other than a corporation shall contain the word "professional" or the abbreviation "prof." in addition to any other words required by the statute under which such entity is organized.

(c) "Director" and "officer" of a corporation includes a member and a manager of a limited liability company and a partner in a registered limited liability partnership.

(d) "Employees" includes employees, members, and managers of a limited liability company and employees and partners of a registered limited liability partnership.

(e) "President" includes all managers, if any, of a limited liability company and all partners in a registered limited liability partnership.

(f) "Share" includes a member's rights in a limited liability company and a partner's rights in a registered limited liability partnership.

(g) "Shareholder" includes a member of a limited liability company and a partner in a registered limited liability partnership.

**12-36-135. Injuries to be reported - penalty for failure to report - immunity from liability.**

(1) (a) It shall be the duty of every licensee who attends or treats a bullet wound, a gunshot wound, a powder burn, or any other injury arising from the discharge of a firearm, or an injury caused by a knife, an ice pick, or any other sharp or pointed instrument that the licensee believes to have been intentionally inflicted upon a person, or an injury arising from a dog bite that the licensee believes was inflicted upon a person by a dangerous dog, as defined in section 18-9-204.5 (2) (b), C.R.S., or any other injury that the licensee has reason to believe involves a criminal act, including injuries resulting from domestic violence, to report the injury at once to the police of the city, town, or city and county or the sheriff of the county in which the licensee is located. Any licensee who fails to make a report as required by this section commits a class 2 petty offense, as defined by section 18-1.3-503, C.R.S., and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.

(b) When a licensee performs a forensic medical examination that includes the collection of evidence at the request of a victim of sexual assault, not in connection with a referring or requesting law enforcement agency, and the licensee's employing medical facility knows where the crime occurred, the facility shall contact the law enforcement agency in whose jurisdiction the crime occurred regarding preservation of the evidence. If the medical facility does not know where the crime occurred, the facility shall contact its local law enforcement agency regarding preservation of the evidence.

(1.5) As used in subsection (1) of this section, unless the context otherwise requires:

(a) "Domestic violence" means an act of violence upon a person with whom the actor is or has been involved in an intimate relationship. Domestic violence also includes any other crime against a person or any municipal ordinance violation against a person when used as a method of coercion, control, punishment, intimidation, or revenge directed against a person with whom the actor is or has been involved in an intimate relationship.

(b) "Intimate relationship" means a relationship between spouses, former spouses, past or present unmarried couples, or persons who are both the parents of the same child regardless of whether the persons have been married or have lived together at any time.

(2) Any licensee who, in good faith, makes a report pursuant to subsection (1) of this section shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed with respect to the making of such report, and shall have the same immunity with respect to participation in any judicial proceeding resulting from such report.

(3) Any licensee who makes a report pursuant to subsection (1) of this section shall not be subject to the physician-patient relationship described in section 13-90-107 (1) (d), C.R.S., as to the medical examination and diagnosis. Such licensee may be examined as a witness, but not as

to any statements made by the patient that are the subject matter of section 13-90-107 (1) (d), C.R.S.

**12-36-136. Determination of death.**

(1) An individual is dead if:

(a) He has sustained irreversible cessation of circulatory and respiratory functions; or

(b) He has sustained irreversible cessation of all functions of the entire brain, including the brain stem.

(2) A determination of death under this section shall be in accordance with accepted medical standards.

**12-36-137. Inactive license.**

(1) Any licensee pursuant to section 12-36-114 may apply to the board to be transferred to an inactive status. Such application shall be in the form and manner designated by the board. The board may grant such status by issuing an inactive license or it may deny the application as set forth in section 12-36-116.

(2) Any person applying for a license under this section shall:

(a) Provide an affidavit to the board that the applicant, after a date certain, shall not practice medicine or practice as a physician assistant in this state unless the applicant is issued a license to practice medicine or practice as a physician assistant pursuant to subsection (5) of this section;

(b) Pay the license fee as authorized pursuant to section 12-36-123; and

(c) Comply with any financial responsibility standards promulgated by the board pursuant to section 13-64-301 (1), C.R.S.

(3) Such inactive status shall be plainly indicated on the face of any inactive license issued under this section.

