

94TH GENERAL ASSEMBLY**State of Illinois****2005 and 2006****HB4074**

Introduced 05/05/05, by Rep. Thomas Holbrook - Daniel V. Beiser - Dan Reitz - Brandon W. Phelps - John E. Bradley

SYNOPSIS AS INTRODUCED:

See Index

Makes legislative findings. Amends the Open Meetings Act, Counties Code, and the Illinois Insurance Code. Provides for creation of risk retention trusts for the pooling of risks to provide professional liability coverage for its physicians and health care professionals providing medical care and related health care. Authorizes a county board to incur indebtedness to ensure the availability of and improve hospital, medical, and health services. Amends the Regulatory Sunset Act to extend the repeal of the Medical Practice Act of 1987 to 2016. Amends the Illinois Insurance Code. Makes numerous changes concerning medical liability insurance rates and regulation. Requires the Secretary of Financial and Professional Regulation to establish a Professional Liability Insurance Resource Center on the World Wide Web, and amends the Clerks of Courts Act to require court clerks to provide certain relevant information. Amends the Medical Practice Act of 1987. Makes changes concerning medical coordinators, investigators, discipline, disciplinary proceedings, records, disclosure of information, incidents to which the Act applies, immunity, and other matters. Amends the Health Care Arbitration Act by making changes concerning distribution, validity, and cancellation of a health care arbitration agreement and making various other changes. Amends the Code of Civil Procedure by: making changes concerning extension of the period for naming a respondent in discovery as a defendant, jury instructions in healing art malpractice actions, the affidavit and report based on the determination of a reviewing health professional; limiting recoveries from hospitals, physicians, and others for non-economic damages in medical malpractice actions; limiting liability of a hospital for the medical care provided by a non-employee member of the hospital's medical staff; changing provisions concerning contingent fees in medical malpractice actions and standards for damages; providing that a statement that a health care provider is "sorry" for an outcome is not admissible as evidence under specified circumstances; changing and adding provisions concerning expert witness standards and guaranteed payment of future medical expenses; and making other changes. Repeals numerous provisions of the Code of Civil Procedure concerning medical malpractice actions. Amends the Illinois Good Samaritan Act. Expands the immunity for civil damages provided for services performed (i) without compensation at, or upon referral from, free medical clinics and (ii) by retired physicians pursuant to an emergency department on call list. Makes other changes. Creates the Sorry Works! Pilot Program Act under which participating hospitals and physicians shall promptly acknowledge and apologize for mistakes in patient care and promptly offer fair settlements. Creates a committee to develop, oversee, and implement the program and specifies the committee's membership. Creates the Sorry Works! Fund as a special fund in the State treasury and amends the State Finance Act to include the Sorry Works! Fund as a special fund. Contains provisions concerning applicability and construction. Effective immediately.

LRB094 12274 RCE 46043 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 101. Findings. The General Assembly finds as
6 follows:

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

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

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

19 (4) This health care crisis, which endangers the public
20 health, safety, and welfare of the citizens of Illinois,
21 requires significant reforms to the civil justice system
22 currently endangering health care for citizens of
23 Illinois. Limiting non-economic damages is one of these
24 significant reforms designed to benefit the people of the
25 State of Illinois. An increasing number of citizens or
26 municipalities are enacting ordinances that limit damages
27 and help maintain the health care delivery system in
28 Illinois and protect the health, safety, and welfare of the
29 people of Illinois.

30 (5) In order to preserve the public health, safety, and
31 welfare of the people of Illinois, the current medical
32 malpractice situation requires reforms that enhance the

1 State's oversight of physicians and ability to discipline
2 physicians, that increase the State's oversight of medical
3 liability insurance carriers, that reduce the number of
4 nonmeritorious healing art malpractice actions, that limit
5 non-economic damages in healing art malpractice actions,
6 that encourage physicians to provide voluntary services at
7 free medical clinics, and that encourage physicians and
8 hospitals to continue providing health care services in
9 Illinois.

