

93RD GENERAL ASSEMBLY

State of Illinois

2003 and 2004

HB7299

Introduced 5/11/2004, by Rep. Steve Davis - Thomas Holbrook -
Brandon W. Phelps - Dan Reitz - Kurt M. Granberg

SYNOPSIS AS INTRODUCED:

See Index

Amends the Medical Practice Act of 1987. Provides that the Director may select up to 3 Deputy Medical Coordinators (instead of one). Provides that, in the event of the settlement of any claim or cause of action in favor of the claimant or the reduction to final judgment of any civil action in favor of the plaintiff, the claim, cause of action, or civil action being grounded on the allegation that a person licensed under the Act was negligent in providing care, the Department shall have an additional period of 2 years (instead of one year) from the date of notification to the Department of the settlement or final judgment in which to investigate and commence formal disciplinary proceedings. Provides that the Director shall employ not less than one full time investigation for every 3000 (instead of 5000) physicians licensed in the State. Provides that the Department shall expunge the records of any investigation concluded by dismissal or closure and any discipline solely for administrative matters 3 years after final disposition or after the statute of limitations has expired, whichever is greater. Provides that the person who is the subject of the report shall provide a copy of the applicable medical records. Amends the Health Care Arbitration Act. Provides that no health care arbitration agreement shall be valid after 10 years (instead of 2 years) from the date of its execution. Amends the Code of Civil Procedure. Provides that a reviewing health professional's report shall contain the name and address of the reviewing health profession and documentation of his or her compliance with the witness standards. Changes the standards that the court shall apply to determine if a witness qualifies as an expert witness as follows: (i) requires the court to determine whether the witness is board certified or board eligible in the same medical specialties as the defendant and is familiar with the same medical problems or the type of treatment administered in the case (instead of the same relationship of the medical specialties of the witness to the medical problem and the type of treatment in the case); (ii) requires the court to determine whether the witness has devoted 75% (instead of a substantial portion) of his or her working hours to the practice of medicine, teaching, or university based research in relation to the medical care and type of treatment at issue; and (iii) requires the court to determine whether the witness is licensed by any state or the District of Columbia (instead of just licensed). Protects a physician's personal assets in healing art malpractice cases. Makes various other changes in other Acts concerning health care. Effective immediately.

LRB093 22081 LCB 50637 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning medical malpractice.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 ARTICLE 1.

5 Section 1-1. Legislative findings. The General Assembly
6 finds that:

7 1. Illinois is in the midst of a medical malpractice
8 insurance crisis of unprecedented magnitude.

9 2. Illinois is among the states with the highest
10 medical malpractice insurance premiums in the nation.

11 3. Medical Malpractice insurance in Illinois is
12 unavailable or unaffordable for many hospitals and
13 physicians.

14 4. The high and increasing cost of medical malpractice
15 insurance in Illinois is causing health care providers to
16 eliminate or reduce the provision of medical care
17 throughout the State.

18 5. The crisis is discouraging medical students from
19 choosing Illinois as the place they will receive their
20 medical education and practice medicine.

21 6. The increase in medical malpractice liability
22 insurance rates is forcing physicians to practice medicine
23 without professional liability insurance, to leave
24 Illinois, to not perform high-risk procedures, or to retire
25 early from the practice of medicine.

26 7. The high and increasing cost of medical malpractice
27 insurance is due in large part to the inefficiency and
28 unpredictability of adjudicating claims through the civil
29 justice system.

30 8. Much of this inefficiency stems from the time and
31 resources needlessly spent on valuing uncertain and
32 unpredictable claims of medical negligence.

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

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

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

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

20 (D) (Blank).

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

32 (F) Each member, and member-officer, of the Disciplinary
33 Board shall receive a per diem stipend as the Director of the
34 Department, hereinafter referred to as the Director, shall
35 determine. The Director shall also determine the per diem
36 stipend that each ex-officio member shall receive. Each member

1 shall be paid their necessary expenses while engaged in the
2 performance of their duties.

3 (G) The Director shall select a Chief Medical Coordinator
4 and up to 3 ~~a~~ Deputy Medical Coordinators ~~Coordinator~~ who shall
5 not be members of the Disciplinary Board. Each medical
6 coordinator shall be a physician licensed to practice medicine
7 in all of its branches, and the Director shall set their rates
8 of compensation. The Director shall assign at least one medical
9 coordinator to a region composed of Cook County and such other
10 counties as the Director may deem appropriate, and such medical
11 coordinators ~~coordinator~~ shall locate their office in Chicago.
12 The Director shall assign at least one ~~the remaining~~ medical
13 coordinator to regions to cover ~~a region composed of~~ the
14 balance of counties in the State, and such medical coordinators
15 ~~coordinator~~ shall locate their office in Springfield. Each
16 medical coordinator shall be the chief enforcement officer of
17 this Act in their assigned region and shall serve at the will
18 of the Disciplinary Board.

19 The Director shall employ, in conformity with the Personnel
20 Code, not less than one full time investigator for every 3000
21 ~~5000~~ physicians licensed in the State and such other fulltime
22 investigators as the Director deems necessary. Each
23 investigator shall be a college graduate with at least 2 years'
24 investigative experience or one year advanced medical
25 education. Upon the written request of the Disciplinary Board,
26 the Director shall employ, in conformity with the Personnel
27 Code, such other professional, technical, investigative, and
28 clerical help, either on a full or part-time basis as the
29 Disciplinary Board deems necessary for the proper performance
30 of its duties.

31 (H) Upon the specific request of the Disciplinary Board,
32 signed by either the chairman, vice chairman, or a medical
33 coordinator of the Disciplinary Board, the Department of Human
34 Services or the Department of State Police shall make available
35 any and all information that they have in their possession
36 regarding a particular case then under investigation by the

1 Disciplinary Board.

2 (I) Members of the Disciplinary Board shall be immune from
3 suit in any action based upon any disciplinary proceedings or
4 other acts performed in good faith as members of the
5 Disciplinary Board.

