



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB0646

Introduced 1/28/2005, by Rep. Jack D. Franks

SYNOPSIS AS INTRODUCED:

225 ILCS 60/22

from Ch. 111, par. 4400-22

Amends the Medical Practice Act of 1987. Provides that, if a person has committed a total of 3 or more violations of the gross negligence ground for discipline or any substantially similar provision of another jurisdiction, or any combination thereof, the Department must refuse to issue a license to the person and must revoke any license issued to the person under the Act. Effective immediately.

LRB094 05073 AMC 35109 b

1 AN ACT concerning regulation.

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

4 Section 5. The Medical Practice Act of 1987 is amended by
5 changing Section 22 as follows:

6 (225 ILCS 60/22) (from Ch. 111, par. 4400-22)

7 (Section scheduled to be repealed on January 1, 2007)

8 Sec. 22. Disciplinary action.

9 (A) The Department may revoke, suspend, place on
10 probationary status, or take any other disciplinary action as
11 the Department may deem proper with regard to the license or
12 visiting professor permit of any person issued under this Act
13 to practice medicine, or to treat human ailments without the
14 use of drugs and without operative surgery upon any of the
15 following grounds:

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

18 (a) a facility licensed pursuant to the Ambulatory
19 Surgical Treatment Center Act;

20 (b) an institution licensed under the Hospital
21 Licensing Act; or

22 (c) an ambulatory surgical treatment center or
23 hospitalization or care facility maintained by the
24 State or any agency thereof, where such department or
25 agency has authority under law to establish and enforce
26 standards for the ambulatory surgical treatment
27 centers, hospitalization, or care facilities under its
28 management and control; or

29 (d) ambulatory surgical treatment centers,
30 hospitalization or care facilities maintained by the
31 Federal Government; or

32 (e) ambulatory surgical treatment centers,

1 hospitalization or care facilities maintained by any
2 university or college established under the laws of
3 this State and supported principally by public funds
4 raised by taxation.

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

8 (3) The conviction of a felony in this or any other
9 jurisdiction, except as otherwise provided in subsection B
10 of this Section, whether or not related to practice under
11 this Act, or the entry of a guilty or nolo contendere plea
12 to a felony charge.

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

14 (5) Engaging in dishonorable, unethical or
15 unprofessional conduct of a character likely to deceive,
16 defraud or harm the public.

17 (6) Obtaining any fee by fraud, deceit, or
18 misrepresentation.

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

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

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

28 (10) Making a false or misleading statement regarding
29 their skill or the efficacy or value of the medicine,
30 treatment, or remedy prescribed by them at their direction
31 in the treatment of any disease or other condition of the
32 body or mind.

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

35 (12) Disciplinary action of another state or
36 jurisdiction against a license or other authorization to

1 practice as a medical doctor, doctor of osteopathy, doctor
2 of osteopathic medicine or doctor of chiropractic, a
3 certified copy of the record of the action taken by the
4 other state or jurisdiction being prima facie evidence
5 thereof.

6 (13) Violation of any provision of this Act or of the
7 Medical Practice Act prior to the repeal of that Act, or
8 violation of the rules, or a final administrative action of
9 the Director, after consideration of the recommendation of
10 the Disciplinary Board.

11 (14) Dividing with anyone other than physicians with
12 whom the licensee practices in a partnership, Professional
13 Association, limited liability company, or Medical or
14 Professional Corporation any fee, commission, rebate or
15 other form of compensation for any professional services
16 not actually and personally rendered. Nothing contained in
17 this subsection prohibits persons holding valid and
18 current licenses under this Act from practicing medicine in
19 partnership under a partnership agreement, including a
20 limited liability partnership, in a limited liability
21 company under the Limited Liability Company Act, in a
22 corporation authorized by the Medical Corporation Act, as
23 an association authorized by the Professional Association
24 Act, or in a corporation under the Professional Corporation
25 Act or from pooling, sharing, dividing or apportioning the
26 fees and monies received by them or by the partnership,
27 corporation or association in accordance with the
28 partnership agreement or the policies of the Board of
29 Directors of the corporation or association. Nothing
30 contained in this subsection prohibits 2 or more
31 corporations authorized by the Medical Corporation Act,
32 from forming a partnership or joint venture of such
33 corporations, and providing medical, surgical and
34 scientific research and knowledge by employees of these
35 corporations if such employees are licensed under this Act,
36 or from pooling, sharing, dividing, or apportioning the

1 fees and monies received by the partnership or joint
2 venture in accordance with the partnership or joint venture
3 agreement. Nothing contained in this subsection shall
4 abrogate the right of 2 or more persons, holding valid and
5 current licenses under this Act, to each receive adequate
6 compensation for concurrently rendering professional
7 services to a patient and divide a fee; provided, the
8 patient has full knowledge of the division, and, provided,
9 that the division is made in proportion to the services
10 performed and responsibility assumed by each.