10 ARTICLE 2

11 Section 201. Short title. This Article 2 may be cited as
12 the Sorry Works! Pilot Program Act, and references in this
13 Article to "this Act" mean this Article.

14 Section 205. Sorry Works! pilot program. The Sorry Works!
15 pilot program is established. During the first year of the
16 program's operation, participation in the program shall be open
17 to one hospital. Hospitals may participate only with the
18 approval of the hospital administration and the hospital's
19 organized medical staff. During the second year of the
20 program's operation, participation in the program shall be open
21 to one additional hospital.

22 The first participating hospital selected by the committee
23 established under Section 210 shall be located in a county with
24 a population greater than 200,000 that is contiguous with the
25 Mississippi River.

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

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

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

22 Section 210. Establishment of committee.

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

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

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

34 (3) The Director of the Division of Insurance or his or
35 her designee.

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

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

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

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

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

18 Section 215. Termination of program.

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

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

24 Section 270. Findings and purpose. The following are the
25 findings and purposes related to (i) the changes made to the
26 Open Meetings Act and the Counties Code by this amendatory Act
27 of the 94th General Assembly and (ii) Article XLV of the
28 Illinois Insurance Code added by this amendatory Act of the
29 94th General Assembly:

30 (1) In order to provide an alternative to the private
31 insurance market to cover medical liability risks, it is
32 the finding of the General Assembly that counties in the
33 State may find it necessary to seek to protect the public
34 health, safety, and welfare by providing an alternative

1 source of insurance or self-insurance for physicians
2 practicing medicine and their personnel within that
3 county, and that providing such an alternative source is in
4 the public interest and serves a public purpose.

5 (2) A program to provide a stable and ongoing source of
6 professional liability coverage for physicians and their
7 personnel through an insurance or self-insurance trust,
8 under the direction and control of a county or counties,
9 will operate for the protection of the public health,
10 safety, and welfare and serve a paramount public interest
11 and purpose of the county or counties.

12 Section 275. The Open Meetings Act is amended by changing
13 Section 2 as follows:

14 (5 ILCS 120/2) (from Ch. 102, par. 42)

15 Sec. 2. Open meetings.

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

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

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

28 (1) The appointment, employment, compensation,
29 discipline, performance, or dismissal of specific
30 employees of the public body or legal counsel for the
31 public body, including hearing testimony on a complaint
32 lodged against an employee of the public body or against
33 legal counsel for the public body to determine its
34 validity.

1 (2) Collective negotiating matters between the public
2 body and its employees or their representatives, or
3 deliberations concerning salary schedules for one or more
4 classes of employees.

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

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

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

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

24 (7) The sale or purchase of securities, investments, or
25 investment contracts.

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

30 (9) Student disciplinary cases.

31 (10) The placement of individual students in special
32 education programs and other matters relating to
33 individual students.

34 (11) Litigation, when an action against, affecting or
35 on behalf of the particular public body has been filed and
36 is pending before a court or administrative tribunal, or

1 when the public body finds that an action is probable or
2 imminent, in which case the basis for the finding shall be
3 recorded and entered into the minutes of the closed
4 meeting.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 Section 280. The State Finance Act is amended by adding
26 Section 5.640 as follows:

27 (30 ILCS 105/5.640 new)

28 Sec. 5.640. The Sorry Works! Fund.

29 Section 285. The Counties Code is amended by changing
30 Section 5-1005 and by adding Division 6-34 as follows:

31 (55 ILCS 5/5-1005) (from Ch. 34, par. 5-1005)