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

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

20 (225 ILCS 60/22) (from Ch. 111, par. 4400-22)

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

22 Sec. 22. Disciplinary action.

23 (A) The Department may revoke, suspend, place on
24 probationary status, or take any other disciplinary action as
25 the Department may deem proper with regard to the license or
26 visiting professor permit of any person issued under this Act
27 to practice medicine, or to treat human ailments without the
28 use of drugs and without operative surgery upon any of the
29 following grounds:

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

32 (a) a facility licensed pursuant to the Ambulatory
33 Surgical Treatment Center Act;

34 (b) an institution licensed under the Hospital
35 Licensing Act; or

1 (c) an ambulatory surgical treatment center or
2 hospitalization or care facility maintained by the
3 State or any agency thereof, where such department or
4 agency has authority under law to establish and enforce
5 standards for the ambulatory surgical treatment
6 centers, hospitalization, or care facilities under its
7 management and control; or

8 (d) ambulatory surgical treatment centers,
9 hospitalization or care facilities maintained by the
10 Federal Government; or

11 (e) ambulatory surgical treatment centers,
12 hospitalization or care facilities maintained by any
13 university or college established under the laws of
14 this State and supported principally by public funds
15 raised by taxation.

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

19 (3) The conviction of a felony in this or any other
20 jurisdiction, except as otherwise provided in subsection B
21 of this Section, whether or not related to practice under
22 this Act, or the entry of a guilty or nolo contendere plea
23 to a felony charge.

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

25 (5) Engaging in dishonorable, unethical or
26 unprofessional conduct of a character likely to deceive,
27 defraud or harm the public.

28 (6) Obtaining any fee by fraud, deceit, or
29 misrepresentation.

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

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

36 (9) Fraud or misrepresentation in applying for, or

1 procuring, a license under this Act or in connection with
2 applying for renewal of a license under this Act.

3 (10) Making a false or misleading statement regarding
4 their skill or the efficacy or value of the medicine,
5 treatment, or remedy prescribed by them at their direction
6 in the treatment of any disease or other condition of the
7 body or mind.

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

10 (12) Disciplinary action of another state or
11 jurisdiction against a license or other authorization to
12 practice as a medical doctor, doctor of osteopathy, doctor
13 of osteopathic medicine or doctor of chiropractic, a
14 certified copy of the record of the action taken by the
15 other state or jurisdiction being prima facie evidence
16 thereof.

17 (13) Violation of any provision of this Act or of the
18 Medical Practice Act prior to the repeal of that Act, or
19 violation of the rules, or a final administrative action of
20 the Director, after consideration of the recommendation of
21 the Disciplinary Board.

22 (14) Dividing with anyone other than physicians with
23 whom the licensee practices in a partnership, Professional
24 Association, limited liability company, or Medical or
25 Professional Corporation any fee, commission, rebate or
26 other form of compensation for any professional services
27 not actually and personally rendered. Nothing contained in
28 this subsection prohibits persons holding valid and
29 current licenses under this Act from practicing medicine in
30 partnership under a partnership agreement, including a
31 limited liability partnership, in a limited liability
32 company under the Limited Liability Company Act, in a
33 corporation authorized by the Medical Corporation Act, as
34 an association authorized by the Professional Association
35 Act, or in a corporation under the Professional Corporation
36 Act or from pooling, sharing, dividing or apportioning the

1 fees and monies received by them or by the partnership,
2 corporation or association in accordance with the
3 partnership agreement or the policies of the Board of
4 Directors of the corporation or association. Nothing
5 contained in this subsection prohibits 2 or more
6 corporations authorized by the Medical Corporation Act,
7 from forming a partnership or joint venture of such
8 corporations, and providing medical, surgical and
9 scientific research and knowledge by employees of these
10 corporations if such employees are licensed under this Act,
11 or from pooling, sharing, dividing, or apportioning the
12 fees and monies received by the partnership or joint
13 venture in accordance with the partnership or joint venture
14 agreement. Nothing contained in this subsection shall
15 abrogate the right of 2 or more persons, holding valid and
16 current licenses under this Act, to each receive adequate
17 compensation for concurrently rendering professional
18 services to a patient and divide a fee; provided, the
19 patient has full knowledge of the division, and, provided,
20 that the division is made in proportion to the services
21 performed and responsibility assumed by each.

22 (15) A finding by the Medical Disciplinary Board that
23 the registrant after having his or her license placed on
24 probationary status or subjected to conditions or
25 restrictions violated the terms of the probation or failed
26 to comply with such terms or conditions.

27 (16) Abandonment of a patient.

28 (17) Prescribing, selling, administering,
29 distributing, giving or self-administering any drug
30 classified as a controlled substance (designated product)
31 or narcotic for other than medically accepted therapeutic
32 purposes.

33 (18) Promotion of the sale of drugs, devices,
34 appliances or goods provided for a patient in such manner
35 as to exploit the patient for financial gain of the
36 physician.

1 (19) Offering, undertaking or agreeing to cure or treat
2 disease by a secret method, procedure, treatment or
3 medicine, or the treating, operating or prescribing for any
4 human condition by a method, means or procedure which the
5 licensee refuses to divulge upon demand of the Department.

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

9 (21) Wilfully making or filing false records or reports
10 in his or her practice as a physician, including, but not
11 limited to, false records to support claims against the
12 medical assistance program of the Department of Public Aid
13 under the Illinois Public Aid Code.

14 (22) Wilful omission to file or record, or wilfully
15 impeding the filing or recording, or inducing another
16 person to omit to file or record, medical reports as
17 required by law, or wilfully failing to report an instance
18 of suspected abuse or neglect as required by law.

19 (23) Being named as a perpetrator in an indicated
20 report by the Department of Children and Family Services
21 under the Abused and Neglected Child Reporting Act, and
22 upon proof by clear and convincing evidence that the
23 licensee has caused a child to be an abused child or
24 neglected child as defined in the Abused and Neglected
25 Child Reporting Act.

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

29 (25) Gross and wilful and continued overcharging for
30 professional services, including filing false statements
31 for collection of fees for which services are not rendered,
32 including, but not limited to, filing such false statements
33 for collection of monies for services not rendered from the
34 medical assistance program of the Department of Public Aid
35 under the Illinois Public Aid Code.

36 (26) A pattern of practice or other behavior which

1 demonstrates incapacity or incompetence to practice under
2 this Act.