(4) The board is authorized to undertake disciplinary proceedings as set forth in sections 12-36-117 and 12-36-118 against any person licensed under this section for any act committed while the person was licensed pursuant to this article.

(5) Any person licensed under this section who wishes to resume the practice of medicine or to resume practice as a physician assistant shall file an application in the form and manner the board shall designate, pay the license fee promulgated by the board pursuant to section 12-36-123, and meet the financial responsibility requirements promulgated by the board pursuant to section 13-64-301 (1), C.R.S. The board may approve such application and issue a license or may deny the application as set forth in section 12-36-116.

**12-36-138. Rules and regulations - compliance with reporting requirements of federal act. (Repealed)**

**12-36-139. Limitations on liability relating to professional review actions. (Repealed)**

**12-36-140. Protection of medical records - licensee's obligations - verification of compliance - noncompliance grounds for discipline - rules.**

(1) Each licensed physician and physician assistant shall develop a written plan to ensure the security of patient medical records. The plan shall address at least the following:

(a) The storage and proper disposal, if appropriate, of patient medical records;

(b) The disposition of patient medical records in the event the licensee dies, retires, or otherwise ceases to practice or provide medical care to patients; and

(c) The method by which patients may access or obtain their medical records promptly if any of the events described in paragraph (b) of this subsection (1) occurs.

(2) Upon initial licensure under this article and upon renewal of a license, the applicant or licensee, as applicable, shall attest to the board that he or she has developed a plan in compliance with this section.

(3) A licensee shall inform each patient, in writing, of the method by which the patient may access or obtain his or her medical records if an event described in paragraph (b) of subsection (1) of this section occurs.

(4) A licensee who fails to comply with this section shall be subject to discipline in accordance with section 12-36-118.

(5) The board may adopt rules as necessary to implement this section.

---

**PART 2**  
**SAFETY TRAINING FOR UNLICENSED X-RAY TECHNICIANS**

**12-36-201 and 12-36-202. (Repealed)**

---

**ARTICLE 36.5**  
**PROFESSIONAL REVIEW OF HEALTH CARE PROVIDERS**

**PART 1**  
**PROFESSIONAL REVIEW PROCEEDINGS - PHYSICIANS**

**12-36.5-101. Legislative declaration.**

(1) The general assembly hereby finds, determines, and declares that the Colorado medical board created pursuant to article 36 of this title acts for the state in its sovereign capacity to govern licensure, discipline, and professional review of persons licensed to practice medicine in this state. The general assembly further finds, determines, and declares that the authority to practice medicine in this state is a privilege granted by the legislative authority of the state and that it is necessary for the health, safety, and welfare of the people of this state that the Colorado medical board exercise its authority to protect the people of this state from the unauthorized practice of medicine and from unprofessional conduct by persons licensed to practice medicine under article 36 of this title.

(2) The general assembly recognizes that: Many patients of persons licensed to practice medicine in this state have restricted choices of physicians under a variety of circumstances and conditions; many patients lack the knowledge, experience, or education to properly evaluate the quality of medical practice or the professional conduct of those licensed to practice medicine; and it is necessary and proper that the Colorado medical board exercise its 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 authority and responsibilities under this article, the Colorado medical board must, to some extent, replace competition with regulation and that such replacement of competition by regulation particularly with regard to physicians, is related to a legitimate state interest in the protection of the health, safety, and welfare of the people of this state.

**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.

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

(3) "Professional review committee" means any committee authorized under the provisions of this article to review and evaluate the professional conduct of and the quality and appropriateness of patient care provided by any physician licensed under article 36 of this title.

(4) "Records" means any and all written or verbal 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 authorized by this article, including the complaint, response, correspondence related thereto, recordings or transcripts of proceedings, minutes, formal recommendations, decisions, exhibits, and other similar items or documents typically constituting the records of administrative proceedings.

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

(1) The general assembly recognizes that the medical board, while assuming and retaining ultimate authority for licensure and discipline in accordance with article 36 of this title 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, from the standards of professional conduct, or from the standards of appropriate care and that an attempt to exercise such oversight would result in extraordinary delays in the determination of the legitimacy of such allegations and would result in the inappropriate and unequal exercise of its authority to license and discipline physicians. It is therefore the intent of the general assembly that the medical board utilize and allow professional review committees and governing boards to assist it in meeting its responsibilities under article 36 of this title and under this article.