11 (15) A finding by the Medical Disciplinary Board that
12 the registrant after having his or her license placed on
13 probationary status or subjected to conditions or
14 restrictions violated the terms of the probation or failed
15 to comply with such terms or conditions.

16 (16) Abandonment of a patient.

17 (17) Prescribing, selling, administering,
18 distributing, giving or self-administering any drug
19 classified as a controlled substance (designated product)
20 or narcotic for other than medically accepted therapeutic
21 purposes.

22 (18) Promotion of the sale of drugs, devices,
23 appliances or goods provided for a patient in such manner
24 as to exploit the patient for financial gain of the
25 physician.

26 (19) Offering, undertaking or agreeing to cure or treat
27 disease by a secret method, procedure, treatment or
28 medicine, or the treating, operating or prescribing for any
29 human condition by a method, means or procedure which the
30 licensee refuses to divulge upon demand of the Department.

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

34 (21) Wilfully making or filing false records or reports
35 in his or her practice as a physician, including, but not
36 limited to, false records to support claims against the

1 medical assistance program of the Department of Public Aid
2 under the Illinois Public Aid Code.

3 (22) Wilful omission to file or record, or wilfully
4 impeding the filing or recording, or inducing another
5 person to omit to file or record, medical reports as
6 required by law, or wilfully failing to report an instance
7 of suspected abuse or neglect as required by law.

8 (23) Being named as a perpetrator in an indicated
9 report by the Department of Children and Family Services
10 under the Abused and Neglected Child Reporting Act, and
11 upon proof by clear and convincing evidence that the
12 licensee has caused a child to be an abused child or
13 neglected child as defined in the Abused and Neglected
14 Child Reporting Act.

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

18 (25) Gross and wilful and continued overcharging for
19 professional services, including filing false statements
20 for collection of fees for which services are not rendered,
21 including, but not limited to, filing such false statements
22 for collection of monies for services not rendered from the
23 medical assistance program of the Department of Public Aid
24 under the Illinois Public Aid Code.

25 (26) A pattern of practice or other behavior which
26 demonstrates incapacity or incompetence to practice under
27 this Act.

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

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

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

1 (30) Wilfully or negligently violating the
2 confidentiality between physician and patient except as
3 required by law.

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

7 (32) Aiding and abetting an individual not licensed
8 under this Act in the practice of a profession licensed
9 under this Act.

10 (33) Violating state or federal laws or regulations
11 relating to controlled substances.

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

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

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

1 (37) Failure to transfer copies of medical records as
2 required by law.

3 (38) Failure to furnish the Department, its
4 investigators or representatives, relevant information,
5 legally requested by the Department after consultation
6 with the Chief Medical Coordinator or the Deputy Medical
7 Coordinator.

8 (39) Violating the Health Care Worker Self-Referral
9 Act.

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

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

14 (42) Entering into an excessive number of written
15 collaborative agreements with licensed advanced practice
16 nurses resulting in an inability to adequately collaborate
17 and provide medical direction.

18 (43) Repeated failure to adequately collaborate with
19 or provide medical direction to a licensed advanced
20 practice nurse.

21 All proceedings to suspend, revoke, place on probationary
22 status, or take any other disciplinary action as the Department
23 may deem proper, with regard to a license on any of the
24 foregoing grounds, must be commenced within 3 years next after
25 receipt by the Department of a complaint alleging the
26 commission of or notice of the conviction order for any of the
27 acts described herein. Except for the grounds numbered (8), (9)
28 and (29), no action shall be commenced more than 5 years after
29 the date of the incident or act alleged to have violated this
30 Section. In the event of the settlement of any claim or cause
31 of action in favor of the claimant or the reduction to final
32 judgment of any civil action in favor of the plaintiff, such
33 claim, cause of action or civil action being grounded on the
34 allegation that a person licensed under this Act was negligent
35 in providing care, the Department shall have an additional
36 period of one year from the date of notification to the

1 Department under Section 23 of this Act of such settlement or
2 final judgment in which to investigate and commence formal
3 disciplinary proceedings under Section 36 of this Act, except
4 as otherwise provided by law. The time during which the holder
5 of the license was outside the State of Illinois shall not be
6 included within any period of time limiting the commencement of
7 disciplinary action by the Department.

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

17 The Department may refuse to issue or take disciplinary
18 action concerning the license of any person who fails to file a
19 return, or to pay the tax, penalty or interest shown in a filed
20 return, or to pay any final assessment of tax, penalty or
21 interest, as required by any tax Act administered by the
22 Illinois Department of Revenue, until such time as the
23 requirements of any such tax Act are satisfied as determined by
24 the Illinois Department of Revenue.