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

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

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

12 (30) Wilfully or negligently violating the
13 confidentiality between physician and patient except as
14 required by law.

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

18 (32) Aiding and abetting an individual not licensed
19 under this Act in the practice of a profession licensed
20 under this Act.

21 (33) Violating state or federal laws or regulations
22 relating to controlled substances.

23 (34) Failure to report to the Department any adverse
24 final action taken against them by another licensing
25 jurisdiction (any other state or any territory of the
26 United States or any foreign state or country), by any peer
27 review body, by any health care institution, by any
28 professional society or association related to practice
29 under this Act, by any governmental agency, by any law
30 enforcement agency, or by any court for acts or conduct
31 similar to acts or conduct which would constitute grounds
32 for action as defined in this Section.

33 (35) Failure to report to the Department surrender of a
34 license or authorization to practice as a medical doctor, a
35 doctor of osteopathy, a doctor of osteopathic medicine, or
36 doctor of chiropractic in another state or jurisdiction, or

1 surrender of membership on any medical staff or in any
2 medical or professional association or society, while
3 under disciplinary investigation by any of those
4 authorities or bodies, for acts or conduct similar to acts
5 or conduct which would constitute grounds for action as
6 defined in this Section.

7 (36) Failure to report to the Department any adverse
8 judgment, settlement, or award arising from a liability
9 claim related to acts or conduct similar to acts or conduct
10 which would constitute grounds for action as defined in
11 this Section.

12 (37) Failure to transfer copies of medical records as
13 required by law.

14 (38) Failure to furnish the Department, its
15 investigators or representatives, relevant information,
16 legally requested by the Department after consultation
17 with the Chief Medical Coordinator or the Deputy Medical
18 Coordinator.

19 (39) Violating the Health Care Worker Self-Referral
20 Act.

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

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

25 (42) Entering into an excessive number of written
26 collaborative agreements with licensed advanced practice
27 nurses resulting in an inability to adequately collaborate
28 and provide medical direction.

29 (43) Repeated failure to adequately collaborate with
30 or provide medical direction to a licensed advanced
31 practice nurse.

32 All proceedings to suspend, revoke, place on probationary
33 status, or take any other disciplinary action as the Department
34 may deem proper, with regard to a license on any of the
35 foregoing grounds, must be commenced within 3 years next after
36 receipt by the Department of a complaint alleging the

1 commission of or notice of the conviction order for any of the
2 acts described herein. Except for the grounds numbered (8), (9)
3 and (29), no action shall be commenced more than 5 years after
4 the date of the incident or act alleged to have violated this
5 Section, however incidents or acts up to 10 years after the
6 date of the incident or act alleged may be combined to allege a
7 pattern of practice under item (26) of subsection (A) of this
8 Section. In the event of the settlement of any claim or cause
9 of action in favor of the claimant or the reduction to final
10 judgment of any civil action in favor of the plaintiff, such
11 claim, cause of action or civil action being grounded on the
12 allegation that a person licensed under this Act was negligent
13 in providing care, the Department shall have an additional
14 period of 2 years ~~one year~~ from the date of notification to the
15 Department under Section 23 of this Act of such settlement or
16 final judgment in which to investigate and commence formal
17 disciplinary proceedings under Section 36 of this Act, except
18 as otherwise provided by law. The Department shall expunge the
19 records of any investigation concluded by dismissal or closure
20 and any discipline solely for administrative matters 3 years
21 after final disposition or after the statute of limitations has
22 expired, whichever is greater. The time during which the holder
23 of the license was outside the State of Illinois shall not be
24 included within any period of time limiting the commencement of
25 disciplinary action by the Department.

26 The entry of an order or judgment by any circuit court
27 establishing that any person holding a license under this Act
28 is a person in need of mental treatment operates as a
29 suspension of that license. That person may resume their
30 practice only upon the entry of a Departmental order based upon
31 a finding by the Medical Disciplinary Board that they have been
32 determined to be recovered from mental illness by the court and
33 upon the Disciplinary Board's recommendation that they be
34 permitted to resume their practice.

35 The Department may refuse to issue or take disciplinary
36 action concerning the license of any person who fails to file a

1 return, or to pay the tax, penalty or interest shown in a filed
2 return, or to pay any final assessment of tax, penalty or
3 interest, as required by any tax Act administered by the
4 Illinois Department of Revenue, until such time as the
5 requirements of any such tax Act are satisfied as determined by
6 the Illinois Department of Revenue.

7 The Department, upon the recommendation of the
8 Disciplinary Board, shall adopt rules which set forth standards
9 to be used in determining:

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

12 (b) what constitutes dishonorable, unethical or
13 unprofessional conduct of a character likely to deceive,
14 defraud, or harm the public;

15 (c) what constitutes immoral conduct in the commission
16 of any act, including, but not limited to, commission of an
17 act of sexual misconduct related to the licensee's
18 practice; and

19 (d) what constitutes gross negligence in the practice
20 of medicine.

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

24 In enforcing this Section, the Medical Disciplinary Board,
25 upon a showing of a possible violation, may compel any
26 individual licensed to practice under this Act, or who has
27 applied for licensure or a permit pursuant to this Act, to
28 submit to a mental or physical examination, or both, as
29 required by and at the expense of the Department. The examining
30 physician or physicians shall be those specifically designated
31 by the Disciplinary Board. The Medical Disciplinary Board or
32 the Department may order the examining physician to present
33 testimony concerning this mental or physical examination of the
34 licensee or applicant. No information shall be excluded by
35 reason of any common law or statutory privilege relating to
36 communication between the licensee or applicant and the

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

34 An individual licensed under this Act, affected under this
35 Section, shall be afforded an opportunity to demonstrate to the
36 Disciplinary Board that they can resume practice in compliance

1 with acceptable and prevailing standards under the provisions
2 of their license.

3 The Department may promulgate rules for the imposition of
4 fines in disciplinary cases, not to exceed \$5,000 for each
5 violation of this Act. Fines may be imposed in conjunction with
6 other forms of disciplinary action, but shall not be the
7 exclusive disposition of any disciplinary action arising out of
8 conduct resulting in death or injury to a patient. Any funds
9 collected from such fines shall be deposited in the Medical
10 Disciplinary Fund.