(2) All physicians are encouraged to serve upon such professional review committees when called to do so and to study and review in good faith the professional conduct of physicians, including the quality and appropriateness of patient care.

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

(b) Professional review committees, the members who constitute such committees, governing boards, and persons who participate directly or indirectly in professional review proceedings are granted certain immunities from liability arising from actions which are within the scope of their activities and taken in good faith as provided in section 12-36.5-105. Such 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.

**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 quality and appropriateness of patient care provided by and the professional conduct of any physician licensed under article 36 of this title.

(2) Persons licensed to practice medicine under article 36 of this title who are actively engaged in the practice of medicine in this state shall constitute a majority of any professional review committee established pursuant to this section, except for those boards authorized by paragraph (g) of subsection (4) of this section.

(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 an approved professional review committee under this article.

(4) Any professional review committee established by any of the following organizations, entities, or professional societies shall be an approved professional review committee under this article if it operates pursuant to written bylaws, policies, or procedures that are in compliance with this article and that have been approved by its governing board:

(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 is "hospital-related" if the licensed or certified hospital or holding company of such hospital has ownership or control of such corporation.

(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 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 specialty society or association representative of physicians practicing such specific discipline of medicine, if the physician whose services are the subject of the review is a member of such specialty society or association;

(e) An individual practice association or a preferred provider organization comprised of at least twenty-five physicians or a medical group which 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 jurisdiction to review only physicians who are members of the association or organization creating and authorizing that committee; except that such professional review committee may review the care provided to a particular patient referred by a member of such association or organization to another physician who is not a member of such association or organization.

(f) A corporation authorized to insure physicians pursuant to article 3 of title 10, C.R.S., or any other corporation authorized to insure such physicians in this state when designated by the medical board under subsection (5) of this section;

(g) Governing boards of any entity which has a professional review committee established pursuant to article 36 of this title;

(h) Any peer 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;

(i) (I) A nonprofit corporation or association comprised of representatives from a statewide medical society and a statewide hospital association. Such association shall be comprised of physicians, hospital administrators, and hospital trustees, with a majority of such representatives

being physicians. The association may establish, or contract for, one or more peer review committees to review the care by hospital staff physicians, with priority given to small rural medical staffs. Such peer review services shall be available statewide on a fee-for-service basis to licensed or certified hospitals at the joint request of the governing body and the medical staff of the hospital or at the sole request of the governing body of the hospital. If a physician being reviewed specializes in a generally recognized specialty of medicine, at least one of the physicians on the peer review committee shall be a physician practicing such specialty.

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

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

(5) The medical board may establish by rule procedures necessary to authorize other health care or physician organizations or professional societies to 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 of any physician licensed under article 36 of this title 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; 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 who is subject to the authority of such organization, entity, or professional society.

(b) Such investigation shall be conducted in conformity with written bylaws, policies, or procedures adopted by such organization, entity, or professional society.

(7) The written bylaws, policies, or procedures of any professional review committee shall provide for at least the following:

(a) If the findings of any investigation indicate that the physician who is the subject of the investigation is lacking in qualifications, has provided substandard or inappropriate patient care, or has exhibited inappropriate professional conduct, the professional review committee shall hold a hearing, unless the physician waives his right to a hearing, to consider the findings; except that, if the professional review committee is submitting its findings to another professional review committee for review, only one hearing shall be necessary prior to any appeal before the governing body.

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

(c) The physician who is the subject of any investigation shall be given reasonable notice of such hearing and shall have a right to be present, to be represented by legal counsel at such hearing, and to offer evidence in his own behalf.

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

(e) A copy of such recommendations shall be given to the subject physician who then shall have the right to appeal the findings and recommendations of the professional review committee to the governing board to which the recommendations are made.

(f) A copy of any recommendations made pursuant to paragraph (d) of this subsection (7) shall be promptly forwarded to the medical board.

(8) (a) All governing boards shall adopt written bylaws, policies, or procedures which provide that a physician who is the subject of an adverse recommendation by a professional review committee may appeal to the governing board. Such bylaws, policies, or procedures shall provide that the physician shall be given reasonable notice of his right to appeal and, unless waived by the physician, shall have the right to appear before the governing board, to be represented by legal counsel, and to offer such argument on the record as he 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 bylaws may also allow for an appeal to be heard by an independent third party designated by the board.