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

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

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

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

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

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

17 6. To cause to be erected, or otherwise provided, suitable
18 buildings for, and maintain a county hospital and necessary
19 branch hospitals and/or a county sheltered care home or county
20 nursing home for the care of such sick, chronically ill or
21 infirm persons as may by law be proper charges upon the county,
22 or upon other governmental units, and to provide for the
23 management of the same. The county board may establish rates to
24 be paid by persons seeking care and treatment in such hospital
25 or home in accordance with their financial ability to meet such
26 charges, either personally or through a hospital plan or
27 hospital insurance, and the rates to be paid by governmental
28 units, including the State, for the care of sick, chronically
29 ill or infirm persons admitted therein upon the request of such
30 governmental units. Any hospital maintained by a county under
31 this Section is authorized to provide any service and enter
32 into any contract or other arrangement not prohibited for a
33 hospital that is licensed under the Hospital Licensing Act,
34 incorporated under the General Not-For-Profit Corporation Act,
35 and exempt from taxation under paragraph (3) of subsection (c)
36 of Section 501 of the Internal Revenue Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

32 20. To appropriate funds from the county treasury and loan
33 such funds to a county water commission created under the
34 "Water Commission Act", approved June 30, 1984, as now or
35 hereafter amended, in such amounts and upon such terms as the
36 county may determine or the county and the commission may

1 agree. The county shall not under any circumstances be
2 obligated to make such loans. The county shall not be required
3 to charge interest on any such loans.

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

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

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

24 (55 ILCS 5/Div. 6-34 heading new)

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

26 (55 ILCS 5/6-34001 new)

27 Sec. 6-34001. Authorization. The county board of any county
28 with a population of 200,000 or more according to the most
29 recent federal decennial census (and a county with a population
30 of less than 200,000 according to the most recent federal
31 decennial census if that county is participating in a single
32 trust program with one or more other counties in accordance
33 with the requirements of paragraph (21) of Section 5-1005 of
34 this Code) may, upon finding such action necessary for

1 protection of the public health, safety, and welfare, incur an
2 indebtedness by the establishment of lines or letters of credit
3 or issue general obligation or revenue bonds for the purpose of
4 ensuring the availability of and improving hospital, medical,
5 and health services as authorized under paragraph (21) of
6 Section 5-1005 of this Code.

7 (55 ILCS 5/6-34002 new)

8 Sec. 6-34002. Bonds. The bonds authorized in Section
9 6-34001 shall be issued in such denominations, be for such term
10 or terms, and bear interest at such rate as may be specified in
11 the resolution of the county board authorizing the issuance of
12 those bonds.

13 Section 290. The Illinois Insurance Code is amended by
14 changing Sections 155.18, 155.19, and 1204 and by adding
15 Section 155.18a and Article XLV as follows:

16 (215 ILCS 5/155.18) (from Ch. 73, par. 767.18)

17 Sec. 155.18. (a) This Section shall apply to insurance on
18 risks based upon negligence by a physician, hospital or other
19 health care provider, referred to herein as medical liability
20 insurance. This Section shall not apply to contracts of
21 reinsurance, nor to any farm, county, district or township
22 mutual insurance company transacting business under an Act
23 entitled "An Act relating to local mutual district, county and
24 township insurance companies", approved March 13, 1936, as now
25 or hereafter amended, nor to any such company operating under a
26 special charter.

27 (b) The following standards shall apply to the making and
28 use of rates pertaining to all classes of medical liability
29 insurance:

30 (1) Rates shall not be excessive or inadequate, ~~as~~
31 ~~herein defined,~~ nor shall they be unfairly discriminatory.
32 ~~No rate shall be held to be excessive unless such rate is~~
33 ~~unreasonably high for the insurance provided, and a~~

1 ~~reasonable degree of competition does not exist in the area~~
2 ~~with respect to the classification to which such rate is~~
3 ~~applicable.~~

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

7 (2) Consideration shall be given, to the extent
8 applicable, to past and prospective loss experience within
9 and outside this State, to a reasonable margin for
10 underwriting profit and contingencies, to past and
11 prospective expenses both countrywide and those especially
12 applicable to this State, and to all other factors,
13 including judgment factors, deemed relevant within and
14 outside this State.