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

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

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

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

2 Sec. 23. Reports relating to professional conduct and
3 capacity.

4 (A) Entities required to report.

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

1 reports of impaired physicians shall not be considered
2 records within the meaning of The State Records Act and
3 shall be disposed of, following a determination by the
4 Disciplinary Board that such reports are no longer
5 required, in a manner and at such time as the Disciplinary
6 Board shall determine by rule. The filing of such reports
7 shall be construed as the filing of a report for purposes
8 of subsection (C) of this Section.

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

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

28 (4) State's Attorneys. The State's Attorney of each
29 county shall report to the Disciplinary Board all instances
30 in which a person licensed under this Act is convicted or
31 otherwise found guilty of the commission of any felony. The
32 State's Attorney of each county may report to the
33 Disciplinary Board through a verified complaint any
34 instance in which the State's Attorney believes that a
35 physician has willfully violated the notice requirements
36 of the Parental Notice of Abortion Act of 1995.

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

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

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

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

23 (3) The name or other means of identification of any
24 patient or patients whose treatment is a subject of the
25 report, ~~provided, however, no medical records may be~~
26 ~~revealed without the written consent of the patient or~~
27 ~~patients.~~

28 (4) A brief description of the facts which gave rise to
29 the issuance of the report, including the dates of any
30 occurrences deemed to necessitate the filing of the report.

31 (5) If court action is involved, the identity of the
32 court in which the action is filed, along with the docket
33 number and date of filing of the action.

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

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

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

16 Nothing contained in this Section shall act to in any way,
17 waive or modify the confidentiality of medical reports and
18 committee reports to the extent provided by law. Any
19 information reported or disclosed shall be kept for the
20 confidential use of the Disciplinary Board, the Medical
21 Coordinators, the Disciplinary Board's attorneys, the medical
22 investigative staff, and authorized clerical staff, as
23 provided in this Act, and shall be afforded the same status as
24 is provided information concerning medical studies in Part 21
25 of Article VIII of the Code of Civil Procedure.

26 (C) Immunity from prosecution. Any individual or
27 organization acting in good faith, and not in a wilful and
28 wanton manner, in complying with this Act by providing any
29 report or other information to the Disciplinary Board, or
30 assisting in the investigation or preparation of such
31 information, or by participating in proceedings of the
32 Disciplinary Board, or by serving as a member of the
33 Disciplinary Board, shall not, as a result of such actions, be
34 subject to criminal prosecution or civil damages.

35 (D) Indemnification. Members of the Disciplinary Board,
36 the Medical Coordinators, the Disciplinary Board's attorneys,

1 the medical investigative staff, physicians retained under
2 contract to assist and advise the medical coordinators in the
3 investigation, and authorized clerical staff shall be
4 indemnified by the State for any actions occurring within the
5 scope of services on the Disciplinary Board, done in good faith
6 and not wilful and wanton in nature. The Attorney General shall
7 defend all such actions unless he or she determines either that
8 there would be a conflict of interest in such representation or
9 that the actions complained of were not in good faith or were
10 wilful and wanton.

11 Should the Attorney General decline representation, the
12 member shall have the right to employ counsel of his or her
13 choice, whose fees shall be provided by the State, after
14 approval by the Attorney General, unless there is a
15 determination by a court that the member's actions were not in
16 good faith or were wilful and wanton.

17 The member must notify the Attorney General within 7 days
18 of receipt of notice of the initiation of any action involving
19 services of the Disciplinary Board. Failure to so notify the
20 Attorney General shall constitute an absolute waiver of the
21 right to a defense and indemnification.

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

25 (E) Deliberations of Disciplinary Board. Upon the receipt
26 of any report called for by this Act, other than those reports
27 of impaired persons licensed under this Act required pursuant
28 to the rules of the Disciplinary Board, the Disciplinary Board
29 shall notify in writing, by certified mail, the person who is
30 the subject of the report. Such notification shall be made
31 within 30 days of receipt by the Disciplinary Board of the
32 report.

33 The notification shall include a written notice setting
34 forth the person's right to examine the report. Included in
35 such notification shall be the address at which the file is
36 maintained, the name of the custodian of the reports, and the

1 telephone number at which the custodian may be reached. The
2 person who is the subject of the report shall submit a written
3 statement responding, clarifying, adding to, or proposing the
4 amending of the report previously filed and provide a copy of
5 the applicable medical records. The statement shall become a
6 permanent part of the file and must be received by the
7 Disciplinary Board no more than 60 days after the date on which
8 the person was notified by the Disciplinary Board of the
9 existence of the original report.

10 The Disciplinary Board shall review all reports received by
11 it, together with any supporting information and responding
12 statements submitted by persons who are the subject of reports.
13 The review by the Disciplinary Board shall be in a timely
14 manner but in no event, shall the Disciplinary Board's initial
15 review of the material contained in each disciplinary file be
16 less than 61 days nor more than 180 days after the receipt of
17 the initial report by the Disciplinary Board.

18 When the Disciplinary Board makes its initial review of the
19 materials contained within its disciplinary files, the
20 Disciplinary Board shall, in writing, make a determination as
21 to whether there are sufficient facts to warrant further
22 investigation or action. Failure to make such determination
23 within the time provided shall be deemed to be a determination
24 that there are not sufficient facts to warrant further
25 investigation or action.

26 Should the Disciplinary Board find that there are not
27 sufficient facts to warrant further investigation, or action,
28 the report shall be accepted for filing and the matter shall be
29 deemed closed and so reported to the Director. The Director
30 shall then have 30 days to accept the Medical Disciplinary
31 Board's decision or request further investigation. The
32 Director shall inform the Board in writing of the decision to
33 request further investigation, including the specific reasons
34 for the decision. The individual or entity filing the original
35 report or complaint and the person who is the subject of the
36 report or complaint shall be notified in writing by the

1 Director of any final action on their report or complaint.

2 (F) Summary reports. The Disciplinary Board shall prepare,
3 on a timely basis, but in no event less than one every other
4 month, a summary report of final actions taken upon
5 disciplinary files maintained by the Disciplinary Board. The
6 summary reports shall be sent by the Disciplinary Board to
7 every health care facility licensed by the Illinois Department
8 of Public Health, every professional association and society of
9 persons licensed under this Act functioning on a statewide
10 basis in this State, the American Medical Association, the
11 American Osteopathic Association, the American Chiropractic
12 Association, all insurers providing professional liability
13 insurance to persons licensed under this Act in the State of
14 Illinois, the Federation of State Medical Licensing Boards, and
15 the Illinois Pharmacists Association.