25 The Department, upon the recommendation of the
26 Disciplinary Board, shall adopt rules which set forth standards
27 to be used in determining:

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

30 (b) what constitutes dishonorable, unethical or
31 unprofessional conduct of a character likely to deceive,
32 defraud, or harm the public;

33 (c) what constitutes immoral conduct in the commission
34 of any act, including, but not limited to, commission of an
35 act of sexual misconduct related to the licensee's
36 practice; and

1 (d) what constitutes gross negligence in the practice
2 of medicine.

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

6 In enforcing this Section, the Medical Disciplinary Board,
7 upon a showing of a possible violation, may compel any
8 individual licensed to practice under this Act, or who has
9 applied for licensure or a permit pursuant to this Act, to
10 submit to a mental or physical examination, or both, as
11 required by and at the expense of the Department. The examining
12 physician or physicians shall be those specifically designated
13 by the Disciplinary Board. The Medical Disciplinary Board or
14 the Department may order the examining physician to present
15 testimony concerning this mental or physical examination of the
16 licensee or applicant. No information shall be excluded by
17 reason of any common law or statutory privilege relating to
18 communication between the licensee or applicant and the
19 examining physician. The individual to be examined may have, at
20 his or her own expense, another physician of his or her choice
21 present during all aspects of the examination. Failure of any
22 individual to submit to mental or physical examination, when
23 directed, shall be grounds for suspension of his or her license
24 until such time as the individual submits to the examination if
25 the Disciplinary Board finds, after notice and hearing, that
26 the refusal to submit to the examination was without reasonable
27 cause. If the Disciplinary Board finds a physician unable to
28 practice because of the reasons set forth in this Section, the
29 Disciplinary Board shall require such physician to submit to
30 care, counseling, or treatment by physicians approved or
31 designated by the Disciplinary Board, as a condition for
32 continued, reinstated, or renewed licensure to practice. Any
33 physician, whose license was granted pursuant to Sections 9,
34 17, or 19 of this Act, or, continued, reinstated, renewed,
35 disciplined or supervised, subject to such terms, conditions or
36 restrictions who shall fail to comply with such terms,

1 conditions or restrictions, or to complete a required program
2 of care, counseling, or treatment, as determined by the Chief
3 Medical Coordinator or Deputy Medical Coordinators, shall be
4 referred to the Director for a determination as to whether the
5 licensee shall have their license suspended immediately,
6 pending a hearing by the Disciplinary Board. In instances in
7 which the Director immediately suspends a license under this
8 Section, a hearing upon such person's license must be convened
9 by the Disciplinary Board within 15 days after such suspension
10 and completed without appreciable delay. The Disciplinary
11 Board shall have the authority to review the subject
12 physician's record of treatment and counseling regarding the
13 impairment, to the extent permitted by applicable federal
14 statutes and regulations safeguarding the confidentiality of
15 medical records.

16 An individual licensed under this Act, affected under this
17 Section, shall be afforded an opportunity to demonstrate to the
18 Disciplinary Board that they can resume practice in compliance
19 with acceptable and prevailing standards under the provisions
20 of their license.

21 The Department may promulgate rules for the imposition of
22 fines in disciplinary cases, not to exceed \$5,000 for each
23 violation of this Act. Fines may be imposed in conjunction with
24 other forms of disciplinary action, but shall not be the
25 exclusive disposition of any disciplinary action arising out of
26 conduct resulting in death or injury to a patient. Any funds
27 collected from such fines shall be deposited in the Medical
28 Disciplinary Fund.

29 (B) The Department shall revoke the license or visiting
30 permit of any person issued under this Act to practice medicine
31 or to treat human ailments without the use of drugs and without
32 operative surgery, who has been convicted a second time of
33 committing any felony under the Illinois Controlled Substances
34 Act, or who has been convicted a second time of committing a
35 Class 1 felony under Sections 8A-3 and 8A-6 of the Illinois
36 Public Aid Code. A person whose license or visiting permit is

1 revoked under this subsection B of Section 22 of this Act shall
2 be prohibited from practicing medicine or treating human
3 ailments without the use of drugs and without operative
4 surgery.

5 (C) The Medical Disciplinary Board shall recommend to the
6 Department civil penalties and any other appropriate
7 discipline in disciplinary cases when the Board finds that a
8 physician willfully performed an abortion with actual
9 knowledge that the person upon whom the abortion has been
10 performed is a minor or an incompetent person without notice as
11 required under the Parental Notice of Abortion Act of 1995.
12 Upon the Board's recommendation, the Department shall impose,
13 for the first violation, a civil penalty of \$1,000 and for a
14 second or subsequent violation, a civil penalty of \$5,000.

15 (D) If a person has committed a total of 3 or more
16 violations of item (4) of subsection (A) of this Section or any
17 substantially similar provision of another jurisdiction, or
18 any combination thereof, the Department must refuse to issue a
19 license to the person and must revoke any license issued to the
20 person under this Act.

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

23 Section 99. Effective date. This Act takes effect upon
24 becoming law.