15 Consideration may also be given in the making and use
16 of rates to dividends, savings or unabsorbed premium
17 deposits allowed or returned by companies to their
18 policyholders, members or subscribers.

19 (3) The systems of expense provisions included in the
20 rates for use by any company or group of companies may
21 differ from those of other companies or groups of companies
22 to reflect the operating methods of any such company or
23 group with respect to any kind of insurance, or with
24 respect to any subdivision or combination thereof.

25 (4) Risks may be grouped by classifications for the
26 establishment of rates and minimum premiums.
27 Classification rates may be modified to produce rates for
28 individual risks in accordance with rating plans which
29 establish standards for measuring variations in hazards or
30 expense provisions, or both. Such standards may measure any
31 difference among risks that have a probable effect upon
32 losses or expenses. Such classifications or modifications
33 of classifications of risks may be established based upon
34 size, expense, management, individual experience, location
35 or dispersion of hazard, or any other reasonable
36 considerations and shall apply to all risks under the same

1 or substantially the same circumstances or conditions. The
2 rate for an established classification should be related
3 generally to the anticipated loss and expense factors of
4 the class.

5 (c) (1) Every company writing medical liability insurance
6 shall file with the Secretary of Financial and Professional
7 Regulation ~~Director of Insurance~~ the rates and rating schedules
8 it uses for medical liability insurance. A rate shall go into
9 effect upon filing, except as otherwise provided in this
10 Section.

11 (2) If the percentage increase in a company's rate is
12 higher than the percentage increase in the Consumer Price Index
13 for All Urban Consumers, United States city average, medical
14 care, 1982-84 = 100, published by the Bureau of Labor
15 Statistics of the United States Department of Labor for the
16 period between the last previous rate filing for rates covered
17 in the increase for that company and the current rate filing,
18 then the company's rate increase may be approved by the
19 Secretary only in accordance with this paragraph (2). The
20 Secretary shall notify the public of any application by an
21 insurer for a rate increase to which this paragraph (2)
22 applies. The application shall be deemed approved 60 days after
23 public notice unless (A) an insured requests a public hearing
24 within 45 days of public notice and the Secretary determines to
25 convene the public hearing, or (B) the Secretary at his or her
26 discretion convenes a public hearing. In any event, a rate
27 increase application to which this paragraph (2) applies shall
28 be deemed approved as filed 180 days after the rate application
29 is received by the Secretary unless that application has been
30 disapproved or otherwise adjusted by an order of the Secretary
31 subsequent to a public hearing. If the rate is adjusted but not
32 disapproved in total, the order shall specify that the rate
33 shall go into effect as adjusted.

34 (3) A rate ~~(1) This~~ filing shall occur upon a company's
35 commencement of medical liability insurance business in this
36 State at least annually and thereafter as often as the rates

1 are changed or amended.

2 (4) ~~(2)~~ For the purposes of this Section, any change in
3 premium to the company's insureds as a result of a change in
4 the company's base rates or a change in its increased limits
5 factors shall constitute a change in rates and shall require a
6 filing with the Secretary ~~Director~~.

7 (5) ~~(3)~~ It shall be certified in such filing by an officer
8 of the company and a qualified actuary that the company's rates
9 are based on sound actuarial principles and are not
10 inconsistent with the company's experience. The Secretary may
11 request any additional statistical data and other pertinent
12 information necessary to determine the manner the company used
13 to set the filed rates and the reasonableness of those rates.

14 (c-5) At the request of an insured, the Secretary shall
15 convene a public hearing for the purpose of receiving testimony
16 from the company and from any interested persons regarding the
17 company's rate. The Secretary may also convene a public hearing
18 under this subsection (c-5) at any time at his or her
19 discretion.

20 (d) If after a public hearing the Secretary ~~Director~~ finds:

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

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

35 (A) Suspend ~~suspend~~ or revoke, in whole or in part,
36 the certificate of authority of such company with

1 respect to the class of insurance which has been the
2 subject of the hearing.