16 (G) Any violation of this Section shall be a Class A
17 misdemeanor.

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

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

33 ARTICLE 5.

34 Section 5-5. The Health Care Arbitration Act is amended by

1 changing Sections 8 and 9 as follows:

2 (710 ILCS 15/8) (from Ch. 10, par. 208)

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

5 (a) The agreement is not a condition to the rendering of
6 health care services by any party and the agreement has been
7 executed by the recipient of health care services at the
8 inception of or during the term of provision of services for a
9 specific cause by either a health care provider or a hospital;
10 and

11 (b) The agreement is a separate instrument complete in
12 itself and not a part of any other contract or instrument; and

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

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

20 ~~(e) As a part of the discharge planning process the patient~~
21 ~~or, if appropriate, members of his family must be given a copy~~
22 ~~of the health care arbitration agreement previously executed by~~
23 ~~or for the patient and shall re-affirm it. Failure to comply~~
24 ~~with this provision during the discharge planning process shall~~
25 ~~void the health care arbitration agreement.~~

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

27 (710 ILCS 15/9) (from Ch. 10, par. 209)

28 Sec. 9. Mandatory Provisions.

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

31 (b) Every health care arbitration agreement in relation to
32 health care services rendered during hospitalization shall
33 specify the date of commencement of hospitalization. Every
34 health care arbitration agreement in relation to health care

1 services not rendered during hospitalization shall state the
2 specific cause for which the services are provided.

3 (c) Every health care arbitration agreement may be
4 cancelled by any signatory (1) ~~within 60 days of its execution~~
5 ~~or~~ within 60 days of the date of the patient's discharge from
6 the hospital, or last date of treatment, whichever is later, as
7 to an agreement in relation to health care services rendered
8 during hospitalization, ~~provided, that if executed other than~~
9 ~~at the time of discharge of the patient from the hospital, the~~
10 ~~health care arbitration agreement be reaffirmed at the time of~~
11 ~~the discharge planning process in the same manner as provided~~
12 ~~for in the execution of the original agreement;~~ or (2) within
13 60 days of the date of its execution, or the last date of
14 treatment by the health care provider, whichever is later, as
15 to an agreement in relation to health care services not
16 rendered during hospitalization. Provided, that no health care
17 arbitration agreement shall be valid after 10 ~~2~~ years from the
18 date of its execution. An employee of a hospital or health care
19 provider who is not a signatory to an agreement may cancel such
20 agreement as to himself until 30 days following his
21 notification that he is a party to a dispute or issue on which
22 arbitration has been demanded pursuant to such agreement. If
23 any person executing a health care arbitration agreement dies
24 before the period of cancellation as outlined above, the
25 personal representative of the decedent shall have the right to
26 cancel the health care arbitration agreement within 60 days of
27 the date of his appointment as the legal representative of the
28 decedent's estate. ~~Provided, that if no legal representative is~~
29 ~~appointed within 6 months of the death of said decedent the~~
30 ~~next of kin of such decedent shall have the right to cancel the~~
31 ~~health care arbitration agreement within 8 months from the date~~
32 ~~of death.~~

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

1 "AGREEMENT TO ARBITRATE HEALTH CARE

2 NEGLIGENCE CLAIMS

3 NOTICE TO PATIENT

4 YOU CANNOT BE REQUIRED TO SIGN THIS AGREEMENT IN ORDER TO
5 RECEIVE TREATMENT. BY SIGNING THIS AGREEMENT, YOUR RIGHT TO
6 TRIAL BY A JURY OR A JUDGE IN A COURT WILL BE BARRED AS TO
7 ANY DISPUTE RELATING TO INJURIES THAT MAY RESULT FROM
8 NEGLIGENCE DURING YOUR TREATMENT OR CARE, AND WILL BE
9 REPLACED BY AN ARBITRATION PROCEDURE.

10 THIS AGREEMENT MAY BE CANCELLED WITHIN 60 DAYS ~~OF SIGNING~~
11 ~~OR 60 DAYS~~ AFTER YOUR HOSPITAL DISCHARGE OR 60 DAYS AFTER
12 YOUR LAST HEALTH CARE SERVICE ~~MEDICAL TREATMENT~~ IN RELATION
13 TO HEALTH CARE SERVICES NOT RENDERED DURING
14 HOSPITALIZATION.

15 THIS AGREEMENT PROVIDES THAT ANY CLAIMS WHICH MAY ARISE OUT
16 OF YOUR HEALTH CARE WILL BE SUBMITTED TO A PANEL OF
17 ARBITRATORS, RATHER THAN TO A COURT FOR DETERMINATION. THIS
18 AGREEMENT REQUIRES ALL PARTIES SIGNING IT TO ABIDE BY THE
19 DECISION OF THE ARBITRATION PANEL."

20 (e) an executed copy of the AGREEMENT TO ARBITRATE HEALTH
21 CARE CLAIMS ~~and any reaffirmation of that agreement as required~~
22 ~~by this Act~~ shall be given to the patient during the time of
23 the discharge planning process or at the time of discharge
24 after last date of treatment.

