



Sen. John J. Cullerton

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1 AMENDMENT TO HOUSE BILL 1191

2 AMENDMENT NO. _____. Amend House Bill 1191, AS AMENDED, by
3 replacing everything after the enacting clause with the
4 following:

5 "ARTICLE 1. FINDINGS

6 Section 101. Findings. The General Assembly finds as
7 follows:

8 (1) The increasing cost of medical malpractice insurance
9 results in increased financial burdens on physicians and
10 hospitals.

11 (2) The increasing cost of medical malpractice insurance in
12 Illinois is believed to have contributed to the reduction of
13 the availability of medical care in portions of the State and
14 is believed to have discouraged some medical students from
15 choosing Illinois as the place they will receive their medical
16 education and practice medicine.

17 (3) The public would benefit from making the services of
18 hospitals and physicians more available.

19 (4) In order to preserve the public health, safety, and
20 welfare of the people of Illinois, the current medical
21 malpractice situation requires reforms that enhance the
22 State's oversight of physicians and ability to discipline
23 physicians, that increase the State's oversight of medical
24 liability insurance carriers, that reduce the number of

1 nonmeritorious healing art malpractice actions, that encourage
2 physicians to provide voluntary services at free medical
3 clinics, and that encourage physicians and hospitals to
4 continue providing health care services in Illinois.

5 ARTICLE 2. RISK RETENTION ARRANGEMENTS

6 Section 205. The Open Meetings Act is amended by changing
7 Section 2 as follows:

8 (5 ILCS 120/2) (from Ch. 102, par. 42)

9 Sec. 2. Open meetings.

10 (a) Openness required. All meetings of public bodies shall
11 be open to the public unless excepted in subsection (c) and
12 closed in accordance with Section 2a.

13 (b) Construction of exceptions. The exceptions contained
14 in subsection (c) are in derogation of the requirement that
15 public bodies meet in the open, and therefore, the exceptions
16 are to be strictly construed, extending only to subjects
17 clearly within their scope. The exceptions authorize but do not
18 require the holding of a closed meeting to discuss a subject
19 included within an enumerated exception.

20 (c) Exceptions. A public body may hold closed meetings to
21 consider the following subjects:

22 (1) The appointment, employment, compensation,
23 discipline, performance, or dismissal of specific
24 employees of the public body or legal counsel for the
25 public body, including hearing testimony on a complaint
26 lodged against an employee of the public body or against
27 legal counsel for the public body to determine its
28 validity.

29 (2) Collective negotiating matters between the public
30 body and its employees or their representatives, or
31 deliberations concerning salary schedules for one or more

1 classes of employees.

2 (3) The selection of a person to fill a public office,
3 as defined in this Act, including a vacancy in a public
4 office, when the public body is given power to appoint
5 under law or ordinance, or the discipline, performance or
6 removal of the occupant of a public office, when the public
7 body is given power to remove the occupant under law or
8 ordinance.

9 (4) Evidence or testimony presented in open hearing, or
10 in closed hearing where specifically authorized by law, to
11 a quasi-adjudicative body, as defined in this Act, provided
12 that the body prepares and makes available for public
13 inspection a written decision setting forth its
14 determinative reasoning.

15 (5) The purchase or lease of real property for the use
16 of the public body, including meetings held for the purpose
17 of discussing whether a particular parcel should be
18 acquired.

19 (6) The setting of a price for sale or lease of
20 property owned by the public body.

21 (7) The sale or purchase of securities, investments, or
22 investment contracts.

23 (8) Security procedures and the use of personnel and
24 equipment to respond to an actual, a threatened, or a
25 reasonably potential danger to the safety of employees,
26 students, staff, the public, or public property.

27 (9) Student disciplinary cases.

28 (10) The placement of individual students in special
29 education programs and other matters relating to
30 individual students.

31 (11) Litigation, when an action against, affecting or
32 on behalf of the particular public body has been filed and
33 is pending before a court or administrative tribunal, or
34 when the public body finds that an action is probable or

1 imminent, in which case the basis for the finding shall be
2 recorded and entered into the minutes of the closed
3 meeting.

4 (12) The establishment of reserves or settlement of
5 claims as provided in the Local Governmental and
6 Governmental Employees Tort Immunity Act, if otherwise the
7 disposition of a claim or potential claim might be
8 prejudiced, or the review or discussion of claims, loss or
9 risk management information, records, data, advice or
10 communications from or with respect to any insurer of the
11 public body or any intergovernmental risk management
12 association or self insurance pool of which the public body
13 is a member.

14 (13) Conciliation of complaints of discrimination in
15 the sale or rental of housing, when closed meetings are
16 authorized by the law or ordinance prescribing fair housing
17 practices and creating a commission or administrative
18 agency for their enforcement.

19 (14) Informant sources, the hiring or assignment of
20 undercover personnel or equipment, or ongoing, prior or
21 future criminal investigations, when discussed by a public
22 body with criminal investigatory responsibilities.

23 (15) Professional ethics or performance when
24 considered by an advisory body appointed to advise a
25 licensing or regulatory agency on matters germane to the
26 advisory body's field of competence.

27 (16) Self evaluation, practices and procedures or
28 professional ethics, when meeting with a representative of
29 a statewide association of which the public body is a
30 member.

31 (17) The recruitment, credentialing, discipline or
32 formal peer review of physicians or other health care
33 professionals for a hospital, or other institution
34 providing medical care, that is operated by the public

1 body.

2 (18) Deliberations for decisions of the Prisoner
3 Review Board.

4 (19) Review or discussion of applications received
5 under the Experimental Organ Transplantation Procedures
6 Act.

7 (20) The classification and discussion of matters
8 classified as confidential or continued confidential by
9 the State Employees Suggestion Award Board.

10 (21) Discussion of minutes of meetings lawfully closed
11 under this Act, whether for purposes of approval by the
12 body of the minutes or semi-annual review of the minutes as
13 mandated by Section 2.06.

14 (22) Deliberations for decisions of the State
15 Emergency Medical Services Disciplinary Review Board.

16 (23) The operation by a municipality of a municipal
17 utility or the operation of a municipal power agency or
18 municipal natural gas agency when the discussion involves
19 (i) contracts relating to the purchase, sale, or delivery
20 of electricity or natural gas or (ii) the results or
21 conclusions of load forecast studies.

22 (24) Meetings of a residential health care facility
23 resident sexual assault and death review team or the
24 Residential Health Care Facility Resident Sexual Assault
25 and Death Review Teams Executive Council under the
26 Residential Health Care Facility Resident Sexual Assault
27 and Death Review Team Act.

28 (25) The establishment of reserves administration,
29 adjudication, or settlement of claims as provided in
30 Article XLV of the Illinois Insurance Code if otherwise the
31 disposition of a claim or potential claim might be
32 prejudiced, or the review or discussion of claims, loss or
33 risk management information, records, data, advice or
34 communications from or with respect to any self-insurance

1 trust administration or adjudication of any claim, or
2 insurer created by the public body.

3 (d) Definitions. For purposes of this Section:

4 "Employee" means a person employed by a public body whose
5 relationship with the public body constitutes an
6 employer-employee relationship under the usual common law
7 rules, and who is not an independent contractor.

8 "Public office" means a position created by or under the
9 Constitution or laws of this State, the occupant of which is
10 charged with the exercise of some portion of the sovereign
11 power of this State. The term "public office" shall include
12 members of the public body, but it shall not include
13 organizational positions filled by members thereof, whether
14 established by law or by a public body itself, that exist to
15 assist the body in the conduct of its business.

16 "Quasi-adjudicative body" means an administrative body
17 charged by law or ordinance with the responsibility to conduct
18 hearings, receive evidence or testimony and make
19 determinations based thereon, but does not include local
20 electoral boards when such bodies are considering petition
21 challenges.

22 (e) Final action. No final action may be taken at a closed
23 meeting. Final action shall be preceded by a public recital of
24 the nature of the matter being considered and other information
25 that will inform the public of the business being conducted.

26 (Source: P.A. 93-57, eff. 7-1-03; 93-79, eff. 7-2-03; 93-422,
27 eff. 8-5-03; 93-577, eff. 8-21-03; revised 9-8-03)

28 Section 210. The Counties Code is amended by changing
29 Section 5-1005 and by adding Division 6-34 as follows:

30 (55 ILCS 5/5-1005) (from Ch. 34, par. 5-1005)

31 Sec. 5-1005. Powers. Each county shall have power:

32 1. To purchase and hold the real and personal estate

1 necessary for the uses of the county, and to purchase and hold,
2 for the benefit of the county, real estate sold by virtue of
3 judicial proceedings in which the county is plaintiff.

4 2. To sell and convey or lease any real or personal estate
5 owned by the county.

6 3. To make all contracts and do all other acts in relation
7 to the property and concerns of the county necessary to the
8 exercise of its corporate powers.

9 4. To take all necessary measures and institute proceedings
10 to enforce all laws for the prevention of cruelty to animals.

11 5. To purchase and hold or lease real estate upon which may
12 be erected and maintained buildings to be utilized for purposes
13 of agricultural experiments and to purchase, hold and use
14 personal property for the care and maintenance of such real
15 estate in connection with such experimental purposes.

16 6. To cause to be erected, or otherwise provided, suitable
17 buildings for, and maintain a county hospital and necessary
18 branch hospitals and/or a county sheltered care home or county
19 nursing home for the care of such sick, chronically ill or
20 infirm persons as may by law be proper charges upon the county,
21 or upon other governmental units, and to provide for the
22 management of the same. The county board may establish rates to
23 be paid by persons seeking care and treatment in such hospital
24 or home in accordance with their financial ability to meet such
25 charges, either personally or through a hospital plan or
26 hospital insurance, and the rates to be paid by governmental
27 units, including the State, for the care of sick, chronically
28 ill or infirm persons admitted therein upon the request of such
29 governmental units. Any hospital maintained by a county under
30 this Section is authorized to provide any service and enter
31 into any contract or other arrangement not prohibited for a
32 hospital that is licensed under the Hospital Licensing Act,
33 incorporated under the General Not-For-Profit Corporation Act,
34 and exempt from taxation under paragraph (3) of subsection (c)

1 of Section 501 of the Internal Revenue Code.

2 7. To contribute such sums of money toward erecting,
3 building, maintaining, and supporting any non-sectarian public
4 hospital located within its limits as the county board of the
5 county shall deem proper.

6 8. To purchase and hold real estate for the preservation of
7 forests, prairies and other natural areas and to maintain and
8 regulate the use thereof.

9 9. To purchase and hold real estate for the purpose of
10 preserving historical spots in the county, to restore, maintain
11 and regulate the use thereof and to donate any historical spot
12 to the State.

13 10. To appropriate funds from the county treasury to be
14 used in any manner to be determined by the board for the
15 suppression, eradication and control of tuberculosis among
16 domestic cattle in such county.

17 11. To take all necessary measures to prevent forest fires
18 and encourage the maintenance and planting of trees and the
19 preservation of forests.

20 12. To authorize the closing on Saturday mornings of all
21 offices of all county officers at the county seat of each
22 county, and to otherwise regulate and fix the days and the
23 hours of opening and closing of such offices, except when the
24 days and the hours of opening and closing of the office of any
25 county officer are otherwise fixed by law; but the power herein
26 conferred shall not apply to the office of State's Attorney and
27 the offices of judges and clerks of courts and, in counties of
28 500,000 or more population, the offices of county clerk.

29 13. To provide for the conservation, preservation and
30 propagation of insectivorous birds through the expenditure of
31 funds provided for such purpose.

32 14. To appropriate funds from the county treasury and
33 expend the same for care and treatment of tuberculosis
34 residents.

1 15. In counties having less than 1,000,000 inhabitants, to
2 take all necessary or proper steps for the extermination of
3 mosquitoes, flies or other insects within the county.

4 16. To install an adequate system of accounts and financial
5 records in the offices and divisions of the county, suitable to
6 the needs of the office and in accordance with generally
7 accepted principles of accounting for governmental bodies,
8 which system may include such reports as the county board may
9 determine.

10 17. To purchase and hold real estate for the construction
11 and maintenance of motor vehicle parking facilities for persons
12 using county buildings, but the purchase and use of such real
13 estate shall not be for revenue producing purposes.

14 18. To acquire and hold title to real property located
15 within the county, or partly within and partly outside the
16 county by dedication, purchase, gift, legacy or lease, for park
17 and recreational purposes and to charge reasonable fees for the
18 use of or admission to any such park or recreational area and
19 to provide police protection for such park or recreational
20 area. Personnel employed to provide such police protection
21 shall be conservators of the peace within such park or
22 recreational area and shall have power to make arrests on view
23 of the offense or upon warrants for violation of any of the
24 ordinances governing such park or recreational area or for any
25 breach of the peace in the same manner as the police in
26 municipalities organized and existing under the general laws of
27 the State. All such real property outside the county shall be
28 contiguous to the county and within the boundaries of the State
29 of Illinois.

30 19. To appropriate funds from the county treasury to be
31 used to provide supportive social services designed to prevent
32 the unnecessary institutionalization of elderly residents, or,
33 for operation of, and equipment for, senior citizen centers
34 providing social services to elderly residents.

1 20. To appropriate funds from the county treasury and loan
2 such funds to a county water commission created under the
3 "Water Commission Act", approved June 30, 1984, as now or
4 hereafter amended, in such amounts and upon such terms as the
5 county may determine or the county and the commission may
6 agree. The county shall not under any circumstances be
7 obligated to make such loans. The county shall not be required
8 to charge interest on any such loans.

9 21. To establish an independent entity to administer a
10 medical care risk retention trust program, to contribute such
11 sums of money to the risk retention trust program as the county
12 board of the county shall deem proper to operate the medical
13 care risk retention trust program, to establish uniform
14 eligibility requirements for participation in the risk
15 retention trust program, to appoint an administrator of the
16 risk retention trust program, to charge premiums, to establish
17 a billing procedure to collect premiums, and to ensure timely
18 administration and adjudication of claims under the program. A
19 single medical care risk retention trust program may be
20 established jointly by more than one county, in accordance with
21 an agreement between the participating counties, if at least
22 one of the participating counties has a population of 200,000
23 or more according to the most recent federal decennial census.

24 All contracts for the purchase of coal under this Section
25 shall be subject to the provisions of "An Act concerning the
26 use of Illinois mined coal in certain plants and institutions",
27 filed July 13, 1937, as amended.

28 (Source: P.A. 86-962; 86-1028.)

