

**94TH GENERAL ASSEMBLY****State of Illinois****2005 and 2006****HB1599**

Introduced 02/16/05, by Rep. Daniel V. Beiser

**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 investigator for every 3,000 (instead of 5,000) 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. Removes language requiring the written consent of a patient for the release of the name or other means of identification of a patient in a report to the Disciplinary Board. 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). Places limits on the amount of non-economic damages that may be awarded against a hospital and its personnel or against a physician and the physician's business or corporation in medical malpractice actions. Protects a physician's personal assets in healing art malpractice cases. Makes various other changes in other Acts concerning health care. Effective immediately.

LRB094 07854 LCB 38035 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 3,000  
21 ~~5000~~ physicians licensed in the State and such other full-time  
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 reenacting and changing Sections 2-622, 2-1107.1, 2-1109,  
28 2-1702, and 8-2501, by changing Sections 2-1704 and 8-1901, and  
29 by adding Sections 2-1105.01, 2-1706.5, and 8-2502 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) The changes to this Section made by this amendatory Act  
9 of 94th General Assembly do not apply to or affect any actions  
10 pending at the time of its effective date, but apply to cases  
11 filed on or after its 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 The changes to this Section made by this amendatory Act of  
6 the 94th General Assembly apply to causes of action filed on or  
7 after its effective date.

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

9 (735 ILCS 5/2-1109) (from Ch. 110, par. 2-1109)

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

12 Sec. 2-1109. Itemized verdicts.

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

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

34 (i) "Economic loss" or "economic damages" means all  
35 damages that are tangible, such as damages for past and

1 future medical expenses, loss of income or earnings and  
2 other property loss.

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

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

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

11 (d) The changes to this Section made by this amendatory Act  
12 of the 94th General Assembly apply to causes of action filed on  
13 or after its effective date.

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

15 (735 ILCS 5/2-1702) (from Ch. 110, par. 2-1702)

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

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

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

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

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

28 (735 ILCS 5/2-1704) (from Ch. 110, par. 2-1704)

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



1 dental, or podiatric malpractice. The term "healing art" shall  
2 not include care and treatment by spiritual means through  
3 prayer in accord with the tenets and practices of a recognized  
4 church or religious denomination.

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

6 (735 ILCS 5/2-1706.5 new)

7 Sec. 2-1706.5. Standards for economic and non-economic  
8 damages.

9 (a) In any medical malpractice action in which economic and  
10 non-economic damages may be awarded, the following standards  
11 shall apply:

12 (1) In a case of an award against a hospital and its  
13 personnel, the total amount of non-economic damages shall  
14 not exceed \$750,000 awarded to all plaintiffs in any civil  
15 action arising out of the care.

16 (2) In a case of an award against a physician and the  
17 physician's business or corporation entity, the total  
18 amount of non-economic damages shall not exceed \$500,000  
19 awarded to all plaintiffs in any civil action arising out  
20 of the care.

21 (3) In awarding damages in a medical malpractice case,  
22 the finder of fact shall render verdicts with a specific  
23 award of damages for economic loss, if any, and a specific  
24 award of damages for non-economic loss, if any.

25 (b) In any medical malpractice action where an individual  
26 plaintiff earns less than the annual average weekly wage, as  
27 determined by the Illinois Workers' Compensation Commission,  
28 at the time the action is filed, any award may include an  
29 amount equal to the wage the individual plaintiff earns or the  
30 annual average weekly wage.

31 (c) Any party in a medical malpractice case may introduce  
32 annuity evidence to inform the fact finder about the time value  
33 of an award and its ability to cover the plaintiff's damages  
34 over time.

35 (d) If any provision of this Section or its application to

1 any person or circumstance is held invalid, the invalidity of  
2 that provision or application does not affect other provisions  
3 or applications of this Section.

4 (735 ILCS 5/8-1901) (from Ch. 110, par. 8-1901)

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

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

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

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

2 (735 ILCS 5/8-2501) (from Ch. 110, par. 8-2501)

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

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

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

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

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

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

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

34 The changes to this Section made by this amendatory Act of  
35 the 94th General Assembly apply to causes of action filed on or

1 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 Secretary of Financial and Professional Regulation  
28 shall establish a Professional Liability Insurance Resource  
29 Center on the World Wide Web containing the following  
30 information:

31 (1) Names, address, and telephone numbers of all  
32 licensed companies providing professional liability

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

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

12 (b) The Department of Financial and Professional  
13 Regulation shall conduct and publish an annual study of the  
14 impact of this amendatory Act of the 94th General Assembly by  
15 county on the following:

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

18 (2) The amounts of economic and non-economic damages  
19 awarded per case.

20 (3) The amount of plaintiff and defense attorney fees  
21 paid per case.

22 (4) The cost and availability of healing art  
23 malpractice coverage for hospitals and physicians.

24 (c) Every 2 years the Secretary of Financial and  
25 Professional Regulation shall make recommendations to the  
26 Governor, the Speaker of the House, and the President of the  
27 Senate on changes in the law necessary to maintain affordable  
28 and accessible 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 Secretary of

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

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

19 (1) the defendant or defendants;

20 (2) the plaintiff or plaintiffs;

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

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

25 (5) the docket number;

26 (6) the verdict or judgment award including:

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

29 (ii) non-economic damages award;

30 (7) remittitur amounts;

31 (8) defense attorney's fees; and

32 (9) plaintiff's attorney's fees, including any request  
33 for additional fees over the amount allowed in Section  
34 2-1114 of the Code of Civil Procedure.

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

1       (c) With due regard for appropriate maintenance of the  
2 confidentiality thereof, the Secretary ~~Director~~ may release  
3 from time to time to the Governor, the General Assembly and the  
4 general public statistical reports based on such data and  
5 information.

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

9       (Source: P.A. 79-1434.)

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

12       (705 ILCS 125/5 new)

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

19               (1) the defendant or defendants;

20               (2) the plaintiff or plaintiffs;

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

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

25               (5) the docket number;

26               (6) the verdict or judgment award including:

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

29                       (ii) non-economic damages award;

30               (7) remittitur amounts;

31               (8) defense attorney's fees; and

32               (9) plaintiff's attorney's fees, including any request  
33 for additional fees over the amount allowed in Section  
34 2-1114 of the Code of Civil Procedure.

## 1 ARTICLE 90.

2 Section 90-90. Severability. If any provision of this Act  
3 or its application to any person or circumstance is held  
4 invalid, the invalidity of that provision or application does  
5 not affect other provisions or applications of this Act that  
6 can be given effect without the invalid provision or  
7 application.

## 8 ARTICLE 99.

9 Section 99-99. Effective date. This Act takes effect upon  
10 becoming law.



1	INDEX	
2	Statutes amended in order of appearance	
3	225 ILCS 60/7	from Ch. 111, par. 4400-7
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
11	735 ILCS 5/2-1109	from Ch. 110, par. 2-1109
12	735 ILCS 5/2-1702	from Ch. 110, par. 2-1702
13	735 ILCS 5/2-1704	from Ch. 110, par. 2-1704
14	735 ILCS 5/2-1706.5 new	
15	735 ILCS 5/8-1901	from Ch. 110, par. 8-1901
16	735 ILCS 5/8-2501	from Ch. 110, par. 8-2501
17	735 ILCS 5/8-2502 new	
18	215 ILCS 5/155.18a new	
19	215 ILCS 5/155.19	from Ch. 73, par. 767.19
20	705 ILCS 125/5 new	