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

26 Section 5-10. The Code of Civil Procedure is amended by
27 changing Sections 2-622, 2-1107.1, 2-1109, 2-1702, 2-1704,
28 8-1901, and 8-2501, and by adding Sections 2-1105.01 and 8-2502
29 as follows:

30 (735 ILCS 5/2-622) (from Ch. 110, par. 2-622)

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

33 Sec. 2-622. Healing art malpractice.

34 (a) In any action, whether in tort, contract or otherwise,

1 in which the plaintiff seeks damages for injuries or death by
2 reason of medical, hospital, or other healing art malpractice,
3 the plaintiff's attorney or the plaintiff, if the plaintiff is
4 proceeding pro se, shall file an affidavit, attached to the
5 original and all copies of the complaint, declaring one of the
6 following:

7 1. That the affiant has consulted and reviewed the
8 facts of the case with a health professional who the
9 affiant reasonably believes: (i) is knowledgeable in the
10 relevant issues involved in the particular action; (ii)
11 practices or has practiced within the last 6 years or
12 teaches or has taught within the last 6 years in the same
13 area of health care or medicine that is at issue in the
14 particular action; ~~and~~ (iii) meets the minimum
15 requirements set forth in 8-2501; and (iv) is qualified by
16 experience or demonstrated competence in the subject of the
17 case; that the reviewing health professional has
18 determined in a written report, after a review of the
19 medical record and other relevant material involved in the
20 particular action that there is a reasonable and
21 meritorious cause for the filing of such action; and that
22 the affiant has concluded on the basis of the reviewing
23 health professional's review and consultation that there
24 is a reasonable and meritorious cause for filing of such
25 action. If the affidavit is filed as to a defendant who is
26 a physician licensed to treat human ailments without the
27 use of drugs or medicines and without operative surgery, a
28 dentist, a podiatrist, a psychologist, or a naprapath, the
29 written report must be from a health professional licensed
30 in the same profession, with the same class of license, as
31 the defendant. For affidavits filed as to all other
32 defendants, the written report must be from a physician
33 licensed to practice medicine in all its branches. In
34 either event, the affidavit must identify the profession of
35 the reviewing health professional. A copy of the written
36 report, clearly identifying the plaintiff and the reasons

1 for the reviewing health professional's determination that
2 a reasonable and meritorious cause for the filing of the
3 action exists, must be attached to the affidavit, ~~but~~
4 ~~information which would identify the reviewing health~~
5 ~~professional may be deleted from the copy so attached.~~ The
6 report shall include the name and address of the reviewing
7 health professional and documentation of compliance with
8 requirements set forth in 8-2501.

9 2. That the affiant was unable to obtain a consultation
10 required by paragraph 1 because a statute of limitations
11 would impair the action and the consultation required could
12 not be obtained before the expiration of the statute of
13 limitations. If an affidavit is executed pursuant to this
14 paragraph, the certificate and written report required by
15 paragraph 1 shall be filed within 90 days after the filing
16 of the complaint. No additional 90 day extensions shall be
17 granted. The defendant shall be excused from answering or
18 otherwise pleading until 30 days after being served with a
19 certificate required by paragraph 1.

20 3. That a request has been made by the plaintiff or his
21 attorney for examination and copying of records pursuant to
22 Part 20 of Article VIII of this Code and the party required
23 to comply under those Sections has failed to produce such
24 records within 60 days of the receipt of the request. If an
25 affidavit is executed pursuant to this paragraph, the
26 certificate and written report required by paragraph 1
27 shall be filed within 90 days following receipt of the
28 requested records. All defendants except those whose
29 failure to comply with Part 20 of Article VIII of this Code
30 is the basis for an affidavit under this paragraph shall be
31 excused from answering or otherwise pleading until 30 days
32 after being served with the certificate required by
33 paragraph 1.

34 (b) Where a certificate and written report are required
35 pursuant to this Section a separate certificate and written
36 report shall be filed as to each defendant who has been named

1 in the complaint and shall be filed as to each defendant named
2 at a later time.

3 (c) Where the plaintiff intends to rely on the doctrine of
4 "res ipsa loquitur", as defined by Section 2-1113 of this Code,
5 the certificate and written report must state that, in the
6 opinion of the reviewing health professional, negligence has
7 occurred in the course of medical treatment. The affiant shall
8 certify upon filing of the complaint that he is relying on the
9 doctrine of "res ipsa loquitur".

10 (d) When the attorney intends to rely on the doctrine of
11 failure to inform of the consequences of the procedure, the
12 attorney shall certify upon the filing of the complaint that
13 the reviewing health professional has, after reviewing the
14 medical record and other relevant materials involved in the
15 particular action, concluded that a reasonable health
16 professional would have informed the patient of the
17 consequences of the procedure.

18 (e) Allegations and denials in the affidavit, made without
19 reasonable cause and found to be untrue, shall subject the
20 party pleading them or his attorney, or both, to the payment of
21 reasonable expenses, actually incurred by the other party by
22 reason of the untrue pleading, together with reasonable
23 attorneys' fees to be summarily taxed by the court upon motion
24 made within 30 days of the judgment or dismissal. In no event
25 shall the award for attorneys' fees and expenses exceed those
26 actually paid by the moving party, including the insurer, if
27 any. In proceedings under this paragraph (e), the moving party
28 shall have the right to depose and examine any and all
29 reviewing health professionals who prepared reports used in
30 conjunction with an affidavit required by this Section.

31 (f) A reviewing health professional who in good faith
32 prepares a report used in conjunction with an affidavit
33 required by this Section shall have civil immunity from
34 liability which otherwise might result from the preparation of
35 such report.

36 (g) The failure to file a certificate required by this

1 Section shall be grounds for dismissal under Section 2-619.

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

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

8 (j) This amendatory Act of 93rd General Assembly does not
9 apply to or affect any actions pending at the time of its
10 effective date, but applies to cases filed on or after its
11 effective date.

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

13 (735 ILCS 5/2-1105.01 new)

14 Sec. 2-1105.01. Personal assets protected in healing art
15 malpractice cases. In all cases, whether tort, contract, or
16 otherwise, in which the plaintiff seeks damages by reason of
17 medical healing art malpractice, the amount of the recovery
18 shall be limited to an amount that is covered by the
19 physician's medical malpractice insurance or liability
20 insurance provided the physician maintains at least a minimum
21 of \$1,000,000 in insurance coverage per occurrence and
22 \$3,000,000 in the aggregate. Corporate assets are subject to
23 attachment for satisfaction of a judgment. In no event, shall a
24 physician be liable in an amount that would cause him or her to
25 forfeit any of his or her personal assets.