29 (55 ILCS 5/Div. 6-34 heading new)

30 Division 6-34. Funding for health care financing programs

31 (55 ILCS 5/6-34001 new)

32 Sec. 6-34001. Authorization. The county board of any county

1 with a population of 200,000 or more according to the most
2 recent federal decennial census (and a county with a population
3 of less than 200,000 according to the most recent federal
4 decennial census if that county is participating in a single
5 trust program with one or more other counties in accordance
6 with the requirements of paragraph (21) of Section 5-1005 of
7 this Code) may, upon finding such action necessary for
8 protection of the public health, safety, and welfare, incur an
9 indebtedness by the establishment of lines or letters of credit
10 or issue general obligation or revenue bonds for the purpose of
11 ensuring the availability of and improving hospital, medical,
12 and health services as authorized under paragraph (21) of
13 Section 5-1005 of this Code.

14 (55 ILCS 5/6-34002 new)

15 Sec. 6-34002. Bonds. The bonds authorized in Section
16 6-34001 shall be issued in such denominations, be for such term
17 or terms, and bear interest at such rate as may be specified in
18 the resolution of the county board authorizing the issuance of
19 those bonds.

20 Section 215. The Illinois Insurance Code is amended by
21 adding Article XLV as follows:

22 (215 ILCS 5/Art. XLV heading new)

23 Article XLV. COUNTY RISK RETENTION ARRANGEMENTS
24 FOR THE PROVISION OF MEDICAL MALPRACTICE INSURANCE

25 (215 ILCS 5/1501 new)

26 Sec. 1501. Scope of Article. This Article applies only to
27 trusts sponsored by counties and organized under this Article
28 to provide medical malpractice insurance authorized under
29 paragraph (21) of Section 5-1005 of the Counties Code for
30 physicians and health care professionals providing medical

1 care and health care within the county's limits. In the case of
2 a single trust sponsored and organized by more than one county
3 in accordance with the requirements of paragraph (21) of
4 Section 5-1005 of the Counties Code, the powers and duties of a
5 county under this Article shall be exercised jointly by the
6 counties participating in the trust program in accordance with
7 the agreement between the counties.

8 (215 ILCS 5/1502 new)

9 Sec. 1502. Definitions. As used in this Article:

10 "Risk retention trust" or "trust" means a risk retention
11 trust created under this Article.

12 "Trust sponsor" means a county that has created a risk
13 retention trust.

14 "Pool retention fund" means a separate fund maintained for
15 payment of first dollar claims, up to a specified amount per
16 claim ("specific retention") and up to an aggregate amount for
17 a 12-month period ("aggregate retention").

18 "Contingency reserve fund" means a separate fund
19 maintained for payment of claims in excess of the pool
20 retention fund amount.

21 "Coverage grant" means the document describing specific
22 coverages and terms of coverage that are provided by a risk
23 retention trust created under this Article.

24 "Licensed service company" means an entity licensed by the
25 Department to perform claims adjusting, loss control, and data
26 processing.

27 (215 ILCS 5/1503 new)

28 Sec. 1503. Name. The corporate name of any risk retention
29 trust shall not be the same as or deceptively similar to the
30 name of any domestic insurance company or of any foreign or
31 alien insurance company authorized to transact business in this
32 State.

1 (215 ILCS 5/1504 new)

2 Sec. 1504. Principal office place of business. The
3 principal office of any risk retention trust shall be located
4 in this State.

5 (215 ILCS 5/1505 new)

6 Sec. 1505. Creation.

7 (1) Any county with a population of 200,000 or more
8 according to the most recent federal decennial census may
9 create a risk retention trust for the pooling of risks to
10 provide professional liability coverage authorized under
11 paragraph (21) of Section 5-1005 of the Counties Code for its
12 physicians and health care professionals providing medical
13 care and related health care within the county's limits. A
14 single risk retention trust may also be created jointly by more
15 than one county in accordance with the requirements of
16 paragraph (21) of Section 5-1005 of the Counties Code. A trust
17 shall be administered by at least 3 trustees who may be
18 individuals or corporate trustees and are appointed by the
19 trust sponsor and who represent physicians who have agreed in
20 writing to participate in the trust.

21 (2) The trustees shall appoint a qualified licensed
22 administrator who shall administer the affairs of the risk
23 retention trust.

24 (3) The trustees shall retain a licensed service company to
25 perform claims adjusting, loss control, and data processing and
26 any other delegated administrative duties.

27 (4) The trust sponsor, the trustees, and the trust
28 administrator shall be fiduciaries of the trust.

29 (5) A trust shall be consummated by a written trust
30 agreement and shall be subject to the laws of this State
31 governing the creation and operation of trusts, to the extent
32 not inconsistent with this Article.

1 (215 ILCS 5/1506 new)

2 Sec. 1506. Participation.

3 (1) A physician or health care professional providing
4 medical care and related health care within the county's limits
5 may participate in a risk retention trust if the physician or
6 health care professional:

7 (a) meets the underwriting standards for acceptance
8 into the trust;

9 (b) files a written application for coverage, agreeing
10 to meet all of the membership conditions of the trust;

11 (c) provides medical care and related health care in
12 the county sponsoring the trust;

13 (d) agrees to meet the ongoing loss control provisions
14 and risk pooling arrangements set forth by the trust;

15 (e) pays premium contributions on a timely basis as
16 required; and

17 (f) pays predetermined annual required contributions
18 into the contingency reserve fund.

19 (2) A physician or health care professional accepted for
20 trust membership and participating in the trust is liable for
21 payment to the trust of the amount of his or her annual premium
22 contribution and his or her annual predetermined contingency
23 reserve fund contribution.

24 (215 ILCS 5/1507 new)

25 Sec. 1507. Coverage grants; payment of claims.

26 (1) A risk retention trust may not issue coverage grants
27 until it has established a contingency reserve fund in an
28 amount deemed appropriate by the trust and filed with the
29 Department of Insurance. A risk retention trust must have and
30 at all times maintain a pool retention fund or a line or letter
31 of credit at least equal to its unpaid liabilities as
32 determined by an independent actuary.

1 (2) Every coverage grant issued or delivered in this State
2 by a risk retention trust shall provide for the extent of the
3 liability of trust members to the extent that funds are needed
4 to pay a member's share of the depleted contingency reserve
5 fund needed to maintain the reserves required by this Section.

6 (3) All claims shall be paid first from the pool retention
7 fund. If that fund becomes depleted, any additional claims
8 shall be paid from the contingency reserve fund.

9 (215 ILCS 5/1508 new)

10 Sec. 1508. Applicable Illinois Insurance Code provisions.
11 Other than this Article, only Sections 155.19, 155.20, and
12 155.25 and subsections (a) through (c) of Section 155.18 of
13 this Code shall apply to county risk retention trusts. The
14 Director shall advise the county board of any determinations
15 made pursuant to subsection (b) of Section 155.18 of this Code.

16 (215 ILCS 5/1509 new)

17 Sec. 1509. Authorized investments. In addition to other
18 investments authorized by law, a risk retention trust with
19 assets of at least \$5,000,000 may invest in any combination of
20 the following:

21 (1) the common stocks listed on a recognized exchange
22 or market;

23 (2) stock and convertible debt investments, or
24 investment grade corporate bonds, in or issued by any
25 corporation, the book value of which may not exceed 5% of
26 the total intergovernmental risk management entity's
27 investment account at book value in which those securities
28 are held, determined as of the date of the investment,
29 provided that investments in the stock of any one
30 corporation may not exceed 5% of the total outstanding
31 stock of the corporation and that the investments in the
32 convertible debt of any one corporation may not exceed 5%

1 of the total amount of such debt that may be outstanding;

2 (3) the straight preferred stocks or convertible
3 preferred stocks and convertible debt securities issued or
4 guaranteed by a corporation whose common stock is listed on
5 a recognized exchange or market;

6 (4) mutual funds or commingled funds that meet the
7 following requirements:

8 (A) the mutual fund or commingled fund is managed
9 by an investment company as defined in and registered
10 under the federal Investment Company Act of 1940 and
11 registered under the Illinois Securities Law of 1953 or
12 an investment adviser as defined under the federal
13 Investment Advisers Act of 1940;

14 (B) the mutual fund has been in operation for at
15 least 5 years; and

16 (C) the mutual fund has total net assets of
17 \$150,000,000 or more;

18 (5) commercial grade real estate located in the State
19 of Illinois.

20 Any investment adviser retained by a trust must be a
21 fiduciary who has the power to manage, acquire, or dispose of
22 any asset of the trust and has acknowledged in writing that he
23 or she is a fiduciary with respect to the trust and that he or
24 she will adhere to all of the guidelines of the trust and is
25 one or more of the following:

26 (i) registered as an investment adviser under the
27 federal Investment Advisers Act of 1940;

28 (ii) registered as an investment adviser under the
29 Illinois Securities Law of 1953;

30 (iii) a bank as defined in the federal Investment
31 Advisers Act of 1940;

32 (iv) an insurance company authorized to transact
33 business in this State.

34 Nothing in this Section shall be construed to authorize a

1 risk retention trust to accept the deposit of public funds
2 except for trust risk retention purposes.

3 ARTICLE 3. AMENDATORY PROVISIONS

4 Section 310. The Illinois Insurance Code is amended by
5 changing Sections 155.18, 155.19, 402, and 1204 and by adding
6 Section 155.18a as follows:

7 (215 ILCS 5/155.18) (from Ch. 73, par. 767.18)

8 Sec. 155.18. (a) This Section shall apply to insurance on
9 risks based upon negligence by a physician, hospital or other
10 health care provider, referred to herein as medical liability
11 insurance. This Section shall not apply to contracts of
12 reinsurance, nor to any farm, county, district or township
13 mutual insurance company transacting business under an Act
14 entitled "An Act relating to local mutual district, county and
15 township insurance companies", approved March 13, 1936, as now
16 or hereafter amended, nor to any such company operating under a
17 special charter.

18 (b) The following standards shall apply to the making and
19 use of rates pertaining to all classes of medical liability
20 insurance:

21 (1) Rates shall not be excessive or inadequate, as
22 herein defined, nor shall they be unfairly discriminatory.
23 No rate shall be held to be excessive unless such rate is
24 unreasonably high for the insurance provided, ~~and a~~
25 ~~reasonable degree of competition does not exist in the area~~
26 ~~with respect to the classification to which such rate is~~
27 ~~applicable.~~

28 No rate shall be held inadequate unless it is
29 unreasonably low for the insurance provided ~~and continued~~
30 ~~use of it would endanger solvency of the company.~~

31 (2) Consideration shall be given, to the extent

1 applicable, to past and prospective loss experience within
2 and outside this State, to a reasonable margin for
3 underwriting profit and contingencies, to past and
4 prospective expenses both countrywide and those especially
5 applicable to this State, and to all other factors,
6 including judgment factors, deemed relevant within and
7 outside this State.

8 Consideration may also be given in the making and use
9 of rates to dividends, savings or unabsorbed premium
10 deposits allowed or returned by companies to their
11 policyholders, members or subscribers.

12 (3) The systems of expense provisions included in the
13 rates for use by any company or group of companies may
14 differ from those of other companies or groups of companies
15 to reflect the operating methods of any such company or
16 group with respect to any kind of insurance, or with
17 respect to any subdivision or combination thereof.

18 (4) Risks may be grouped by classifications for the
19 establishment of rates and minimum premiums.
20 Classification rates may be modified to produce rates for
21 individual risks in accordance with rating plans which
22 establish standards for measuring variations in hazards or
23 expense provisions, or both. Such standards may measure any
24 difference among risks that have a probable effect upon
25 losses or expenses. Such classifications or modifications
26 of classifications of risks may be established based upon
27 size, expense, management, individual experience, location
28 or dispersion of hazard, or any other reasonable
29 considerations and shall apply to all risks under the same
30 or substantially the same circumstances or conditions. The
31 rate for an established classification should be related
32 generally to the anticipated loss and expense factors of
33 the class.

34 (c) Every company writing medical liability insurance

1 shall file with the Director of Insurance the rates and rating
2 schedules it uses for medical liability insurance.

3 (1) This filing shall occur upon a company's
4 commencement of medical liability insurance business in
5 this State ~~at least annually~~ and thereafter as often as the
6 rates are changed or amended.

7 (2) For the purposes of this Section, any change in
8 premium to the company's insureds as a result of a change
9 in the company's base rates or a change in its increased
10 limits factors shall constitute a change in rates and shall
11 require a filing with the Director.

12 (3) It shall be certified in such filing by an officer
13 of the company and a qualified actuary that the company's
14 rates are based on sound actuarial principles and are not
15 inconsistent with the company's experience.

16 (d) If, after an administrative ~~a~~ hearing pursuant to
17 subsection (c) of Section 401 of this Code, the Director finds:

18 (1) that any rate, rating plan or rating system
19 violates the provisions of this Section applicable to it,
20 he shall ~~may~~ issue an order to the company which has been
21 the subject of the hearing specifying in what respects such
22 violation exists and may prohibit ~~stating when, within a~~
23 ~~reasonable period of time,~~ the further use of such rate or
24 rating system by such company in contracts of insurance
25 ~~made thereafter shall be prohibited;~~

26 (2) that the violation of any of the provisions of this
27 Section ~~applicable to it~~ by any company which has been the
28 subject of the hearing was wilful or that any company has
29 repeatedly violated any provision of this Section, he may
30 take either or both of the following actions:

31 (A) Suspend ~~suspend~~ or revoke, in whole or in part,
32 the certificate of authority of such company with
33 respect to the class of insurance which has been the
34 subject of the hearing.

1 (B) Impose a penalty of up to \$1,000 against the
2 company for each violation. Each day during which a
3 violation occurs constitutes a separate violation.

4 (e) Every company writing medical liability insurance in
5 this State shall offer to each of its medical liability
6 insureds the option to make premium payments in at least
7 quarterly installments as prescribed by and filed with the
8 Director. This offer shall be included in the initial offer or
9 in the first policy renewal occurring after the effective date
10 of this amendatory Act of the 93rd General Assembly, but no
11 earlier than January 1, 2005.

12 (f) Every company writing medical liability insurance is
13 encouraged, but not required, to offer the opportunity for
14 participation in a plan offering deductibles to its medical
15 liability insureds. Any plan to offer deductibles shall be
16 filed with the Department of Insurance.

17 (g) Medical liability insurers are encouraged, but not
18 required, to offer the opportunity for participation in a plan
19 providing premium discounts for participation in risk
20 management activities to its medical liability insureds. Any
21 such plan shall be filed with the Department.

22 (Source: P.A. 79-1434.)