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

6 The burden is on the company to justify the rate or
7 proposed rate at the public hearing.

8 (e) Every company writing medical liability insurance in
9 this State shall offer to each of its medical liability
10 insureds the option to make premium payments in quarterly
11 installments as prescribed by and filed with the Secretary.
12 This offer shall be included in the initial offer or in the
13 first policy renewal occurring after the effective date of this
14 amendatory Act of the 94th General Assembly, but no earlier
15 than January 1, 2006.

16 (f) Medical liability insurers are required to offer their
17 medical liability insureds a plan providing premium discounts
18 for participation in risk management activities. Any such plan
19 shall be reported to the Department.

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

21 (215 ILCS 5/155.18a new)

22 Sec. 155.18a. Professional Liability Insurance Resource
23 Center. The Secretary of Financial and Professional Regulation
24 shall establish a Professional Liability Insurance Resource
25 Center on the Internet containing the names and telephone
26 numbers of all licensed companies providing medical liability
27 insurance and producers who sell medical liability insurance.
28 Each company and producer shall submit the information to the
29 Department on or before September 30 of each year in order to
30 be listed on the website. Hyperlinks to company websites shall
31 be included, if available. The publication of the information
32 on the Department's website shall commence on January 1, 2006.
33 The Department shall update the information on the Professional
34 Liability Insurance Resource Center at least annually.

1 (215 ILCS 5/155.19) (from Ch. 73, par. 767.19)

2 Sec. 155.19. All claims filed after December 31, 1976 with
3 any insurer and all suits filed after December 31, 1976 in any
4 court in this State, alleging liability on the part of any
5 physician, hospital or other health care provider for medically
6 related injuries, shall be reported to the Secretary of
7 Financial and Professional Regulation ~~Director of Insurance~~ in
8 such form and under such terms and conditions as may be
9 prescribed by the Secretary ~~Director~~. Each clerk of the circuit
10 court shall provide to the Secretary such information as the
11 Secretary may deem necessary to verify the accuracy and
12 completeness of reports made to the Secretary under this
13 Section. The Secretary ~~Director~~ shall maintain complete and
14 accurate records of all ~~such~~ claims and suits including their
15 nature, amount, disposition (categorized by verdict,
16 settlement, dismissal, or otherwise and including disposition
17 of any post-trial motions and types of damages awarded, if any,
18 including but not limited to economic damages and non-economic
19 damages) and other information as he may deem useful or
20 desirable in observing and reporting on health care provider
21 liability trends in this State. Records received by the
22 Secretary under this Section shall be available to the general
23 public; however, the records made available to the general
24 public shall not include the names or addresses of the parties
25 to any claims or suits. The Secretary ~~Director~~ shall release to
26 appropriate disciplinary and licensing agencies any such data
27 or information which may assist such agencies in improving the
28 quality of health care or which may be useful to such agencies
29 for the purpose of professional discipline.

30 With due regard for appropriate maintenance of the
31 confidentiality thereof, the Secretary ~~Director~~ shall ~~may~~
32 release, on an annual basis, from time to time to the Governor,
33 the General Assembly and the general public statistical reports
34 based on such data and information.

35 If the Secretary finds that any entity required to report
36 information in its possession under this Section has violated

1 any provision of this Section by filing late, incomplete, or
2 inaccurate reports, the Secretary may fine the entity up to
3 \$1,000 for each offense. Each day during which a violation
4 occurs constitutes a separate offense.