26 (735 ILCS 5/2-1107.1) (from Ch. 110, par. 2-1107.1)

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

29 Sec. 2-1107.1. Jury instruction in tort actions. In all
30 actions on account of bodily injury or death or physical damage
31 to property based on negligence, or product liability based on
32 strict tort liability, the court shall instruct the jury in
33 writing, to the extent that it is true, that any award of
34 compensatory damages will not be taxable under federal or State

1 income tax law and that the defendant shall be found not liable
2 if the jury finds that the contributory fault of the plaintiff
3 is more than 50% of the proximate cause of the injury or damage
4 for which recovery is sought.

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

7 (Source: P.A. 84-1431.)

8 (735 ILCS 5/2-1109) (from Ch. 110, par. 2-1109)

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

11 Sec. 2-1109. Itemized verdicts.

12 (a) In every case where damages for bodily injury or death
13 ~~to the person~~ are assessed by the jury the verdict shall be
14 itemized so as to reflect the monetary distribution, if any,
15 among economic loss and non-economic loss, ~~if any,~~ and, in
16 healing art medical malpractice cases, further itemized so as
17 to reflect the distribution of economic loss by category, such
18 itemization of economic loss by category to include: (a)
19 amounts intended to compensate for reasonable expenses which
20 have been incurred, or which will be incurred, for necessary
21 medical, surgical, x-ray, dental, or other health or
22 rehabilitative services, drugs, and therapy; (b) amounts
23 intended to compensate for lost wages or loss of earning
24 capacity; and (c) all other economic losses claimed by the
25 plaintiff or granted by the jury. Each category of economic
26 loss shall be further itemized into amounts intended to
27 compensate for losses which have been incurred prior to the
28 verdict and amounts intended to compensate for future losses
29 ~~which will be incurred in the future.~~

30 (b) In all actions on account of bodily injury or death
31 based on negligence, including healing art malpractice
32 actions, the following terms have the following meanings:

33 (i) "Economic loss" or "economic damages" means all
34 damages that are tangible, such as damages for past and
35 future medical expenses, loss of income or earnings and

1 other property loss.

2 (ii) "Non-economic loss" or "non-economic damages"
3 means damages that are intangible, including but not
4 limited to damages for pain and suffering, disability,
5 disfigurement, loss of consortium, and loss of society.

6 (iii) "Compensatory damages" or "actual damages" are
7 the sum of economic and non-economic damages.

8 (c) Nothing in this Section shall be construed to create a
9 cause of action.

10 (d) This amendatory Act of the 93rd General Assembly
11 applies to causes of action filed on or after its effective
12 date.

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

14 (735 ILCS 5/2-1702) (from Ch. 110, par. 2-1702)

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

17 Sec. 2-1702. Economic/Non-Economic Loss. As used in this
18 Part, "economic loss" and "non-economic loss" have the same
19 meanings as in Section 2-1109(b). †

20 ~~(a) "Economic loss" means all pecuniary harm for which~~
21 ~~damages are recoverable.~~

22 ~~(b) "Non-economic loss" means loss of consortium and all~~
23 ~~nonpecuniary harm for which damages are recoverable,~~
24 ~~including, without limitation, damages for pain and suffering,~~
25 ~~inconvenience, disfigurement, and physical impairment.~~

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

27 (735 ILCS 5/2-1704) (from Ch. 110, par. 2-1704)

28 Sec. 2-1704. Healing art malpractice ~~Medical Malpractice~~
29 ~~Action~~. As used in this Code Part, "healing art ~~medical~~
30 malpractice action" means any action, whether in tort, contract
31 or otherwise, in which the plaintiff seeks damages for injuries
32 or death by reason of medical, hospital, or other healing art
33 malpractice including but not limited to medical, nursing,
34 dental, or podiatric malpractice. The term "healing art" shall

1 not include care and treatment by spiritual means through
2 prayer in accord with the tenets and practices of a recognized
3 church or religious denomination.

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

5 (735 ILCS 5/8-1901) (from Ch. 110, par. 8-1901)

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

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

18 (b) Any expression of grief, apology, remedial action, or
19 explanation provided by a health care provider, including, but
20 not limited to, a statement that the health care provider is
21 "sorry" for the outcome to a patient, the patient's family, or
22 the patient's legal representative about an inadequate or
23 unanticipated treatment or care outcome that is provided within
24 72 hours of when the provider knew or should have known of the
25 potential cause of such outcome shall not be admissible as
26 evidence, nor discoverable in any action of any kind in any
27 court or before any tribunal, board, agency, or person. The
28 disclosure of any such information, whether proper, or
29 improper, shall not waive or have any effect upon its
30 confidentiality, nondiscoverability, or inadmissibility. As
31 used in this Section, a "health care provider" is any hospital,
32 nursing home or other facility, or employee or agent thereof, a
33 physician, or other licensed health care professional. Nothing
34 in this Section precludes the discovery or admissibility of any
35 other facts regarding the patient's treatment or outcome as

1 otherwise permitted by law.

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

3 (735 ILCS 5/8-2501) (from Ch. 110, par. 8-2501)

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

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

12 (a) Whether the witness is board certified or board
13 eligible in the same medical specialties as the defendant and
14 is familiar with the same ~~Relationship of the medical~~
15 ~~specialties of the witness to the~~ medical problem or problems,
16 or and the type of treatment administered in the case;

17 (b) Whether the witness has devoted 75% ~~a substantial~~
18 ~~portion~~ of his or her working hours ~~time~~ to the practice of
19 medicine, teaching or University based research in relation to
20 the medical care and type of treatment at issue which gave rise
21 to the medical problem of which the plaintiff complains;

22 (c) whether the witness is licensed by a state or the
23 District of Columbia in the same profession as the defendant;
24 and

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

28 An expert shall provide proof of active practice, teaching,
29 or engaging in university-based research. If retired, an expert
30 must provide proof of attendance and completion of continuing
31 education courses for 3 years previous to giving testimony. An
32 expert who has not actively practiced, taught, or been engaged
33 in university-based research for 10 years may not be qualified
34 as an expert witness.

35 This amendatory Act of the 93rd General Assembly applies to

1 causes of action filed on or after its effective date.