23 (215 ILCS 5/155.18a new)

24 Sec. 155.18a. Professional Liability Insurance Resource
25 Center. The Director of Insurance shall establish a
26 Professional Liability Insurance Resource Center on the World
27 Wide Web containing the names and telephone numbers of all
28 licensed companies providing medical liability insurance and
29 producers who sell medical liability insurance. Each company
30 and producer shall submit the information to the Department on
31 or before September 30 of each year in order to be listed on
32 the website. The Department is under no obligation to list a
33 company or producer on the website. Hyperlinks to company

1 websites shall be included, if available. The publication of
2 the information on the Department's website shall commence on
3 January 1, 2005. The Department shall update the information on
4 the Professional Liability Insurance Resource Center at least
5 annually.

6 (215 ILCS 5/155.19) (from Ch. 73, par. 767.19)

7 Sec. 155.19. All claims filed after December 31, 1976 with
8 any insurer and all suits filed after December 31, 1976 in any
9 court in this State, alleging liability on the part of any
10 physician, hospital or other health care provider for medically
11 related injuries, shall be reported to the Director of
12 Insurance in such form and under such terms and conditions as
13 may be prescribed by the Director. Notwithstanding any other
14 provision of law to the contrary, any insurer, stop loss
15 insurer, captive insurer, risk retention group, county risk
16 retention trust, religious or charitable risk pooling trust,
17 surplus line insurer, or other entity authorized or permitted
18 by law to provide medical liability insurance in this State
19 shall report to the Director, in such form and under such terms
20 and conditions as may be prescribed by the Director, all claims
21 filed after December 31, 2004 and all suits filed after
22 December 31, 2004 in any court in this State alleging liability
23 on the part of any physician, hospital, or health care provider
24 for medically-related injuries. Each clerk of the circuit court
25 shall provide to the Director such information as the Director
26 may deem necessary to verify the accuracy and completeness of
27 reports made to the Director under this Section. The Director
28 shall maintain complete and accurate records of all such claims
29 and suits including their nature, amount, disposition and other
30 information as he may deem useful or desirable in observing and
31 reporting on health care provider liability trends in this
32 State. The Director shall release to appropriate disciplinary
33 and licensing agencies any such data or information which may

1 assist such agencies in improving the quality of health care or
2 which may be useful to such agencies for the purpose of
3 professional discipline.

4 With due regard for appropriate maintenance of the
5 confidentiality thereof, the Director shall ~~may~~ release, on an
6 annual basis, from time to time to the Governor, the General
7 Assembly and the general public statistical reports based on
8 such data and information.

9 If the Director finds that any entity required to report
10 information in its possession under this Section has violated
11 any provision of this Section by filing late, incomplete, or
12 inaccurate reports, the Director may fine the entity up to
13 \$1,000 for each offense. Each day during which a violation
14 occurs constitutes a separate offense.

15 The Director may promulgate such rules and regulations as
16 may be necessary to carry out the provisions of this Section.

17 (Source: P.A. 79-1434.)

18 (215 ILCS 5/402) (from Ch. 73, par. 1014)

19 Sec. 402. Examinations, investigations and hearings. (1)
20 All examinations, investigations and hearings provided for by
21 this Code may be conducted either by the Director personally,
22 or by one or more of the actuaries, technical advisors,
23 deputies, supervisors or examiners employed or retained by the
24 Department and designated by the Director for such purpose.
25 When necessary to supplement its examination procedures, the
26 Department may retain independent actuaries deemed competent
27 by the Director, independent certified public accountants, or
28 qualified examiners of insurance companies deemed competent by
29 the Director, or any combination of the foregoing, the cost of
30 which shall be borne by the company or person being examined.
31 The Director may compensate independent actuaries, certified
32 public accountants and qualified examiners retained for
33 supplementing examination procedures in amounts not to exceed

1 the reasonable and customary charges for such services. The
2 Director may also accept as a part of the Department's
3 examination of any company or person (a) a report by an
4 independent actuary deemed competent by the Director or (b) a
5 report of an audit made by an independent certified public
6 accountant. Neither those persons so designated nor any members
7 of their immediate families shall be officers of, connected
8 with, or financially interested in any company other than as
9 policyholders, nor shall they be financially interested in any
10 other corporation or person affected by the examination,
11 investigation or hearing.

12 (2) All hearings provided for in this Code shall, unless
13 otherwise specially provided, be held at such time and place as
14 shall be designated in a notice which shall be given by the
15 Director in writing to the person or company whose interests
16 are affected, at least 10 days before the date designated
17 therein. The notice shall state the subject of inquiry and the
18 specific charges, if any. The hearings shall be held in the
19 City of Springfield, the City of Chicago, or in the county
20 where the principal business address of the person or company
21 affected is located. For a rate increase filing in medical
22 liability insurance under subsection (c) of Section 155.18 of
23 this Code, the Director may hold a hearing with the company and
24 policyholders present for the purpose of receiving testimony
25 from the company and policyholders regarding the rate increase.
26 The hearing must occur under written and express terms and
27 conditions that are sufficient to protect from disclosure
28 information that the subject medical liability insurance
29 company deems proprietary, confidential, or a trade secret. The
30 insurance company must give notice of the hearing time, date,
31 and location to medical liability insurance policyholders
32 whose rates have increased. Notice to policyholders may be
33 given through regular publications issued to policyholders or
34 by electronic means. Other than the cost of this notice, the

1 Department shall be responsible for the costs of this hearing.

2 (Source: P.A. 87-757.)

3 (215 ILCS 5/1204) (from Ch. 73, par. 1065.904)

4 Sec. 1204. (A) The Director shall promulgate rules and
5 regulations which shall require each insurer licensed to write
6 property or casualty insurance in the State and each syndicate
7 doing business on the Illinois Insurance Exchange to record and
8 report its loss and expense experience and other data as may be
9 necessary to assess the relationship of insurance premiums and
10 related income as compared to insurance costs and expenses. The
11 Director may designate one or more rate service organizations
12 or advisory organizations to gather and compile such experience
13 and data. The Director shall require each insurer licensed to
14 write property or casualty insurance in this State and each
15 syndicate doing business on the Illinois Insurance Exchange to
16 submit a report, on a form furnished by the Director, showing
17 its direct writings in this State and companywide.

18 (B) Such report required by subsection (A) of this Section
19 may include, but not be limited to, the following specific
20 types of insurance written by such insurer:

21 (1) Political subdivision liability insurance reported
22 separately in the following categories:

23 (a) municipalities;

24 (b) school districts;

25 (c) other political subdivisions;

26 (2) Public official liability insurance;

27 (3) Dram shop liability insurance;

28 (4) Day care center liability insurance;

29 (5) Labor, fraternal or religious organizations
30 liability insurance;

31 (6) Errors and omissions liability insurance;

32 (7) Officers and directors liability insurance
33 reported separately as follows:

- 1 (a) non-profit entities;
- 2 (b) for-profit entities;
- 3 (8) Products liability insurance;
- 4 (9) Medical malpractice insurance;
- 5 (10) Attorney malpractice insurance;
- 6 (11) Architects and engineers malpractice insurance;
- 7 and
- 8 (12) Motor vehicle insurance reported separately for
- 9 commercial and private passenger vehicles as follows:
 - 10 (a) motor vehicle physical damage insurance;
 - 11 (b) motor vehicle liability insurance.
- 12 (C) Such report may include, but need not be limited to the
- 13 following data, both specific to this State and companywide, in
- 14 the aggregate or by type of insurance for the previous year on
- 15 a calendar year basis:
 - 16 (1) Direct premiums written;
 - 17 (2) Direct premiums earned;
 - 18 (3) Number of policies;
 - 19 (4) Net investment income, using appropriate estimates
 - 20 where necessary;
 - 21 (5) Losses paid;
 - 22 (6) Losses incurred;
 - 23 (7) Loss reserves:
 - 24 (a) Losses unpaid on reported claims;
 - 25 (b) Losses unpaid on incurred but not reported
 - 26 claims;
 - 27 (8) Number of claims:
 - 28 (a) Paid claims;
 - 29 (b) Arising claims;
 - 30 (9) Loss adjustment expenses:
 - 31 (a) Allocated loss adjustment expenses;
 - 32 (b) Unallocated loss adjustment expenses;
 - 33 (10) Net underwriting gain or loss;
 - 34 (11) Net operation gain or loss, including net

1 investment income;

2 (12) Any other information requested by the Director.

3 (C-5) Additional information required from medical
4 malpractice insurers.

5 (1) In addition to the other requirements of this
6 Section, all medical malpractice insurers shall include
7 the following information in the report required by
8 subsection (A) of this Section in such form and under such
9 terms and conditions as may be prescribed by the Director:

10 (a) paid and incurred losses by county for each of
11 the past 10 policy years; and

12 (b) earned exposures by ISO code, policy type, and
13 policy year by county for each of the past 10 years.

14 (2) All information collected by the Director under
15 paragraph (1) of this subsection (C-5) shall be made
16 available, on an aggregate basis, to the General Assembly
17 and the general public. This provision shall supersede any
18 other provision of law that may otherwise protect such
19 information from public disclosure as confidential. The
20 identity of the plaintiff, the defendant, the attorneys,
21 and the company shall not be disclosed.

22 (D) In addition to the information which may be requested
23 under subsection (C), the Director may also request on a
24 companywide, aggregate basis, Federal Income Tax recoverable,
25 net realized capital gain or loss, net unrealized capital gain
26 or loss, and all other expenses not requested in subsection (C)
27 above.

28 (E) Violations - Suspensions - Revocations.

29 (1) Any company or person subject to this Article, who
30 willfully or repeatedly fails to observe or who otherwise
31 violates any of the provisions of this Article or any rule
32 or regulation promulgated by the Director under authority
33 of this Article or any final order of the Director entered
34 under the authority of this Article shall by civil penalty

1 forfeit to the State of Illinois a sum not to exceed
2 \$2,000. Each day during which a violation occurs
3 constitutes a separate offense.

4 (2) No forfeiture liability under paragraph (1) of this
5 subsection may attach unless a written notice of apparent
6 liability has been issued by the Director and received by
7 the respondent, or the Director sends written notice of
8 apparent liability by registered or certified mail, return
9 receipt requested, to the last known address of the
10 respondent. Any respondent so notified must be granted an
11 opportunity to request a hearing within 10 days from
12 receipt of notice, or to show in writing, why he should not
13 be held liable. A notice issued under this Section must set
14 forth the date, facts and nature of the act or omission
15 with which the respondent is charged and must specifically
16 identify the particular provision of this Article, rule,
17 regulation or order of which a violation is charged.

18 (3) No forfeiture liability under paragraph (1) of this
19 subsection may attach for any violation occurring more than
20 2 years prior to the date of issuance of the notice of
21 apparent liability and in no event may the total civil
22 penalty forfeiture imposed for the acts or omissions set
23 forth in any one notice of apparent liability exceed
24 \$100,000.

25 (4) All administrative hearings conducted pursuant to
26 this Article are subject to 50 Ill. Adm. Code 2402 and all
27 administrative hearings are subject to the Administrative
28 Review Law.

29 (5) The civil penalty forfeitures provided for in this
30 Section are payable to the General Revenue Fund of the
31 State of Illinois, and may be recovered in a civil suit in
32 the name of the State of Illinois brought in the Circuit
33 Court in Sangamon County or in the Circuit Court of the
34 county where the respondent is domiciled or has its

1 principal operating office.

2 (6) In any case where the Director issues a notice of
3 apparent liability looking toward the imposition of a civil
4 penalty forfeiture under this Section that fact may not be
5 used in any other proceeding before the Director to the
6 prejudice of the respondent to whom the notice was issued,
7 unless (a) the civil penalty forfeiture has been paid, or
8 (b) a court has ordered payment of the civil penalty
9 forfeiture and that order has become final.

10 (7) When any person or company has a license or
11 certificate of authority under this Code and knowingly
12 fails or refuses to comply with a lawful order of the
13 Director requiring compliance with this Article, entered
14 after notice and hearing, within the period of time
15 specified in the order, the Director may, in addition to
16 any other penalty or authority provided, revoke or refuse
17 to renew the license or certificate of authority of such
18 person or company, or may suspend the license or
19 certificate of authority of such person or company until
20 compliance with such order has been obtained.

21 (8) When any person or company has a license or
22 certificate of authority under this Code and knowingly
23 fails or refuses to comply with any provisions of this
24 Article, the Director may, after notice and hearing, in
25 addition to any other penalty provided, revoke or refuse to
26 renew the license or certificate of authority of such
27 person or company, or may suspend the license or
28 certificate of authority of such person or company, until
29 compliance with such provision of this Article has been
30 obtained.

31 (9) No suspension or revocation under this Section may
32 become effective until 5 days from the date that the notice
33 of suspension or revocation has been personally delivered
34 or delivered by registered or certified mail to the company

1 or person. A suspension or revocation under this Section is
2 stayed upon the filing, by the company or person, of a
3 petition for judicial review under the Administrative
4 Review Law.

5 (Source: P.A. 93-32, eff. 7-1-03.)

6 Section 315. The Medical Practice Act of 1987 is amended by
7 changing Sections 7, 22, 23, 24, and 36 as follows:

8 (225 ILCS 60/7) (from Ch. 111, par. 4400-7)

9 (Section scheduled to be repealed on January 1, 2007)

10 Sec. 7. Medical Disciplinary Board.

11 (A) There is hereby created the Illinois State Medical
12 Disciplinary Board (hereinafter referred to as the
13 "Disciplinary Board"). The Disciplinary Board shall consist of
14 9 members, to be appointed by the Governor by and with the
15 advice and consent of the Senate. All shall be residents of the
16 State, not more than 5 of whom shall be members of the same
17 political party. Five members shall be physicians licensed to
18 practice medicine in all of its branches in Illinois possessing
19 the degree of doctor of medicine. Two shall be members of the
20 public, who shall not be engaged in any way, directly or
21 indirectly, as providers of health care. The 2 public members
22 shall act as voting members. One member shall be a physician
23 licensed to practice in Illinois possessing the degree of
24 doctor of osteopathy or osteopathic medicine. One member shall
25 be a physician licensed to practice in Illinois and possessing
26 the degree of doctor of chiropractic.

27 (B) Members of the Disciplinary Board shall be appointed
28 for terms of 4 years. Upon the expiration of the term of any
29 member, their successor shall be appointed for a term of 4
30 years by the Governor by and with the advice and consent of the
31 Senate. The Governor shall fill any vacancy for the remainder
32 of the unexpired term by and with the advice and consent of the

1 Senate. Upon recommendation of the Board, any member of the
2 Disciplinary Board may be removed by the Governor for
3 misfeasance, malfeasance, or wilful neglect of duty, after
4 notice, and a public hearing, unless such notice and hearing
5 shall be expressly waived in writing. Each member shall serve
6 on the Disciplinary Board until their successor is appointed
7 and qualified. No member of the Disciplinary Board shall serve
8 more than 2 consecutive 4 year terms.

9 In making appointments the Governor shall attempt to insure
10 that the various social and geographic regions of the State of
11 Illinois are properly represented.