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

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

9 (215 ILCS 5/1204) (from Ch. 73, par. 1065.904)

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

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

28 (1) Political subdivision liability insurance reported
29 separately in the following categories:

30 (a) municipalities;

31 (b) school districts;

32 (c) other political subdivisions;

33 (2) Public official liability insurance;

34 (3) Dram shop liability insurance;

35 (4) Day care center liability insurance;

1 (5) Labor, fraternal or religious organizations
2 liability insurance;

3 (6) Errors and omissions liability insurance;

4 (7) Officers and directors liability insurance
5 reported separately as follows:

6 (a) non-profit entities;

7 (b) for-profit entities;

8 (8) Products liability insurance;

9 (9) Medical malpractice insurance;

10 (10) Attorney malpractice insurance;

11 (11) Architects and engineers malpractice insurance;

12 and

13 (12) Motor vehicle insurance reported separately for
14 commercial and private passenger vehicles as follows:

15 (a) motor vehicle physical damage insurance;

16 (b) motor vehicle liability insurance.

17 (C) Such report may include, but need not be limited to the
18 following data, both specific to this State and companywide, in
19 the aggregate or by type of insurance for the previous year on
20 a calendar year basis:

21 (1) Direct premiums written;

22 (2) Direct premiums earned;

23 (3) Number of policies;

24 (4) Net investment income, using appropriate estimates
25 where necessary;

26 (5) Losses paid;

27 (6) Losses incurred;

28 (7) Loss reserves:

29 (a) Losses unpaid on reported claims;

30 (b) Losses unpaid on incurred but not reported
31 claims;

32 (8) Number of claims:

33 (a) Paid claims;

34 (b) Arising claims;

35 (9) Loss adjustment expenses:

36 (a) Allocated loss adjustment expenses;

1 (b) Unallocated loss adjustment expenses;

2 (10) Net underwriting gain or loss;

3 (11) Net operation gain or loss, including net
4 investment income;

5 (12) Any other information requested by the Secretary
6 ~~Director~~.

7 (C-5) Additional information required from medical
8 malpractice insurers.

9 (1) In addition to the other requirements of this
10 Section, the following information shall be included in the
11 report required by subsection (A) of this Section in such
12 form and under such terms and conditions as may be
13 prescribed by the Secretary:

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

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

18 (2) The following information must also be annually
19 provided to the Department:

20 (a) copies of the company's reserve and surplus
21 studies; and

22 (b) consulting actuarial report and data
23 supporting the company's rate filing.

24 (3) All information collected by the Secretary under
25 paragraphs (1) and (2) shall be made available, on a
26 company-by-company basis, to the General Assembly and the
27 general public. This provision shall supersede any other
28 provision of State law that may otherwise protect such
29 information from public disclosure as confidential.

30 (D) In addition to the information which may be requested
31 under subsection (C), the Secretary ~~Director~~ may also request
32 on a companywide, aggregate basis, Federal Income Tax
33 recoverable, net realized capital gain or loss, net unrealized
34 capital gain or loss, and all other expenses not requested in
35 subsection (C) above.

36 (E) Violations - Suspensions - Revocations.

1 (1) Any company or person subject to this Article, who
2 willfully or repeatedly fails to observe or who otherwise
3 violates any of the provisions of this Article or any rule
4 or regulation promulgated by the Secretary ~~Director~~ under
5 authority of this Article or any final order of the
6 Secretary ~~Director~~ entered under the authority of this
7 Article shall by civil penalty forfeit to the State of
8 Illinois a sum not to exceed \$2,000. Each day during which
9 a violation occurs constitutes a separate offense.

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

25 (3) No forfeiture liability under paragraph (1) of this
26 subsection may attach for any violation occurring more than
27 2 years prior to the date of issuance of the notice of
28 apparent liability and in no event may the total civil
29 penalty forfeiture imposed for the acts or omissions set
30 forth in any one notice of apparent liability exceed
31 \$100,000.

32 (4) All administrative hearings conducted pursuant to
33 this Article are subject to 50 Ill. Adm. Code 2402 and all
34 administrative hearings are subject to the Administrative
35 Review Law.

36 (5) The civil penalty forfeitures provided for in this

1 Section are payable to the General Revenue Fund of the
2 State of Illinois, and may be recovered in a civil suit in
3 the name of the State of Illinois brought in the Circuit
4 Court in Sangamon County or in the Circuit Court of the
5 county where the respondent is domiciled or has its
6 principal operating office.