(9) All governing boards that are required to report their final actions to the medical board are not otherwise relieved of such obligations by virtue of any provision of this article.

(10) (a) The records of a professional review committee, a governing board, or the committee on anticompetitive conduct shall not be subject to subpoena or discovery and shall 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 records shall be subject to subpoena and available for use:

(I) By the committee on anticompetitive conduct;

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

(III) By a physician in a suit seeking judicial review of any action by the governing board;

(IV) By a governing board seeking judicial review.

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

(13) All proceedings, recommendations, records, and reports involving professional review committees or governing boards shall be confidential.

(14) A professional review committee or governing board which is constituted and conducts its reviews and activities pursuant to the provisions of 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.

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

(1) The quality and appropriateness of patient care rendered by physicians 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 overall quality and appropriateness of care rendered by physicians and other licensed health care professionals.

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

(A) Refer the matter to a hospital committee created pursuant to section 25-3-109, C.R.S.; or

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

(II) A professional review committee established pursuant to this article may meet and act in collaboration with a committee established pursuant to section 25-3-109, C.R.S.

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

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

**12-36.5-105. Immunity from liability.**

(1) A member of a professional review committee, a witness before a professional review committee, or any person who files a complaint or otherwise participates in the professional review process shall be immune from suit 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.

(2) The governing board, the individual members of such board and the entity that has established a peer 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.

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

(1) There is hereby established a permanent, independent committee of the medical board, to be known as the committee on anticompetitive conduct, also referred to in this section as "the committee".

(2) The committee shall be composed of five persons, none of whom shall be a member of the medical board. Four members of the committee shall be licensed to practice medicine and actively engaged in the practice of medicine in this state and shall be appointed by the medical board. No member shall practice in the same medical subspecialty as any other member nor conduct his or her primary practice in the same county as any other member. One member shall be appointed by the governor and shall be an attorney licensed to practice in this state who has particular expertise and experience in the area of antitrust law.

(3) Each member of the committee shall serve for a term of three years and may be reappointed for one additional term. The initial committee shall be appointed as follows: Two members, including the attorney member, for terms of three years; two members for terms of two years; and one member for a term of one year. All subsequent appointments shall be for terms of three years.

(4) Any member of the committee may be removed by his appointing authority for neglect of duty, incapacity, or misconduct. Any vacancy shall be filled by the appointing authority for the remainder of the vacated term.

(5) The committee shall annually elect a chairman from among its members. Any three members of the committee shall constitute a quorum. Any action of a majority of those present comprising such quorum shall be the action of the committee. Committee members shall be 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 costs of such consultants shall be assessed and collected as provided in subsection (11) of this section.

(6) The committee shall adopt procedural rules, including emergency rules, pursuant to the rule-making provisions of the "State Administrative Procedure Act", article 4 of title 24, C.R.S., including rules related to the disqualification of a committee member, which rules shall be guided by section 24-4-105 (1), C.R.S.

(7) Any physician 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 action resulted from unreasonable anticompetitive

conduct shall have, as his sole and exclusive remedy, direct review of the record by the committee. Such review shall be limited to the sole issue of whether such final board action resulted from unreasonable anticompetitive conduct. Failure to exhaust this administrative remedy before the committee shall preclude the right of de novo review on the merits of the issue of unreasonable anticompetitive conduct.

(8) Nothing in this article shall preclude a physician or health care provider 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 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 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 would support his allegation that the final action taken by the governing board resulted from unreasonable anticompetitive conduct.

(b) The committee shall mail a copy of such complaint to the governing board and the professional review committee by certified mail, return receipt requested, within five days of the receipt of such 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 the recipients thereof a party to these proceedings.

(c) The governing board and professional review committee shall have thirty days after receipt of the complaint to file their verified answer.

(d) Within thirty days of receipt of the complaint, unless the committee, for good cause shown, extends the time period not to exceed an additional thirty days, the committee shall determine whether the complaint alleges sufficient facts which, if true, would substantiate a finding of probable cause that the final action taken by the governing board resulted from unreasonable anticompetitive conduct.