12 In making the designation of persons to act for the several
13 professions represented on the Disciplinary Board, the
14 Governor shall give due consideration to recommendations by
15 members of the respective professions and by organizations
16 therein.

17 (C) The Disciplinary Board shall annually elect one of its
18 voting members as chairperson and one as vice chairperson. No
19 officer shall be elected more than twice in succession to the
20 same office. Each officer shall serve until their successor has
21 been elected and qualified.

22 (D) (Blank).

23 (E) Four voting members of the Disciplinary Board shall
24 constitute a quorum. A vacancy in the membership of the
25 Disciplinary Board shall not impair the right of a quorum to
26 exercise all the rights and perform all the duties of the
27 Disciplinary Board. Any action taken by the Disciplinary Board
28 under this Act may be authorized by resolution at any regular
29 or special meeting and each such resolution shall take effect
30 immediately. The Disciplinary Board shall meet at least
31 quarterly. The Disciplinary Board is empowered to adopt all
32 rules and regulations necessary and incident to the powers
33 granted to it under this Act.

34 (F) Each member, and member-officer, of the Disciplinary

1 Board shall receive a per diem stipend as the Director of the
2 Department, hereinafter referred to as the Director, shall
3 determine. The Director shall also determine the per diem
4 stipend that each ex-officio member shall receive. Each member
5 shall be paid their necessary expenses while engaged in the
6 performance of their duties.

7 (G) The Director shall select a Chief Medical Coordinator
8 and not less than 2 ~~a~~ Deputy Medical Coordinators ~~Coordinator~~
9 who shall not be members of the Disciplinary Board. Each
10 medical coordinator shall be a physician licensed to practice
11 medicine in all of its branches, and the Director shall set
12 their rates of compensation. The Director shall assign at least
13 one medical coordinator to a region composed of Cook County and
14 such other counties as the Director may deem appropriate, and
15 such medical coordinator or coordinators shall locate their
16 office in Chicago. The Director shall assign at least one ~~the~~
17 ~~remaining~~ medical coordinator to a region composed of the
18 balance of counties in the State, and such medical coordinator
19 or coordinators shall locate their office in Springfield. Each
20 medical coordinator shall be the chief enforcement officer of
21 this Act in his or her ~~their~~ assigned region and shall serve at
22 the will of the Disciplinary Board.

23 The Director shall employ, in conformity with the Personnel
24 Code, not less than one full time investigator for every 2,500
25 ~~5000~~ physicians licensed in the State. Each investigator shall
26 be a college graduate with at least 2 years' investigative
27 experience or one year advanced medical education. Upon the
28 written request of the Disciplinary Board, the Director shall
29 employ, in conformity with the Personnel Code, such other
30 professional, technical, investigative, and clerical help,
31 either on a full or part-time basis as the Disciplinary Board
32 deems necessary for the proper performance of its duties.

33 (H) Upon the specific request of the Disciplinary Board,
34 signed by either the chairman, vice chairman, or a medical

1 coordinator of the Disciplinary Board, the Department of Human
2 Services or the Department of State Police shall make available
3 any and all information that they have in their possession
4 regarding a particular case then under investigation by the
5 Disciplinary Board.

6 (I) Members of the Disciplinary Board shall be immune from
7 suit in any action based upon any disciplinary proceedings or
8 other acts performed in good faith as members of the
9 Disciplinary Board.

10 (J) The Disciplinary Board may compile and establish a
11 statewide roster of physicians and other medical
12 professionals, including the several medical specialties, of
13 such physicians and medical professionals, who have agreed to
14 serve from time to time as advisors to the medical
15 coordinators. Such advisors shall assist the medical
16 coordinators or the Disciplinary Board in their investigations
17 and participation in complaints against physicians. Such
18 advisors shall serve under contract and shall be reimbursed at
19 a reasonable rate for the services provided, plus reasonable
20 expenses incurred. While serving in this capacity, the advisor,
21 for any act undertaken in good faith and in the conduct of
22 their duties under this Section, shall be immune from civil
23 suit.

24 (Source: P.A. 93-138, eff. 7-10-03.)

25 (225 ILCS 60/22) (from Ch. 111, par. 4400-22)

26 (Section scheduled to be repealed on January 1, 2007)

27 Sec. 22. Disciplinary action.

28 (A) The Department may revoke, suspend, place on
29 probationary status, refuse to renew, or take any other
30 disciplinary action as the Department may deem proper with
31 regard to the license or visiting professor permit of any
32 person issued under this Act to practice medicine, or to treat
33 human ailments without the use of drugs and without operative

1 surgery upon any of the following grounds:

2 (1) Performance of an elective abortion in any place,
3 locale, facility, or institution other than:

4 (a) a facility licensed pursuant to the Ambulatory
5 Surgical Treatment Center Act;

6 (b) an institution licensed under the Hospital
7 Licensing Act; or

8 (c) an ambulatory surgical treatment center or
9 hospitalization or care facility maintained by the
10 State or any agency thereof, where such department or
11 agency has authority under law to establish and enforce
12 standards for the ambulatory surgical treatment
13 centers, hospitalization, or care facilities under its
14 management and control; or

15 (d) ambulatory surgical treatment centers,
16 hospitalization or care facilities maintained by the
17 Federal Government; or

18 (e) ambulatory surgical treatment centers,
19 hospitalization or care facilities maintained by any
20 university or college established under the laws of
21 this State and supported principally by public funds
22 raised by taxation.

23 (2) Performance of an abortion procedure in a wilful
24 and wanton manner on a woman who was not pregnant at the
25 time the abortion procedure was performed.

26 (3) The conviction of a felony in this or any other
27 jurisdiction, except as otherwise provided in subsection B
28 of this Section, whether or not related to practice under
29 this Act, or the entry of a guilty or nolo contendere plea
30 to a felony charge.

31 (4) Gross negligence in practice under this Act.

32 (5) Engaging in dishonorable, unethical or
33 unprofessional conduct of a character likely to deceive,
34 defraud or harm the public.

1 (6) Obtaining any fee by fraud, deceit, or
2 misrepresentation.

3 (7) Habitual or excessive use or abuse of drugs defined
4 in law as controlled substances, of alcohol, or of any
5 other substances which results in the inability to practice
6 with reasonable judgment, skill or safety.

7 (8) Practicing under a false or, except as provided by
8 law, an assumed name.

9 (9) Fraud or misrepresentation in applying for, or
10 procuring, a license under this Act or in connection with
11 applying for renewal of a license under this Act.

12 (10) Making a false or misleading statement regarding
13 their skill or the efficacy or value of the medicine,
14 treatment, or remedy prescribed by them at their direction
15 in the treatment of any disease or other condition of the
16 body or mind.

17 (11) Allowing another person or organization to use
18 their license, procured under this Act, to practice.

19 (12) Disciplinary action of another state or
20 jurisdiction against a license or other authorization to
21 practice as a medical doctor, doctor of osteopathy, doctor
22 of osteopathic medicine or doctor of chiropractic, a
23 certified copy of the record of the action taken by the
24 other state or jurisdiction being prima facie evidence
25 thereof.

26 (13) Violation of any provision of this Act or of the
27 Medical Practice Act prior to the repeal of that Act, or
28 violation of the rules, or a final administrative action of
29 the Director, after consideration of the recommendation of
30 the Disciplinary Board.

31 (14) Dividing with anyone other than physicians with
32 whom the licensee practices in a partnership, Professional
33 Association, limited liability company, or Medical or
34 Professional Corporation any fee, commission, rebate or

1 other form of compensation for any professional services
2 not actually and personally rendered. Nothing contained in
3 this subsection prohibits persons holding valid and
4 current licenses under this Act from practicing medicine in
5 partnership under a partnership agreement, including a
6 limited liability partnership, in a limited liability
7 company under the Limited Liability Company Act, in a
8 corporation authorized by the Medical Corporation Act, as
9 an association authorized by the Professional Association
10 Act, or in a corporation under the Professional Corporation
11 Act or from pooling, sharing, dividing or apportioning the
12 fees and monies received by them or by the partnership,
13 corporation or association in accordance with the
14 partnership agreement or the policies of the Board of
15 Directors of the corporation or association. Nothing
16 contained in this subsection prohibits 2 or more
17 corporations authorized by the Medical Corporation Act,
18 from forming a partnership or joint venture of such
19 corporations, and providing medical, surgical and
20 scientific research and knowledge by employees of these
21 corporations if such employees are licensed under this Act,
22 or from pooling, sharing, dividing, or apportioning the
23 fees and monies received by the partnership or joint
24 venture in accordance with the partnership or joint venture
25 agreement. Nothing contained in this subsection shall
26 abrogate the right of 2 or more persons, holding valid and
27 current licenses under this Act, to each receive adequate
28 compensation for concurrently rendering professional
29 services to a patient and divide a fee; provided, the
30 patient has full knowledge of the division, and, provided,
31 that the division is made in proportion to the services
32 performed and responsibility assumed by each.

33 (15) A finding by the Medical Disciplinary Board that
34 the registrant after having his or her license placed on

1 probationary status or subjected to conditions or
2 restrictions violated the terms of the probation or failed
3 to comply with such terms or conditions.

4 (16) Abandonment of a patient.

5 (17) Prescribing, selling, administering,
6 distributing, giving or self-administering any drug
7 classified as a controlled substance (designated product)
8 or narcotic for other than medically accepted therapeutic
9 purposes.

10 (18) Promotion of the sale of drugs, devices,
11 appliances or goods provided for a patient in such manner
12 as to exploit the patient for financial gain of the
13 physician.

14 (19) Offering, undertaking or agreeing to cure or treat
15 disease by a secret method, procedure, treatment or
16 medicine, or the treating, operating or prescribing for any
17 human condition by a method, means or procedure which the
18 licensee refuses to divulge upon demand of the Department.

19 (20) Immoral conduct in the commission of any act
20 including, but not limited to, commission of an act of
21 sexual misconduct related to the licensee's practice.

22 (21) Wilfully making or filing false records or reports
23 in his or her practice as a physician, including, but not
24 limited to, false records to support claims against the
25 medical assistance program of the Department of Public Aid
26 under the Illinois Public Aid Code.

27 (22) Wilful omission to file or record, or wilfully
28 impeding the filing or recording, or inducing another
29 person to omit to file or record, medical reports as
30 required by law, or wilfully failing to report an instance
31 of suspected abuse or neglect as required by law.

32 (23) Being named as a perpetrator in an indicated
33 report by the Department of Children and Family Services
34 under the Abused and Neglected Child Reporting Act, and

1 upon proof by clear and convincing evidence that the
2 licensee has caused a child to be an abused child or
3 neglected child as defined in the Abused and Neglected
4 Child Reporting Act.

5 (24) Solicitation of professional patronage by any
6 corporation, agents or persons, or profiting from those
7 representing themselves to be agents of the licensee.

8 (25) Gross and wilful and continued overcharging for
9 professional services, including filing false statements
10 for collection of fees for which services are not rendered,
11 including, but not limited to, filing such false statements
12 for collection of monies for services not rendered from the
13 medical assistance program of the Department of Public Aid
14 under the Illinois Public Aid Code.

15 (26) A pattern of practice or other behavior which
16 demonstrates incapacity or incompetence to practice under
17 this Act.

18 (27) Mental illness or disability which results in the
19 inability to practice under this Act with reasonable
20 judgment, skill or safety.

21 (28) Physical illness, including, but not limited to,
22 deterioration through the aging process, or loss of motor
23 skill which results in a physician's inability to practice
24 under this Act with reasonable judgment, skill or safety.

25 (29) Cheating on or attempt to subvert the licensing
26 examinations administered under this Act.

27 (30) Wilfully or negligently violating the
28 confidentiality between physician and patient except as
29 required by law.

30 (31) The use of any false, fraudulent, or deceptive
31 statement in any document connected with practice under
32 this Act.

33 (32) Aiding and abetting an individual not licensed
34 under this Act in the practice of a profession licensed

1 under this Act.

2 (33) Violating state or federal laws or regulations
3 relating to controlled substances, legend drugs, or
4 ephedra, as defined in the Ephedra Prohibition Act.

5 (34) Failure to report to the Department any adverse
6 final action taken against them by another licensing
7 jurisdiction (any other state or any territory of the
8 United States or any foreign state or country), by any peer
9 review body, by any health care institution, by any
10 professional society or association related to practice
11 under this Act, by any governmental agency, by any law
12 enforcement agency, or by any court for acts or conduct
13 similar to acts or conduct which would constitute grounds
14 for action as defined in this Section.

15 (35) Failure to report to the Department surrender of a
16 license or authorization to practice as a medical doctor, a
17 doctor of osteopathy, a doctor of osteopathic medicine, or
18 doctor of chiropractic in another state or jurisdiction, or
19 surrender of membership on any medical staff or in any
20 medical or professional association or society, while
21 under disciplinary investigation by any of those
22 authorities or bodies, for acts or conduct similar to acts
23 or conduct which would constitute grounds for action as
24 defined in this Section.

25 (36) Failure to report to the Department any adverse
26 judgment, settlement, or award arising from a liability
27 claim related to acts or conduct similar to acts or conduct
28 which would constitute grounds for action as defined in
29 this Section.

30 (37) Failure to transfer copies of medical records as
31 required by law.

32 (38) Failure to furnish the Department, its
33 investigators or representatives, relevant information,
34 legally requested by the Department after consultation

1 with the Chief Medical Coordinator or the Deputy Medical
2 Coordinator.

3 (39) Violating the Health Care Worker Self-Referral
4 Act.

5 (40) Willful failure to provide notice when notice is
6 required under the Parental Notice of Abortion Act of 1995.

7 (41) Failure to establish and maintain records of
8 patient care and treatment as required by this law.

9 (42) Entering into an excessive number of written
10 collaborative agreements with licensed advanced practice
11 nurses resulting in an inability to adequately collaborate
12 and provide medical direction.

13 (43) Repeated failure to adequately collaborate with
14 or provide medical direction to a licensed advanced
15 practice nurse.