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

3 (735 ILCS 5/8-2502 new)

4 Sec. 8-2502. Settlement annuity evidence. Any party in a
5 medical malpractice action may introduce structured settlement
6 annuity evidence to pay for any future damages that may be
7 awarded to the plaintiff provided that the following conditions
8 are satisfied:

9 (a) the witness providing the evidence has specialized
10 in purchasing structured settlement annuities for at least
11 5 years and has the ability to obtain price quotes from at
12 least 3 companies offering structured settlement
13 annuities; and

14 (b) the structured settlement annuity price quotes are
15 from companies that have at least a "A+" rating from A.M.
16 Best and "AA" rating from another rating agency.

17 Any defendant who introduces structured annuity testimony,
18 must cooperate with the plaintiff in purchasing a structured
19 settlement annuity to cover any awarded future damages.

20 ARTICLE 10.

21 Section 10-5. The Illinois Insurance Code is amended by
22 changing Section 155.19 and by adding Section 155.18a as
23 follows:

24 (215 ILCS 5/155.18a new)

25 Sec. 155.18a. Professional Liability Insurance Resource
26 Center.

27 (a) The Director of Insurance shall establish a
28 Professional Liability Insurance Resource Center on the World
29 Wide Web containing the following information:

30 (1) Names, address, and telephone numbers of all
31 licensed companies providing professional liability
32 insurance for health care professionals and health care

1 providers including but not limited to hospitals, nursing
2 homes, physicians, and dentists. Computer links to company
3 websites shall be included, if available.

4 (2) Names, addresses and telephone numbers of all
5 licensed brokers who provide access to professional
6 liability insurance for health care professionals and
7 health care providers including but not limited to
8 hospitals, nursing homes, physicians, and dentists.
9 Computer links to company websites shall be included, if
10 available.

11 (b) The Department of Insurance shall conduct and publish
12 an annual study of the impact of this amendatory Act of the
13 93rd General Assembly by county on the following:

14 (1) The number of medical malpractice claims filed and
15 amounts recovered per claim.

16 (2) The amounts of economic and non-economic damages
17 awarded per case.

18 (3) The amount of plaintiff and defense attorney fees
19 paid per case.

20 (4) The impact of the provisions of this amendatory Act
21 of the 93rd General Assembly on the cost and availability
22 of healing art malpractice coverage for hospitals and
23 physicians.

24 (5) Every 2 years the Director of Insurance shall make
25 recommendations to the Governor, the Speaker of the House,
26 and the President of the Senate on changes in the law
27 necessary to maintain affordable and accessible
28 professional liability insurance.

29 (215 ILCS 5/155.19) (from Ch. 73, par. 767.19)

30 Sec. 155.19. Report of medical liability claims.

31 (a) All claims filed after December 31, 1976 with any
32 insurer and all suits filed after December 31, 1976 in any
33 court in this State, alleging liability on the part of any
34 physician, hospital or other health care provider for medically
35 related injuries, shall be reported to the Director of

1 Insurance in such form and under such terms and conditions as
2 may be prescribed by the Director. The Director shall maintain
3 complete and accurate records of all such claims and suits
4 including their nature, amount, disposition and other
5 information as he may deem useful or desirable in observing and
6 reporting on health care provider liability trends in this
7 State. The Director shall release to appropriate disciplinary
8 and licensing agencies any such data or information which may
9 assist such agencies in improving the quality of health care or
10 which may be useful to such agencies for the purpose of
11 professional discipline.

12 (b) All judgments and settlements filed with the clerks of
13 the circuit court shall be reported to the Director at least
14 monthly in such form and under such terms and conditions as may
15 be prescribed by the Department by Rule. At minimum, the
16 information reported to the Director under this Section shall
17 include:

18 (1) the defendant or defendants;

19 (2) the plaintiff or plaintiffs;

20 (3) the defense attorney's name and address and
21 associated law firm;

22 (4) the plaintiff attorney's name and address and
23 associated law firm;

24 (5) the docket number;

25 (6) the verdict or judgment award including:

26 (i) economic damages, future medical expenses,
27 lost wages, and other economic expenses; and

28 (ii) non-economic damages award;

29 (7) remittitur amounts;

30 (8) defense attorney's fees; and

31 (9) plaintiff's attorney's fees, including any request
32 for additional fees over the amount allowed in Section
33 2-1114 of the Code of Civil Procedure.

34 The identity of any plaintiff, defendant, attorneys, or
35 insurance company shall not be disclosed by the Department.

36 (c) With due regard for appropriate maintenance of the

1 confidentiality thereof, the Director may release from time to
2 time to the Governor, the General Assembly and the general
3 public statistical reports based on such data and information.

4 (d) The Director may promulgate such rules and regulations
5 as may be necessary to carry out the provisions of this
6 Section.

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

8 Section 10-10. The Illinois Court Statistics Act is changed
9 by adding Section 5 as follows:

10 (705 ILCS 125/5 new)

11 Sec. 5. Medical liability reporting. The Clerks of all
12 courts shall report at least monthly all healing art or medical
13 malpractice judgements and settlements filed with the court to
14 the Director of the Department of Insurance on forms or in a
15 format the Department prescribes by rule. The minimum
16 information to be reported shall include the following:

17 (1) the defendant or defendants;

18 (2) the plaintiff or plaintiffs;

19 (3) the defense attorney's name and address and
20 associated law firm;

21 (4) the plaintiff attorney's name and address and
22 associated law firm;

23 (5) the docket number;

24 (6) the verdict or judgment award including:

25 (i) economic damages, future medical expenses,
26 lost wages, and other economic expenses; and

27 (ii) non-economic damages award;

28 (7) remittitur amounts;

29 (8) defense attorney's fees; and

30 (9) plaintiff's attorney's fees, including any request
31 for additional fees over the amount allowed in Section
32 2-1114 of the Code of Civil Procedure.

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4	225 ILCS 60/22	from Ch. 111, par. 4400-22
5	225 ILCS 60/23	from Ch. 111, par. 4400-23
6	710 ILCS 15/8	from Ch. 10, par. 208
7	710 ILCS 15/9	from Ch. 10, par. 209
8	735 ILCS 5/2-622	from Ch. 110, par. 2-622
9	735 ILCS 5/2-1105.01 new	
10	735 ILCS 5/2-1107.1	from Ch. 110, par. 2-1107.1
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19	705 ILCS 125/5 new	