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

(f) If the committee finds such probable cause exists, it shall schedule a hearing. At such 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.

(g) The attendance of witnesses and the production of books, patient records, papers, and other pertinent documents at the hearing may be summoned by subpoenas issued by the chairman of the committee or his designee, which shall be served in the manner provided by the Colorado rules of civil procedure for service of subpoenas. Any subpoena issued pursuant to this paragraph (g) shall be enforceable in the district court.

(h) No evidentiary hearing shall last more than eight hours, unless the committee, in its discretion, determines that additional time is necessary in the interests of a fair hearing. Except as provided otherwise in this section, any evidentiary hearing shall be conducted in accordance with section 24-4-105 (4) and (7), C.R.S.

(i) An evidentiary hearing shall be scheduled within a reasonable time after a finding that probable cause exists.

(j) Within a reasonable time after the completion of its hearing, the committee shall issue its written findings and final order.

(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 action or modifying the action taken by the governing board in whole or in part, which final order shall be binding on the parties. A copy of such order shall be mailed by certified mail, return receipt requested, to the parties.

(l) If the committee fails to find that the final action of the governing board resulted from unreasonable anticompetitive conduct as provided in paragraph (k) of this subsection (9), it shall issue its order dismissing the complaint, and the final action of the governing board shall stand.

(m) If the committee finds that the record of the governing board is insufficient to permit the committee to reach appropriate findings with regard to unreasonable anticompetitive conduct, it may remand the case for further review by the governing board.

(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 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 through appropriate proceedings brought pursuant to section 24-4-106 (11), C.R.S.

(b) Following final administrative action by the committee, any party aggrieved by the final action of a governing board who wishes to challenge the action of such governing board, rather than the committee's review of such action, shall have the right to seek de novo review on the merits in a district court in Colorado. In no event shall the medical board or the committee be made parties to such a 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 may be assessed against him. Within thirty days of 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 may be assessed against it as a party. The committee may enforce this latter requirement through the district court.

(11) The committee shall assess and collect all costs associated with its activities, including attorney fees incurred by the committee, the per diem and reasonable expenses of each

committee member, and other reasonable expenses, from the losing party or as the committee deems appropriate.

(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) Any member of the committee, any member of the committee's staff, any person acting as a witness or consultant to the committee, 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 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.

**12-36.5-107. Repeal of article.**

This article is repealed, effective July 1, 2012. Prior to such repeal, 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.

---

## **PART 2**

### **CONFORMANCE WITH FEDERAL LAW AND REGULATION**

#### **12-36.5-201. Legislative declaration.**

The general assembly hereby finds, determines, and declares that the enactment of this part 2 is necessary in order for the state to comply with the provisions of the federal "Health Care Quality Improvement Act of 1986", as amended. It is the intent of the general assembly that the provisions of this part 2 are to be interpreted as being complementary to the provisions of part 1 of this article. The provisions of this part 2 are intended to be responsive to specific requirements of the federal "Health Care Quality Improvement Act of 1986", as amended. If the provisions of this part 2 conflict with the provisions of part 1 of this article, other than with respect to the specific requirements of the federal "Health Care Quality Improvement Act of 1986", as amended, the provisions of part 1 of this article shall prevail.

#### **12-36.5-202. Rules - compliance with reporting requirements of federal act.**

Upon implementation of the federal "Health Care Quality Improvement Act of 1986", as amended, 42 U.S.C. secs. 11101 through 11152, and upon implementation of 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.

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

(1) The following persons shall 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 in connection with a professional review action in this state, and such persons shall 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 which 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 professional review body;
- (b) Any person acting as a member of or staff to the professional review body;
- (c) Any person under a contract or other formal agreement with the professional review body;
- (d) Any person who participates with or assists the professional review body with respect to the professional review action.

(2) 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.

(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 is taken or made in the conduct of professional review activity and which is based on the competence or professional conduct of an individual physician, which conduct affects or may affect adversely the clinical privileges of or membership in a professional society of the physician. "Professional review action" includes a formal decision by the professional review body 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 not be considered to be based upon the competence or professional conduct of a physician if the action is primarily based on:

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

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

(III) The physician'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 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 competence or professional conduct of a physician.

(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.

---