16 Except for actions involving the ground numbered (26), all
17 ~~All~~ proceedings to suspend, revoke, place on probationary
18 status, or take any other disciplinary action as the Department
19 may deem proper, with regard to a license on any of the
20 foregoing grounds, must be commenced within 5 ~~3~~ years next
21 after receipt by the Department of a complaint alleging the
22 commission of or notice of the conviction order for any of the
23 acts described herein. Except for the grounds numbered (8),
24 (9), (26), and (29), no action shall be commenced more than 10
25 ~~5~~ years after the date of the incident or act alleged to have
26 violated this Section. For actions involving the ground
27 numbered (26), a pattern of practice or other behavior includes
28 all incidents alleged to be part of the pattern of practice or
29 other behavior that occurred or a report pursuant to Section 23
30 of this Act received within the 10-year period preceding the
31 filing of the complaint. In the event of the settlement of any
32 claim or cause of action in favor of the claimant or the
33 reduction to final judgment of any civil action in favor of the
34 plaintiff, such claim, cause of action or civil action being

1 grounded on the allegation that a person licensed under this
2 Act was negligent in providing care, the Department shall have
3 an additional period of 2 years ~~one year~~ from the date of
4 notification to the Department under Section 23 of this Act of
5 such settlement or final judgment in which to investigate and
6 commence formal disciplinary proceedings under Section 36 of
7 this Act, except as otherwise provided by law. The Department
8 shall expunge the records of discipline solely for
9 administrative matters 3 years after final disposition or after
10 the statute of limitations has expired, whichever is later. The
11 time during which the holder of the license was outside the
12 State of Illinois shall not be included within any period of
13 time limiting the commencement of disciplinary action by the
14 Department.

15 The entry of an order or judgment by any circuit court
16 establishing that any person holding a license under this Act
17 is a person in need of mental treatment operates as a
18 suspension of that license. That person may resume their
19 practice only upon the entry of a Departmental order based upon
20 a finding by the Medical Disciplinary Board that they have been
21 determined to be recovered from mental illness by the court and
22 upon the Disciplinary Board's recommendation that they be
23 permitted to resume their practice.

24 The Department may refuse to issue or take disciplinary
25 action concerning the license of any person who fails to file a
26 return, or to pay the tax, penalty or interest shown in a filed
27 return, or to pay any final assessment of tax, penalty or
28 interest, as required by any tax Act administered by the
29 Illinois Department of Revenue, until such time as the
30 requirements of any such tax Act are satisfied as determined by
31 the Illinois Department of Revenue.

32 The Department, upon the recommendation of the
33 Disciplinary Board, shall adopt rules which set forth standards
34 to be used in determining:

1 (a) when a person will be deemed sufficiently
2 rehabilitated to warrant the public trust;

3 (b) what constitutes dishonorable, unethical or
4 unprofessional conduct of a character likely to deceive,
5 defraud, or harm the public;

6 (c) what constitutes immoral conduct in the commission
7 of any act, including, but not limited to, commission of an
8 act of sexual misconduct related to the licensee's
9 practice; and

10 (d) what constitutes gross negligence in the practice
11 of medicine.

12 However, no such rule shall be admissible into evidence in
13 any civil action except for review of a licensing or other
14 disciplinary action under this Act.

15 In enforcing this Section, the Medical Disciplinary Board,
16 upon a showing of a possible violation, may compel any
17 individual licensed to practice under this Act, or who has
18 applied for licensure or a permit pursuant to this Act, to
19 submit to a mental or physical examination, or both, as
20 required by and at the expense of the Department. The examining
21 physician or physicians shall be those specifically designated
22 by the Disciplinary Board. The Medical Disciplinary Board or
23 the Department may order the examining physician to present
24 testimony concerning this mental or physical examination of the
25 licensee or applicant. No information shall be excluded by
26 reason of any common law or statutory privilege relating to
27 communication between the licensee or applicant and the
28 examining physician. The individual to be examined may have, at
29 his or her own expense, another physician of his or her choice
30 present during all aspects of the examination. Failure of any
31 individual to submit to mental or physical examination, when
32 directed, shall be grounds for suspension of his or her license
33 until such time as the individual submits to the examination if
34 the Disciplinary Board finds, after notice and hearing, that

1 the refusal to submit to the examination was without reasonable
2 cause. If the Disciplinary Board finds a physician unable to
3 practice because of the reasons set forth in this Section, the
4 Disciplinary Board shall require such physician to submit to
5 care, counseling, or treatment by physicians approved or
6 designated by the Disciplinary Board, as a condition for
7 continued, reinstated, or renewed licensure to practice. Any
8 physician, whose license was granted pursuant to Sections 9,
9 17, or 19 of this Act, or, continued, reinstated, renewed,
10 disciplined or supervised, subject to such terms, conditions or
11 restrictions who shall fail to comply with such terms,
12 conditions or restrictions, or to complete a required program
13 of care, counseling, or treatment, as determined by the Chief
14 Medical Coordinator or Deputy Medical Coordinators, shall be
15 referred to the Director for a determination as to whether the
16 licensee shall have their license suspended immediately,
17 pending a hearing by the Disciplinary Board. In instances in
18 which the Director immediately suspends a license under this
19 Section, a hearing upon such person's license must be convened
20 by the Disciplinary Board within 15 days after such suspension
21 and completed without appreciable delay. The Disciplinary
22 Board shall have the authority to review the subject
23 physician's record of treatment and counseling regarding the
24 impairment, to the extent permitted by applicable federal
25 statutes and regulations safeguarding the confidentiality of
26 medical records.

27 An individual licensed under this Act, affected under this
28 Section, shall be afforded an opportunity to demonstrate to the
29 Disciplinary Board that they can resume practice in compliance
30 with acceptable and prevailing standards under the provisions
31 of their license.

32 The Department may promulgate rules for the imposition of
33 fines in disciplinary cases, not to exceed \$10,000 ~~\$5,000~~ for
34 each violation of this Act. Fines may be imposed in conjunction

1 with other forms of disciplinary action, but shall not be the
2 exclusive disposition of any disciplinary action arising out of
3 conduct resulting in death or injury to a patient. Any funds
4 collected from such fines shall be deposited in the Medical
5 Disciplinary Fund.

6 (B) The Department shall revoke the license or visiting
7 permit of any person issued under this Act to practice medicine
8 or to treat human ailments without the use of drugs and without
9 operative surgery, who has been convicted a second time of
10 committing any felony under the Illinois Controlled Substances
11 Act, or who has been convicted a second time of committing a
12 Class 1 felony under Sections 8A-3 and 8A-6 of the Illinois
13 Public Aid Code. A person whose license or visiting permit is
14 revoked under this subsection B of Section 22 of this Act shall
15 be prohibited from practicing medicine or treating human
16 ailments without the use of drugs and without operative
17 surgery.

18 (C) The Medical Disciplinary Board shall recommend to the
19 Department civil penalties and any other appropriate
20 discipline in disciplinary cases when the Board finds that a
21 physician willfully performed an abortion with actual
22 knowledge that the person upon whom the abortion has been
23 performed is a minor or an incompetent person without notice as
24 required under the Parental Notice of Abortion Act of 1995.
25 Upon the Board's recommendation, the Department shall impose,
26 for the first violation, a civil penalty of \$1,000 and for a
27 second or subsequent violation, a civil penalty of \$5,000.

28 (Source: P.A. 89-18, eff. 6-1-95; 89-201, eff. 1-1-96; 89-626,
29 eff. 8-9-96; 89-702, eff. 7-1-97; 90-742, eff. 8-13-98.)

30 (225 ILCS 60/23) (from Ch. 111, par. 4400-23)

31 (Section scheduled to be repealed on January 1, 2007)

32 Sec. 23. Reports relating to professional conduct and
33 capacity.

1 (A) Entities required to report.

2 (1) Health care institutions. The chief administrator
3 or executive officer of any health care institution
4 licensed by the Illinois Department of Public Health shall
5 report to the Disciplinary Board when any person's clinical
6 privileges are terminated or are restricted based on a
7 final determination, in accordance with that institution's
8 by-laws or rules and regulations, that a person has either
9 committed an act or acts which may directly threaten
10 patient care, and not of an administrative nature, or that
11 a person may be mentally or physically disabled in such a
12 manner as to endanger patients under that person's care.
13 Such officer also shall report if a person accepts
14 voluntary termination or restriction of clinical
15 privileges in lieu of formal action based upon conduct
16 related directly to patient care and not of an
17 administrative nature, or in lieu of formal action seeking
18 to determine whether a person may be mentally or physically
19 disabled in such a manner as to endanger patients under
20 that person's care. The Medical Disciplinary Board shall,
21 by rule, provide for the reporting to it of all instances
22 in which a person, licensed under this Act, who is impaired
23 by reason of age, drug or alcohol abuse or physical or
24 mental impairment, is under supervision and, where
25 appropriate, is in a program of rehabilitation. Such
26 reports shall be strictly confidential and may be reviewed
27 and considered only by the members of the Disciplinary
28 Board, or by authorized staff as provided by rules of the
29 Disciplinary Board. Provisions shall be made for the
30 periodic report of the status of any such person not less
31 than twice annually in order that the Disciplinary Board
32 shall have current information upon which to determine the
33 status of any such person. Such initial and periodic
34 reports of impaired physicians shall not be considered

1 records within the meaning of The State Records Act and
2 shall be disposed of, following a determination by the
3 Disciplinary Board that such reports are no longer
4 required, in a manner and at such time as the Disciplinary
5 Board shall determine by rule. The filing of such reports
6 shall be construed as the filing of a report for purposes
7 of subsection (C) of this Section.

8 (2) Professional associations. The President or chief
9 executive officer of any association or society, of persons
10 licensed under this Act, operating within this State shall
11 report to the Disciplinary Board when the association or
12 society renders a final determination that a person has
13 committed unprofessional conduct related directly to
14 patient care or that a person may be mentally or physically
15 disabled in such a manner as to endanger patients under
16 that person's care.

17 (3) Professional liability insurers. Every insurance
18 company which offers policies of professional liability
19 insurance to persons licensed under this Act, or any other
20 entity which seeks to indemnify the professional liability
21 of a person licensed under this Act, shall report to the
22 Disciplinary Board the settlement of any claim or cause of
23 action, or final judgment rendered in any cause of action,
24 which alleged negligence in the furnishing of medical care
25 by such licensed person when such settlement or final
26 judgment is in favor of the plaintiff.

27 (4) State's Attorneys. The State's Attorney of each
28 county shall report to the Disciplinary Board all instances
29 in which a person licensed under this Act is convicted or
30 otherwise found guilty of the commission of any felony. The
31 State's Attorney of each county may report to the
32 Disciplinary Board through a verified complaint any
33 instance in which the State's Attorney believes that a
34 physician has willfully violated the notice requirements

1 of the Parental Notice of Abortion Act of 1995.

2 (5) State agencies. All agencies, boards, commissions,
3 departments, or other instrumentalities of the government
4 of the State of Illinois shall report to the Disciplinary
5 Board any instance arising in connection with the
6 operations of such agency, including the administration of
7 any law by such agency, in which a person licensed under
8 this Act has either committed an act or acts which may be a
9 violation of this Act or which may constitute
10 unprofessional conduct related directly to patient care or
11 which indicates that a person licensed under this Act may
12 be mentally or physically disabled in such a manner as to
13 endanger patients under that person's care.

14 (B) Mandatory reporting. All reports required by items
15 (34), (35), and (36) of subsection (A) of Section 22 and by
16 Section 23 shall be submitted to the Disciplinary Board in a
17 timely fashion. The reports shall be filed in writing within 60
18 days after a determination that a report is required under this
19 Act. All reports shall contain the following information:

20 (1) The name, address and telephone number of the
21 person making the report.

22 (2) The name, address and telephone number of the
23 person who is the subject of the report.

24 (3) The name and date of birth ~~or other means of~~
25 ~~identification~~ of any patient or patients whose treatment
26 is a subject of the report, if available, or other means of
27 identification if such information is not available,
28 identification of the hospital or other healthcare
29 facility where the care at issue in the report was
30 rendered, provided, however, no medical records may be
31 revealed ~~without the written consent of the patient or~~
32 ~~patients.~~

33 (4) A brief description of the facts which gave rise to
34 the issuance of the report, including the dates of any

1 occurrences deemed to necessitate the filing of the report.

2 (5) If court action is involved, the identity of the
3 court in which the action is filed, along with the docket
4 number and date of filing of the action.

5 (6) Any further pertinent information which the
6 reporting party deems to be an aid in the evaluation of the
7 report.

8 ~~The Department shall have the right to inform patients of~~
9 ~~the right to provide written consent for the Department to~~
10 ~~obtain copies of hospital and medical records.~~ The Disciplinary
11 Board or Department may also exercise the power under Section
12 38 of this Act to subpoena copies of hospital or medical
13 records in mandatory report cases alleging death or permanent
14 bodily injury ~~when consent to obtain records is not provided by~~
15 ~~a patient or legal representative.~~ Appropriate rules shall be
16 adopted by the Department with the approval of the Disciplinary
17 Board.

18 When the Department has received written reports
19 concerning incidents required to be reported in items (34),
20 (35), and (36) of subsection (A) of Section 22, the licensee's
21 failure to report the incident to the Department under those
22 items shall not be the sole grounds for disciplinary action.

23 Nothing contained in this Section shall act to in any way,
24 waive or modify the confidentiality of medical reports and
25 committee reports to the extent provided by law. Any
26 information reported or disclosed shall be kept for the
27 confidential use of the Disciplinary Board, the Medical
28 Coordinators, the Disciplinary Board's attorneys, the medical
29 investigative staff, and authorized clerical staff, as
30 provided in this Act, and shall be afforded the same status as
31 is provided information concerning medical studies in Part 21
32 of Article VIII of the Code of Civil Procedure, except that the
33 Department may disclose information and documents to a federal,
34 State, or local law enforcement agency pursuant to a subpoena

1 in an ongoing criminal investigation. Furthermore, information
2 and documents disclosed to a federal, State, or local law
3 enforcement agency may be used by that agency only for the
4 investigation and prosecution of a criminal offense.

5 (C) Immunity from prosecution. Any individual or
6 organization acting in good faith, and not in a wilful and
7 wanton manner, in complying with this Act by providing any
8 report or other information to the Disciplinary Board or a peer
9 review committee, or assisting in the investigation or
10 preparation of such information, or by voluntarily reporting to
11 the Disciplinary Board or a peer review committee information
12 regarding alleged errors or negligence by a person licensed
13 under this Act, or by participating in proceedings of the
14 Disciplinary Board or a peer review committee, or by serving as
15 a member of the Disciplinary Board or a peer review committee,
16 shall not, as a result of such actions, be subject to criminal
17 prosecution or civil damages.

18 (D) Indemnification. Members of the Disciplinary Board,
19 the Medical Coordinators, the Disciplinary Board's attorneys,
20 the medical investigative staff, physicians retained under
21 contract to assist and advise the medical coordinators in the
22 investigation, and authorized clerical staff shall be
23 indemnified by the State for any actions occurring within the
24 scope of services on the Disciplinary Board, done in good faith
25 and not wilful and wanton in nature. The Attorney General shall
26 defend all such actions unless he or she determines either that
27 there would be a conflict of interest in such representation or
28 that the actions complained of were not in good faith or were
29 wilful and wanton.

30 Should the Attorney General decline representation, the
31 member shall have the right to employ counsel of his or her
32 choice, whose fees shall be provided by the State, after
33 approval by the Attorney General, unless there is a
34 determination by a court that the member's actions were not in

1 good faith or were wilful and wanton.

2 The member must notify the Attorney General within 7 days
3 of receipt of notice of the initiation of any action involving
4 services of the Disciplinary Board. Failure to so notify the
5 Attorney General shall constitute an absolute waiver of the
6 right to a defense and indemnification.

7 The Attorney General shall determine within 7 days after
8 receiving such notice, whether he or she will undertake to
9 represent the member.

10 (E) Deliberations of Disciplinary Board. Upon the receipt
11 of any report called for by this Act, other than those reports
12 of impaired persons licensed under this Act required pursuant
13 to the rules of the Disciplinary Board, the Disciplinary Board
14 shall notify in writing, by certified mail, the person who is
15 the subject of the report. Such notification shall be made
16 within 30 days of receipt by the Disciplinary Board of the
17 report.

18 The notification shall include a written notice setting
19 forth the person's right to examine the report. Included in
20 such notification shall be the address at which the file is
21 maintained, the name of the custodian of the reports, and the
22 telephone number at which the custodian may be reached. The
23 person who is the subject of the report shall submit a written
24 statement responding, clarifying, adding to, or proposing the
25 amending of the report previously filed. The person who is the
26 subject of the report shall also submit with the written
27 statement any medical records related to the report. The
28 statement and accompanying medical records shall become a
29 permanent part of the file and must be received by the
30 Disciplinary Board no more than 30 ~~60~~ days after the date on
31 which the person was notified by the Disciplinary Board of the
32 existence of the original report.

33 The Disciplinary Board shall review all reports received by
34 it, together with any supporting information and responding

1 statements submitted by persons who are the subject of reports.
2 The review by the Disciplinary Board shall be in a timely
3 manner but in no event, shall the Disciplinary Board's initial
4 review of the material contained in each disciplinary file be
5 less than 61 days nor more than 180 days after the receipt of
6 the initial report by the Disciplinary Board.

7 When the Disciplinary Board makes its initial review of the
8 materials contained within its disciplinary files, the
9 Disciplinary Board shall, in writing, make a determination as
10 to whether there are sufficient facts to warrant further
11 investigation or action. Failure to make such determination
12 within the time provided shall be deemed to be a determination
13 that there are not sufficient facts to warrant further
14 investigation or action.

15 Should the Disciplinary Board find that there are not
16 sufficient facts to warrant further investigation, or action,
17 the report shall be accepted for filing and the matter shall be
18 deemed closed and so reported to the Director. The Director
19 shall then have 30 days to accept the Medical Disciplinary
20 Board's decision or request further investigation. The
21 Director shall inform the Board in writing of the decision to
22 request further investigation, including the specific reasons
23 for the decision. The individual or entity filing the original
24 report or complaint and the person who is the subject of the
25 report or complaint shall be notified in writing by the
26 Director of any final action on their report or complaint.

27 (F) Summary reports. The Disciplinary Board shall prepare,
28 on a timely basis, but in no event less than one every other
29 month, a summary report of final actions taken upon
30 disciplinary files maintained by the Disciplinary Board. The
31 summary reports shall be sent by the Disciplinary Board to
32 every health care facility licensed by the Illinois Department
33 of Public Health, every professional association and society of
34 persons licensed under this Act functioning on a statewide

1 basis in this State, the American Medical Association, the
2 American Osteopathic Association, the American Chiropractic
3 Association, all insurers providing professional liability
4 insurance to persons licensed under this Act in the State of
5 Illinois, the Federation of State Medical Licensing Boards, and
6 the Illinois Pharmacists Association.

7 (G) Any violation of this Section shall be a Class A
8 misdemeanor.

9 (H) If any such person violates the provisions of this
10 Section an action may be brought in the name of the People of
11 the State of Illinois, through the Attorney General of the
12 State of Illinois, for an order enjoining such violation or for
13 an order enforcing compliance with this Section. Upon filing of
14 a verified petition in such court, the court may issue a
15 temporary restraining order without notice or bond and may
16 preliminarily or permanently enjoin such violation, and if it
17 is established that such person has violated or is violating
18 the injunction, the court may punish the offender for contempt
19 of court. Proceedings under this paragraph shall be in addition
20 to, and not in lieu of, all other remedies and penalties
21 provided for by this Section.

22 (Source: P.A. 89-18, eff. 6-1-95; 89-702, eff. 7-1-97; 90-699,
23 eff. 1-1-99.)

24 (225 ILCS 60/24) (from Ch. 111, par. 4400-24)

25 (Section scheduled to be repealed on January 1, 2007)

26 Sec. 24. Report of violations; medical associations. Any
27 physician licensed under this Act, the Illinois State Medical
28 Society, the Illinois Association of Osteopathic Physicians
29 and Surgeons, the Illinois Chiropractic Society, the Illinois
30 Prairie State Chiropractic Association, or any component
31 societies of any of these 4 groups, and any other person, may
32 report to the Disciplinary Board any information the physician,
33 association, society, or person may have that appears to show

1 that a physician is or may be in violation of any of the
2 provisions of Section 22 of this Act.

3 The Department may enter into agreements with the Illinois
4 State Medical Society, the Illinois Association of Osteopathic
5 Physicians and Surgeons, the Illinois Prairie State
6 Chiropractic Association, or the Illinois Chiropractic Society
7 to allow these organizations to assist the Disciplinary Board
8 in the review of alleged violations of this Act. Subject to the
9 approval of the Department, any organization party to such an
10 agreement may subcontract with other individuals or
11 organizations to assist in review.

12 Any physician, association, society, or person
13 participating in good faith in the making of a report, under
14 this Act or participating in or assisting with an investigation
15 or review under this Act ~~Section~~ shall have immunity from any
16 civil, criminal, or other liability that might result by reason
17 of those actions.

18 The medical information in the custody of an entity under
19 contract with the Department participating in an investigation
20 or review shall be privileged and confidential to the same
21 extent as are information and reports under the provisions of
22 Part 21 of Article VIII of the Code of Civil Procedure.

23 Upon request by the Department after a mandatory report has
24 been filed with the Department, an attorney for any party
25 seeking to recover damages for injuries or death by reason of
26 medical, hospital, or other healing art malpractice shall
27 provide patient records related to the physician involved in
28 the disciplinary proceeding to the Department within 30 days of
29 the Department's request for use by the Department in any
30 disciplinary matter under this Act. An attorney who provides
31 patient records to the Department in accordance with this
32 requirement shall not be deemed to have violated any
33 attorney-client privilege. Notwithstanding any other provision
34 of law, consent by a patient shall not be required for the

1 provision of patient records in accordance with this
2 requirement.

3 For the purpose of any civil or criminal proceedings, the
4 good faith of any physician, association, society or person
5 shall be presumed. The Disciplinary Board may request the
6 Illinois State Medical Society, the Illinois Association of
7 Osteopathic Physicians and Surgeons, the Illinois Prairie
8 State Chiropractic Association, or the Illinois Chiropractic
9 Society to assist the Disciplinary Board in preparing for or
10 conducting any medical competency examination as the Board may
11 deem appropriate.

12 (Source: P.A. 88-324.)

13 (225 ILCS 60/36) (from Ch. 111, par. 4400-36)

14 (Section scheduled to be repealed on January 1, 2007)

15 Sec. 36. Upon the motion of either the Department or the
16 Disciplinary Board or upon the verified complaint in writing of
17 any person setting forth facts which, if proven, would
18 constitute grounds for suspension or revocation under Section
19 22 of this Act, the Department shall investigate the actions of
20 any person, so accused, who holds or represents that they hold
21 a license. Such person is hereinafter called the accused.

22 The Department shall, before suspending, revoking, placing
23 on probationary status, or taking any other disciplinary action
24 as the Department may deem proper with regard to any license at
25 least 30 days prior to the date set for the hearing, notify the
26 accused in writing of any charges made and the time and place
27 for a hearing of the charges before the Disciplinary Board,
28 direct them to file their written answer thereto to the
29 Disciplinary Board under oath within 20 days after the service
30 on them of such notice and inform them that if they fail to
31 file such answer default will be taken against them and their
32 license may be suspended, revoked, placed on probationary
33 status, or have other disciplinary action, including limiting

1 the scope, nature or extent of their practice, as the
2 Department may deem proper taken with regard thereto.

3 Where a physician has been found, upon complaint and
4 investigation of the Department, and after hearing, to have
5 performed an abortion procedure in a wilful and wanton manner
6 upon a woman who was not pregnant at the time such abortion
7 procedure was performed, the Department shall automatically
8 revoke the license of such physician to practice medicine in
9 Illinois.

10 Such written notice and any notice in such proceedings
11 thereafter may be served by delivery of the same, personally,
12 to the accused person, or by mailing the same by registered or
13 certified mail to the address last theretofore specified by the
14 accused in their last notification to the Department.

15 All information gathered by the Department during its
16 investigation including information subpoenaed under Section
17 23 or 38 of this Act and the investigative file shall be kept
18 for the confidential use of the Director, Disciplinary Board,
19 the Medical Coordinators, persons employed by contract to
20 advise the Medical Coordinator or the Department, the
21 Disciplinary Board's attorneys, the medical investigative
22 staff, and authorized clerical staff, as provided in this Act
23 and shall be afforded the same status as is provided
24 information concerning medical studies in Part 21 of Article
25 VIII of the Code of Civil Procedure, except that the Department
26 may disclose information and documents to a federal, State, or
27 local law enforcement agency pursuant to a subpoena in an
28 ongoing criminal investigation. Furthermore, information and
29 documents disclosed to a federal, State, or local law
30 enforcement agency may be used by that agency only for the
31 investigation and prosecution of a criminal offense.

32 (Source: P.A. 90-699, eff. 1-1-99.)

33 Section 320. The Clerks of Courts Act is amended by adding

1 Section 27.10 as follows:

2 (705 ILCS 105/27.10 new)

3 Sec. 27.10. Director of Insurance. Each clerk of the
4 circuit court shall provide to the Director of Insurance such
5 information as the Director of Insurance requests under Section
6 155.19 of the Illinois Insurance Code.

7 Section 325. The Health Care Arbitration Act is amended by
8 changing Sections 8 and 9 as follows:

9 (710 ILCS 15/8) (from Ch. 10, par. 208)

10 Sec. 8. Conditions. Every health care arbitration
11 agreement shall be subject to the following conditions:

12 (a) The agreement is not a condition to the rendering of
13 health care services by any party and the agreement has been
14 executed by the recipient of health care services at the
15 inception of or during the term of provision of services for a
16 specific cause by either a health care provider or a hospital;
17 and

18 (b) The agreement is a separate instrument complete in
19 itself and not a part of any other contract or instrument and
20 an executed copy of the agreement shall be provided to the
21 patient or the patient's legal representative upon signing; and

22 (c) The agreement may not limit, impair, or waive any
23 substantive rights or defenses of any party, including the
24 statute of limitations; and

25 (d) The agreement shall not limit, impair, or waive the
26 procedural rights to be heard, to present material evidence, to
27 cross-examine witnesses, and to be represented by an attorney,
28 or other procedural rights of due process of any party.

29 (e) (Blank). ~~As a part of the discharge planning process~~
30 ~~the patient or, if appropriate, members of his family must be~~
31 ~~given a copy of the health care arbitration agreement~~

1 ~~previously executed by or for the patient and shall re-affirm~~
2 ~~it. Failure to comply with this provision during the discharge~~
3 ~~planning process shall void the health care arbitration~~
4 ~~agreement.~~

5 (f) This amendatory Act of the 93rd General Assembly
6 applies to health care arbitration agreements executed on or
7 after its effective date.

8 (Source: P.A. 80-1012.)

9 (710 ILCS 15/9) (from Ch. 10, par. 209)

10 Sec. 9. Mandatory Provisions.

11 (a) Every health care arbitration agreement shall be
12 clearly captioned "Health Care Arbitration Agreement".

13 (b) Every health care arbitration agreement in relation to
14 health care services rendered during hospitalization shall
15 specify the date of commencement of hospitalization. Every
16 health care arbitration agreement in relation to health care
17 services not rendered during hospitalization shall state the
18 specific cause for which the services are provided.

19 (c) Every health care arbitration agreement may be
20 cancelled by any signatory (1) within 120 ~~60~~ days of its
21 execution or within 120 ~~60~~ days of the date of the patient's
22 discharge from the hospital, whichever is later, as to an
23 agreement in relation to health care services rendered during
24 hospitalization, ~~provided, that if executed other than at the~~
25 ~~time of discharge of the patient from the hospital, the health~~
26 ~~care arbitration agreement be reaffirmed at the time of the~~
27 ~~discharge planning process in the same manner as provided for~~
28 ~~in the execution of the original agreement;~~ or (2) within 120
29 ~~60~~ days of the date of its execution, or the last date of
30 treatment by the health care provider, whichever is later, as
31 to an agreement in relation to health care services not
32 rendered during hospitalization. Provided, that no health care
33 arbitration agreement shall be valid after 4 ~~2~~ years from the

1 date of its execution. An employee of a hospital or health care
2 provider who is not a signatory to an agreement may cancel such
3 agreement as to himself until 30 days following his
4 notification that he is a party to a dispute or issue on which
5 arbitration has been demanded pursuant to such agreement. If
6 any person executing a health care arbitration agreement dies
7 before the period of cancellation as outlined above, the
8 personal representative of the decedent shall have the right to
9 cancel the health care arbitration agreement within 60 days of
10 the date of his appointment as the legal representative of the
11 decedent's estate. ~~Provided, that if no legal representative is~~
12 ~~appointed within 6 months of the death of said decedent the~~
13 ~~next of kin of such decedent shall have the right to cancel the~~
14 ~~health care arbitration agreement within 8 months from the date~~
15 ~~of death.~~

16 (d) Every health care arbitration agreement shall contain
17 immediately above the signature lines, in upper case type in
18 printed letters of at least 3/16 inch height, a caption and
19 paragraphs as follows:

20 "AGREEMENT TO ARBITRATE HEALTH CARE

21 NEGLIGENCE CLAIMS

22 NOTICE TO PATIENT

23 YOU CANNOT BE REQUIRED TO SIGN THIS AGREEMENT IN ORDER TO
24 RECEIVE TREATMENT. BY SIGNING THIS AGREEMENT, YOUR RIGHT TO
25 TRIAL BY A JURY OR A JUDGE IN A COURT WILL BE BARRED AS TO
26 ANY DISPUTE RELATING TO INJURIES THAT MAY RESULT FROM
27 NEGLIGENCE DURING YOUR TREATMENT OR CARE, AND WILL BE
28 REPLACED BY AN ARBITRATION PROCEDURE.

29 THIS AGREEMENT MAY BE CANCELLED WITHIN 120 ~~60~~ DAYS OF
30 SIGNING OR 120 ~~60~~ DAYS AFTER YOUR HOSPITAL DISCHARGE,
31 WHICHEVER IS LATER, OR 120 ~~60~~ DAYS AFTER YOUR LAST MEDICAL
32 TREATMENT IN RELATION TO HEALTH CARE SERVICES NOT RENDERED
33 DURING HOSPITALIZATION.

34 THIS AGREEMENT PROVIDES THAT ANY CLAIMS WHICH MAY ARISE OUT

1 OF YOUR HEALTH CARE WILL BE SUBMITTED TO A PANEL OF
2 ARBITRATORS, RATHER THAN TO A COURT FOR DETERMINATION. THIS
3 AGREEMENT REQUIRES ALL PARTIES SIGNING IT TO ABIDE BY THE
4 DECISION OF THE ARBITRATION PANEL."

5 (e) An ~~an~~ executed copy of the AGREEMENT TO ARBITRATE
6 HEALTH CARE CLAIMS ~~and any reaffirmation of that agreement as~~
7 ~~required by this Act~~ shall be given to the patient or the
8 patient's legally authorized representative upon signing
9 ~~during the time of the discharge planning process or at the~~
10 ~~time of discharge.~~

11 (f) This amendatory Act of the 93rd General Assembly
12 applies to health care arbitration agreements executed on or
13 after its effective date.

14 (Source: P.A. 91-156, eff. 1-1-00.)

15 Section 330. The Code of Civil Procedure is amended by
16 reenacting and changing Sections 2-402, 2-622, and 8-2501, by
17 changing Sections 2-1704 and 8-1901, and by adding Sections
18 2-1105.01 and 2-1721 as follows:

19 (735 ILCS 5/2-402) (from Ch. 110, par. 2-402)

20 (Text of Section WITHOUT the changes made by P.A. 89-7,
21 which has been held unconstitutional)

22 Sec. 2-402. Respondents in discovery. The plaintiff in any
23 civil action may designate as respondents in discovery in his
24 or her pleading those individuals or other entities, other than
25 the named defendants, believed by the plaintiff to have
26 information essential to the determination of who should
27 properly be named as additional defendants in the action.

28 Persons or entities so named as respondents in discovery
29 shall be required to respond to discovery by the plaintiff in
30 the same manner as are defendants and may, on motion of the
31 plaintiff, be added as defendants if the evidence discloses the
32 existence of probable cause for such action.

1 A person or entity named a respondent in discovery may upon
2 his or her own motion be made a defendant in the action, in
3 which case the provisions of this Section are no longer
4 applicable to that person.

5 A copy of the complaint shall be served on each person or
6 entity named as a respondent in discovery.

7 Each respondent in discovery shall be paid expenses and
8 fees as provided for witnesses.

9 A person or entity named as a respondent in discovery in
10 any civil action may be made a defendant in the same action at
11 any time within 6 months after being named as a respondent in
12 discovery, even though the time during which an action may
13 otherwise be initiated against him or her may have expired
14 during such 6 month period. An extension from the original
15 6-month period for good cause may be granted only once for up
16 to 90 days for (i) withdrawal of plaintiff's counsel or (ii)
17 good cause. Notwithstanding the limitations in this Section,
18 the court may grant additional reasonable extensions from this
19 6-month period for a failure or refusal on the part of the
20 respondent to comply with timely filed discovery.

21 This amendatory Act of the 93rd General Assembly applies to
22 causes of action accruing on or after its effective date.

23 (Source: P.A. 86-483.)

24 (735 ILCS 5/2-622) (from Ch. 110, par. 2-622)

25 (Text of Section WITHOUT the changes made by P.A. 89-7,
26 which has been held unconstitutional)

27 Sec. 2-622. Healing art malpractice.

28 (a) In any action, whether in tort, contract or otherwise,
29 in which the plaintiff seeks damages for injuries or death by
30 reason of medical, hospital, or other healing art malpractice,
31 the plaintiff's attorney or the plaintiff, if the plaintiff is
32 proceeding pro se, shall file an affidavit, attached to the
33 original and all copies of the complaint, declaring one of the

1 following:

2 1. That the affiant has consulted and reviewed the
3 facts of the case with a health professional who the
4 affiant reasonably believes: (i) is knowledgeable in the
5 relevant issues involved in the particular action; (ii)
6 practices or has practiced within the last 5 ~~6~~ years or
7 teaches or has taught within the last 5 ~~6~~ years in the same
8 area of health care or medicine that is at issue in the
9 particular action; and (iii) meets the expert witness
10 standards set forth in paragraphs (a) through (d) of
11 Section 8-2501; is qualified by experience or demonstrated
12 ~~competence in the subject of the case;~~ that the reviewing
13 health professional has determined in a written report,
14 after a review of the medical record and other relevant
15 material involved in the particular action that there is a
16 reasonable and meritorious cause for the filing of such
17 action; and that the affiant has concluded on the basis of
18 the reviewing health professional's review and
19 consultation that there is a reasonable and meritorious
20 cause for filing of such action. A single written report
21 must be filed to cover each defendant in the action. As to
22 defendants who are individuals, the ~~If the affidavit is~~
23 ~~filed as to a defendant who is a physician licensed to~~
24 ~~treat human ailments without the use of drugs or medicines~~
25 ~~and without operative surgery, a dentist, a podiatrist, a~~
26 ~~psychologist, or a naprapath, The written report must be~~
27 from a health professional licensed in the same profession,
28 with the same class of license, as the defendant. For
29 written reports ~~affidavits~~ filed as to all other
30 defendants, who are not individuals, the written report
31 must be from a physician licensed to practice medicine in
32 all its branches who is qualified by experience with the
33 standard of care, methods, procedures and treatments
34 relevant to the allegations at issue in the case. In either

1 event, the written report ~~affidavit~~ must identify the
2 profession of the reviewing health professional. A copy of
3 the written report, clearly identifying the plaintiff and
4 the reasons for the reviewing health professional's
5 determination that a reasonable and meritorious cause for
6 the filing of the action exists, must be attached to the
7 affidavit, but information which would identify the
8 reviewing health professional may be deleted from the copy
9 so attached. The report must contain the affirmations set
10 forth in items (i) through (iii) of this paragraph 1. At
11 the first Supreme Court Rule 218 case management
12 conference, the plaintiff shall present to the court the
13 original signed health professional's report, along with
14 the health professional's current license number and state
15 of licensure and curriculum vitae, for an in camera
16 inspection. The court shall verify whether the report and
17 affidavit comply with the requirements of this paragraph 1.
18 The court, in verifying whether the report and affidavit
19 comply with the requirements of this paragraph 1, shall
20 determine whether the health professional preparing the
21 report is qualified and the determination shall be either
22 in writing or transcribed. If the court finds that the
23 report, the health professional's current license
24 information or curriculum vitae, or the affidavit is
25 deficient, the court may request from the plaintiff all
26 documents it deems necessary to make its decision and shall
27 allow for a reasonable opportunity to provide any requested
28 documents and to amend that report or affidavit; provided,
29 if the statute of limitations has tolled, the judge may
30 grant only one extension not exceeding 120 days. The
31 court's verification as to whether the health professional
32 preparing the report is qualified shall be issued to all
33 parties and be made a part of the official record. The
34 original report, the health professional's current license

1 number and state of licensure and curriculum vitae, and any
2 documents requested by the court shall remain under seal
3 and part of the court record. Notwithstanding the other
4 provisions of this Section, the judge may disclose the name
5 and address of the reviewing health professional upon a
6 showing of good cause by the defendant who in good faith
7 challenges the qualifications of the health professional
8 based on information available to the defendant. If the
9 information is disclosed at the trial level, then it shall
10 be confidential and it shall not be disclosed by the
11 defendant to a third party.

12 2. That the affiant was unable to obtain a consultation
13 required by paragraph 1 because a statute of limitations
14 would impair the action and the consultation required could
15 not be obtained before the expiration of the statute of
16 limitations. If an affidavit is executed pursuant to this
17 paragraph, the affidavit ~~certificate~~ and written report
18 required by paragraph 1 shall be filed within 90 days after
19 the filing of the complaint. No additional 90-day
20 extensions pursuant to this paragraph shall be granted,
21 except where there has been a withdrawal of the plaintiff's
22 counsel. The defendant shall be excused from answering or
23 otherwise pleading until 30 days after being served with an
24 affidavit and a report ~~a certificate~~ required by paragraph
25 1.

26 3. That a request has been made by the plaintiff or his
27 attorney for examination and copying of records pursuant to
28 Part 20 of Article VIII of this Code and the party required
29 to comply under those Sections has failed to produce such
30 records within 60 days of the receipt of the request. If an
31 affidavit is executed pursuant to this paragraph, the
32 affidavit ~~certificate~~ and written report required by
33 paragraph 1 shall be filed within 90 days following receipt
34 of the requested records. All defendants except those whose

1 failure to comply with Part 20 of Article VIII of this Code
2 is the basis for an affidavit under this paragraph shall be
3 excused from answering or otherwise pleading until 30 days
4 after being served with the affidavit and report
5 ~~certificate~~ required by paragraph 1.

6 (b) Where an affidavit ~~a certificate~~ and written report are
7 required pursuant to this Section a separate affidavit
8 ~~certificate~~ and written report shall be filed as to each
9 defendant who has been named in the complaint and shall be
10 filed as to each defendant named at a later time.

11 (c) Where the plaintiff intends to rely on the doctrine of
12 "res ipsa loquitur", as defined by Section 2-1113 of this Code,
13 the affidavit ~~certificate~~ and written report must state that,
14 in the opinion of the reviewing health professional, negligence
15 has occurred in the course of medical treatment. The affiant
16 shall certify upon filing of the complaint that he is relying
17 on the doctrine of "res ipsa loquitur".

18 (d) When the attorney intends to rely on the doctrine of
19 failure to inform of the consequences of the procedure, the
20 attorney shall certify upon the filing of the complaint that
21 the reviewing health professional has, after reviewing the
22 medical record and other relevant materials involved in the
23 particular action, concluded that a reasonable health
24 professional would have informed the patient of the
25 consequences of the procedure.

26 (e) Allegations and denials in the affidavit, made without
27 reasonable cause and found to be untrue, shall subject the
28 party pleading them or his attorney, or both, to the payment of
29 reasonable expenses, actually incurred by the other party by
30 reason of the untrue pleading, together with reasonable
31 attorneys' fees to be summarily taxed by the court upon motion
32 made within 30 days of the judgment or dismissal. In no event
33 shall the award for attorneys' fees and expenses exceed those
34 actually paid by the moving party, including the insurer, if

1 any. In proceedings under this paragraph (e), the moving party
2 shall have the right to depose and examine any and all
3 reviewing health professionals who prepared reports used in
4 conjunction with an affidavit required by this Section.

5 (f) A reviewing health professional who in good faith
6 prepares a report used in conjunction with an affidavit
7 required by this Section shall have civil immunity from
8 liability which otherwise might result from the preparation of
9 such report.

10 (g) The failure of the plaintiff to file an affidavit and
11 report in compliance with ~~to file a certificate required by~~
12 this Section shall be grounds for dismissal under Section
13 2-619.

14 (h) This Section does not apply to or affect any actions
15 pending at the time of its effective date, but applies to cases
16 filed on or after its effective date.

17 (i) This amendatory Act of 1997 does not apply to or
18 affect any actions pending at the time of its effective date,
19 but applies to cases filed on or after its effective date.

20 (j) This amendatory Act of the 93rd General Assembly
21 applies to causes of action accruing on or after its effective
22 date.

23 (Source: P.A. 86-646; 90-579, eff. 5-1-98.)

24 (735 ILCS 5/2-1105.01 new)

25 Sec. 2-1105.01. Personal assets protected in healing art
26 malpractice cases.

27 (a) In the event that a physician has at least \$1,000,000
28 in professional liability insurance coverage to cover a claim
29 against him or her, and there is a verdict in excess of the
30 physician's professional liability policy limits, the
31 physician may petition the trial court or the designee of the
32 chief judge of the circuit court for asset protection in an
33 amount equal to 2 times the maximum amount payable per

1 occurrence under the physician's professional liability
2 insurance coverage and obtain such asset protection if the
3 court finds that:

4 (1) the physician's role and participation, if any, in
5 the choice to proceed to verdict and not to settle the
6 action within the physician's insurance policy limits,
7 given all of the facts and circumstances the physician knew
8 or should have known up to the time of verdict in the
9 underlying action, was reasonable; and

10 (2) after the verdict, the physician has assigned to
11 the plaintiff any and all causes of action the physician
12 has against the physician's insurer for acting in bad faith
13 or vexatiously and without reasonable cause by failing to
14 settle the action within the physician's insurance policy
15 limits.

16 (b) Under this Section, no attachment, garnishment, or
17 other form of forfeiture to satisfy any judgment or verdict
18 from any assets of the physician shall occur before the trial
19 court or the designee of the chief judge of the circuit court
20 has ruled upon the physician's petition.

21 (c) For the purpose of this Section, "asset" includes,
22 without limitation, any asset, property (real or personal),
23 interest, or other thing of value, of any kind or character
24 whatsoever that would otherwise be subject to immediate
25 execution to satisfy a judgment.

26 (d) This Section applies only to an individual physician
27 who satisfies the applicable requirements of this Section and
28 does not apply to any actual or alleged principal, apparent
29 principal, employer, master, or partner of the physician, or
30 any other party in the action.

31 (e) This Section shall not restrict, impair, or otherwise
32 affect the amount of damages that may be awarded to the
33 plaintiff or the amount of any judgment in favor of the
34 plaintiff. In any statutory or common law cause of action

1 against the physician's insurer in which it is alleged that the
2 physician's insurer acted in bad faith or vexatiously and
3 without reasonable cause by not settling the action within the
4 physician's insurance policy limits before verdict, neither a
5 physician nor a physician's assignee shall be required to
6 allege or prove that the physician made a demand to settle the
7 action before verdict or that there was a conflict between the
8 physician and the insurer over whether to settle the action
9 before verdict. Proof by the physician or the physician's
10 assignee of the remaining elements of such a statutory or
11 common law cause of action shall constitute a prima facie case
12 of the insurer acting in bad faith or vexatiously and without
13 reasonable cause.

14 (f) This amendatory Act of the 93rd General Assembly
15 applies to causes of action accruing on or after its effective
16 date.

17 (735 ILCS 5/2-1704) (from Ch. 110, par. 2-1704)

18 Sec. 2-1704. Healing art malpractice ~~Medical Malpractice~~
19 ~~Action~~. As used in this Code Part, "healing art medical
20 malpractice action" means any action, whether in tort, contract
21 or otherwise, in which the plaintiff seeks damages for injuries
22 or death by reason of medical, hospital, or other healing art
23 malpractice including but not limited to medical, hospital,
24 nursing, dental, or podiatric malpractice. The term "healing
25 art" shall not include care and treatment by spiritual means
26 through prayer in accord with the tenets and practices of a
27 recognized church or religious denomination.

28 This amendatory Act of the 93rd General Assembly applies to
29 causes of action accruing on or after its effective date.

30 (Source: P.A. 84-7.)

31 (735 ILCS 5/2-1721 new)

32 Sec. 2-1721. Hospitals; apparent or ostensible agency.

1 (a) A hospital shall not be liable for the conduct of a
2 non-employee member of its medical staff under any claim based
3 upon apparent or ostensible agency as a matter of law,
4 provided:

5 (1) the patient was unconscious or unaware of his or
6 her surroundings upon arrival at the hospital and the
7 patient's legal representative was not present at the time
8 to be informed that the non-employee member of its medical
9 staff was not an agent or employee of the hospital; or

10 (2) the specific member of the hospital's medical staff
11 personally informed the patient, or his or her legal
12 representative, if present, before rendering treatment
13 that he or she was not an agent or employee of the
14 hospital.

15 (b) A hospital shall not be liable for the conduct of a
16 non-employee member of its medical staff under any claim based
17 upon apparent or ostensible agency, provided:

18 (1) the following disclosure is provided to the patient
19 prior to the provision of the care in question in a
20 separate document, complete in itself and not part of any
21 other contract or instrument, which shall contain in upper
22 case type in printed letters of at least 3/16 inch height a
23 caption and statement as follows:

24 "NOTICE OF STATUS OF TREATING PHYSICIANS

25 SOME PHYSICIANS WHO WILL TREAT YOU AT THIS HOSPITAL MAY NOT
26 BE EMPLOYEES OF THE HOSPITAL AND THE HOSPITAL IS NOT
27 RESPONSIBLE FOR ANY CONDUCT OF ANY NON-EMPLOYEE PHYSICIANS
28 ON THE BASIS THAT THEY ARE HOSPITAL AGENTS OR EMPLOYEES";

29 and

30 (2) if the patient is asked to sign the disclosure, the
31 disclosure shall contain immediately above the signature
32 lines, in upper case bold type printed letters of at least

1 3/16 inch height, a statement that the patient cannot be
2 required to sign the disclosure in order to receive
3 treatment; and

4 (3) the patient was not required to sign the disclosure
5 in order to receive treatment; and

6 (4) such disclosure is provided in a reasonable and
7 meaningful manner. In determining if a disclosure
8 satisfies the requirements of this item (4), the trier of
9 fact shall consider only the following factors:

10 (A) Whether the patient knowingly and voluntarily
11 signed the disclosure.

12 (B) Whether the hospital provided an opportunity
13 for the patient to ask questions.

14 (C) Whether the patient's questions about this
15 disclosure were answered and the contents of the
16 answers.

17 (D) Whether such disclosure was provided orally
18 and in writing.

19 (E) Whether a reasonable person under the
20 circumstances should have understood the disclosure,
21 taking into account any and all representations made by
22 or on behalf of the hospital.

23 As used in this subsection (b), "patient" refers to the
24 patient or any legal representative of the patient.

25 (c) Nothing in this Section shall be construed as imposing
26 an obligation on a hospital to provide any particular health
27 care service, treatment, or procedure to a patient.

28 (d) Nothing in this Section precludes any other defense to
29 a claim of apparent or ostensible agency.

30 (e) This amendatory Act of the 93rd General Assembly
31 applies to causes of action accruing on or after its effective
32 date.

1 Sec. 8-1901. Admission of liability - Effect.

2 (a) The providing of, or payment for, medical, surgical,
3 hospital, or rehabilitation services, facilities, or equipment
4 by or on behalf of any person, or the offer to provide, or pay
5 for, any one or more of the foregoing, shall not be construed
6 as an admission of any liability by such person or persons.
7 Testimony, writings, records, reports or information with
8 respect to the foregoing shall not be admissible in evidence as
9 an admission of any liability in any action of any kind in any
10 court or before any commission, administrative agency, or other
11 tribunal in this State, except at the instance of the person or
12 persons so making any such provision, payment or offer.

13 (b) Any expression of grief, apology, or explanation
14 provided by a health care provider, including, but not limited
15 to, a statement that the health care provider is "sorry" for
16 the outcome to a patient, the patient's family, or the
17 patient's legal representative about an inadequate or
18 unanticipated treatment or care outcome that is provided within
19 72 hours of when the provider knew or should have known of the
20 potential cause of such outcome shall not be admissible as
21 evidence in any action of any kind in any court or before any
22 tribunal, board, agency, or person. The disclosure of any such
23 information, whether proper, or improper, shall not waive or
24 have any effect upon its confidentiality or inadmissibility. As
25 used in this Section, a "health care provider" is any hospital,
26 nursing home or other facility, or employee or agent thereof, a
27 physician, or other licensed health care professional. Nothing
28 in this Section precludes the discovery or admissibility of any
29 other facts regarding the patient's treatment or outcome as
30 otherwise permitted by law.

31 (c) This amendatory Act of the 93rd General Assembly
32 applies to causes of action accruing on or after its effective
33 date.

34 (Source: P.A. 82-280.)

1 (735 ILCS 5/8-2501) (from Ch. 110, par. 8-2501)

2 (Text of Section WITHOUT the changes made by P.A. 89-7,
3 which has been held unconstitutional)

4 Sec. 8-2501. Expert Witness Standards. In any case in which
5 the standard of care applicable to ~~given by~~ a medical
6 professional profession is at issue, the court shall apply the
7 following standards to determine if a witness qualifies as an
8 expert witness and can testify on the issue of the appropriate
9 standard of care.

10 (a) Whether the witness is board certified or board
11 eligible, or has completed a residency, in the same or
12 substantially similar medical specialties as the defendant and
13 is otherwise qualified by significant experience with the
14 standard of care, methods, procedures, and treatments relevant
15 to the allegations against the defendant ~~Relationship of the~~
16 ~~medical specialties of the witness to the medical problem or~~
17 ~~problems and the type of treatment administered in the case;~~

18 (b) Whether the witness has devoted a majority ~~substantial~~
19 ~~portion~~ of his or her work time to the practice of medicine,
20 teaching or University based research in relation to the
21 medical care and type of treatment at issue which gave rise to
22 the medical problem of which the plaintiff complains;

23 (c) whether the witness is licensed in the same profession
24 with the same class of license as the defendant if the
25 defendant is an individual; and

26 (d) whether, in the case against a nonspecialist, the
27 witness can demonstrate a sufficient familiarity with the
28 standard of care practiced in this State.

29 An expert shall provide evidence of active practice,
30 teaching, or engaging in university-based research. If
31 retired, an expert must provide evidence of attendance and
32 completion of continuing education courses for 3 years previous
33 to giving testimony. An expert who has not actively practiced,

1 taught, or been engaged in university-based research, or any
2 combination thereof, during the preceding 5 years may not be
3 qualified as an expert witness.

4 This amendatory Act of the 93rd General Assembly applies to
5 causes of action accruing on or after its effective date.

6 (Source: P.A. 84-7.)

7 Section 340. The Good Samaritan Act is amended by changing
8 Section 30 as follows:

9 (745 ILCS 49/30)

10 Sec. 30. Free medical clinic; exemption from civil
11 liability for services performed without compensation.

12 (a) A person licensed under the Medical Practice Act of
13 1987, a person licensed to practice the treatment of human
14 ailments in any other state or territory of the United States,
15 or a health care professional, including but not limited to an
16 advanced practice nurse, retired physician, physician
17 assistant, nurse, pharmacist, physical therapist, podiatrist,
18 or social worker licensed in this State or any other state or
19 territory of the United States, who, in good faith, provides
20 medical treatment, diagnosis, or advice as a part of the
21 services of an established free medical clinic providing care,
22 including but not limited to home visits, without charge to
23 ~~medically indigent~~ patients which is limited to care that does
24 not require the services of a licensed hospital or ambulatory
25 surgical treatment center and who receives no fee or
26 compensation from that source shall not be liable for civil
27 damages as a result of his or her acts or omissions in
28 providing that medical treatment, except for willful or wanton
29 misconduct.

30 (b) For purposes of this Section, a "free medical clinic"
31 is an organized community based program providing medical care
32 without charge to individuals ~~unable to pay for it,~~ at which

1 the care provided does not include ~~the use of general~~
2 ~~anesthesia or require~~ an overnight stay in a health-care
3 facility.

4 (c) The provisions of subsection (a) of this Section do not
5 apply to a particular case unless the free medical clinic has
6 posted in a conspicuous place on its premises an explanation of
7 the exemption from civil liability provided herein.

8 (d) The immunity from civil damages provided under
9 subsection (a) also applies to physicians, retired physicians,
10 hospitals, and other health care providers that provide further
11 medical treatment, diagnosis, or advice, including but not
12 limited to hospitalization, office visits, and home visits, to
13 a patient upon referral from an established free medical clinic
14 without fee or compensation.

15 (d-5) A free medical clinic may receive reimbursement from
16 the Illinois Department of Public Aid, provided any
17 reimbursements shall be used only to pay overhead expenses of
18 operating the free medical clinic and may not be used, in whole
19 or in part, to provide a fee or other compensation to any
20 person licensed under the Medical Practice Act of 1987 or any
21 other health care professional who is receiving an exemption
22 under this Section. Any health care professional receiving an
23 exemption under this Section may not receive any fee or other
24 compensation in connection with any services provided to, or
25 any ownership interest in, the clinic. Medical care shall not
26 include an overnight stay in a health care facility.

27 (e) Nothing in this Section prohibits a free medical clinic
28 from accepting voluntary contributions for medical services
29 provided to a patient who has acknowledged his or her ability
30 and willingness to pay a portion of the value of the medical
31 services provided.

32 (f) Any voluntary contribution collected for providing
33 care at a free medical clinic shall be used only to pay
34 overhead expenses of operating the clinic. No portion of any

1 moneys collected shall be used to provide a fee or other
2 compensation to any person licensed under Medical Practice Act
3 of 1987.

4 (g) This amendatory Act of the 93rd General Assembly
5 applies to causes of action accruing on or after its effective
6 date.

7 (Source: P.A. 89-607, eff. 1-1-97; 90-742, eff. 8-13-98.)

8 ARTICLE 4. SORRY WORKS! PILOT PROGRAM ACT

9 Section 401. Short title. This Article 4 may be cited as
10 the Sorry Works! Pilot Program Act, and references in this
11 Article to "this Act" mean this Article.

12 Section 405. Sorry Works! pilot program. The Sorry Works!
13 pilot program is established. During the first year of the
14 program's operation, participation in the program shall be open
15 to one hospital. Hospitals may participate only with the
16 approval of the hospital administration and the hospital's
17 organized medical staff. During the second year of the
18 program's operation, participation in the program shall be open
19 to one additional hospital.

20 The first participating hospital selected by the committee
21 established under Section 410 shall be located in a county with
22 a population greater than 200,000 that is contiguous with the
23 Mississippi River.

24 Under the program, participating hospitals and physicians
25 shall promptly acknowledge and apologize for mistakes in
26 patient care and promptly offer fair settlements.
27 Participating hospitals shall encourage patients and families
28 to retain their own legal counsel to ensure that their rights
29 are protected and to help facilitate negotiations for fair
30 settlements. Participating hospitals shall report to the
31 committee their total costs for healing art malpractice

1 verdicts, settlements, and defense litigation for the
2 preceding 5 years to enable the committee to determine average
3 costs for that hospital during that period. The committee shall
4 develop standards and protocols to compare costs for cases
5 handled by traditional means and cases handled under the Sorry
6 Works! protocol.

7 If the committee determines that the total costs of cases
8 handled under the Sorry Works! protocol by a hospital
9 participating in the program exceed the total costs that would
10 have been incurred if the cases had been handled by traditional
11 means, the hospital may apply for a grant from the Sorry Works!
12 Fund, a special fund that is created in the State Treasury, for
13 an amount, as determined by the committee, by which the total
14 costs exceed the total costs that would have been incurred if
15 the cases had been handled by traditional means; however, the
16 total of all grants from the Fund for cases in any single
17 participating hospital in any year may not exceed the amount in
18 the Fund or \$2,000,000, whichever is less. All grants shall be
19 subject to appropriation. Moneys in the Fund shall consist of
20 funds transferred into the Fund or otherwise made available
21 from any source.

22 Section 410. Establishment of committee.

23 (a) A committee is established to develop, oversee, and
24 implement the Sorry Works! pilot program. The committee shall
25 have 10 members, each of whom shall be a voting member. Six
26 members of the committee shall constitute a quorum. The
27 committee shall be comprised as follows:

28 (1) The President of the Senate, the Minority Leader of
29 the Senate, the Speaker of the House of Representatives,
30 and the Minority Leader of the House of Representatives
31 shall each appoint 2 members.

32 (2) The Director of Professional Regulation or his or
33 her designee.

1 (3) The Director of Insurance or his or her designee.

2 (b) The committee shall establish criteria for the program,
3 including but not limited to: selection of hospitals,
4 physicians, and insurers to participate in the program; and
5 creation of a subcommittee to review cases from hospitals and
6 determine whether hospitals, physicians, and insurers are
7 entitled to compensation under the program.

8 (c) The committee shall communicate with hospitals,
9 physicians, and insurers that are interested in participating
10 in the program. The committee shall make final decisions as to
11 which applicants are accepted for the program.

12 (d) The committee shall report to the Governor and the
13 General Assembly annually.

14 (e) The committee shall publish data regarding the program.

15 (f) Committee members shall receive no compensation for the
16 performance of their duties as members, but each member shall
17 be paid necessary expenses while engaged in the performance of
18 those duties.

19 Section 415. Termination of program.

20 (a) The program may be terminated at any time if the
21 committee, by a vote of two-thirds of its members, votes to
22 terminate the program.

23 (b) If the program is not terminated under subsection (a),
24 the program shall terminate after its second year of operation.

25 Section 495. The State Finance Act is amended by adding
26 Section 5.626 as follows:

27 (30 ILCS 105/5.626 new)

28 Sec. 5.626. The Sorry Works! Fund.

29

ARTICLE 9. MISCELLANEOUS

1 Section 995. Severability. The provisions of this Act are
2 severable under Section 1.31 of the Statute on Statutes.

3 Section 999. Effective date. This Act takes effect upon
4 becoming law.".