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

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

27 (8) When any person or company has a license or
28 certificate of authority under this Code and knowingly
29 fails or refuses to comply with any provisions of this
30 Article, the Secretary ~~Director~~ may, after notice and
31 hearing, in addition to any other penalty provided, revoke
32 or refuse to renew the license or certificate of authority
33 of such person or company, or may suspend the license or
34 certificate of authority of such person or company, until
35 compliance with such provision of this Article has been
36 obtained.

1 (9) No suspension or revocation under this Section may
2 become effective until 5 days from the date that the notice
3 of suspension or revocation has been personally delivered
4 or delivered by registered or certified mail to the company
5 or person. A suspension or revocation under this Section is
6 stayed upon the filing, by the company or person, of a
7 petition for judicial review under the Administrative
8 Review Law.

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

10 (215 ILCS 5/Art. XLV heading new)

11 Article XLV. COUNTY RISK RETENTION ARRANGEMENTS
12 FOR THE PROVISION OF MEDICAL MALPRACTICE INSURANCE

13 (215 ILCS 5/1501 new)

14 Sec. 1501. Scope of Article. This Article applies only to
15 trusts sponsored by counties and organized under this Article
16 to provide medical malpractice insurance authorized under
17 paragraph (21) of Section 5-1005 of the Counties Code for
18 physicians and health care professionals providing medical
19 care and health care within the county's limits. In the case of
20 a single trust sponsored and organized by more than one county
21 in accordance with the requirements of paragraph (21) of
22 Section 5-1005 of the Counties Code, the powers and duties of a
23 county under this Article shall be exercised jointly by the
24 counties participating in the trust program in accordance with
25 the agreement between the counties.

26 (215 ILCS 5/1502 new)

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

28 "Risk retention trust" or "trust" means a risk retention
29 trust created under this Article.

30 "Trust sponsor" means a county that has created a risk
31 retention trust.

32 "Pool retention fund" means a separate fund maintained for
33 payment of first dollar claims, up to a specified amount per

1 claim ("specific retention") and up to an aggregate amount for
2 a 12-month period ("aggregate retention").

3 "Contingency reserve fund" means a separate fund
4 maintained for payment of claims in excess of the pool
5 retention fund amount.

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

9 "Licensed service company" means an entity licensed by the
10 Department to perform claims adjusting, loss control, and data
11 processing.

12 (215 ILCS 5/1503 new)

13 Sec. 1503. Name. The corporate name of any risk retention
14 trust shall not be the same as or deceptively similar to the
15 name of any domestic insurance company or of any foreign or
16 alien insurance company authorized to transact business in this
17 State.

18 (215 ILCS 5/1504 new)

19 Sec. 1504. Principal office place of business. The
20 principal office of any risk retention trust shall be located
21 in this State.

22 (215 ILCS 5/1505 new)

23 Sec. 1505. Creation.
24 (1) Any county with a population of 200,000 or more
25 according to the most recent federal decennial census may
26 create a risk retention trust for the pooling of risks to
27 provide professional liability coverage authorized under
28 paragraph (21) of Section 5-1005 of the Counties Code for its
29 physicians and health care professionals providing medical
30 care and related health care within the county's limits. A
31 single risk retention trust may also be created jointly by more
32 than one county in accordance with the requirements of
33 paragraph (21) of Section 5-1005 of the Counties Code. A trust

1 shall be administered by at least 3 trustees who may be
2 individuals or corporate trustees and are appointed by the
3 trust sponsor and who represent physicians who have agreed in
4 writing to participate in the trust.

5 (2) The trustees shall appoint a qualified licensed
6 administrator who shall administer the affairs of the risk
7 retention trust.

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

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

13 (5) A trust shall be consummated by a written trust
14 agreement and shall be subject to the laws of this State
15 governing the creation and operation of trusts, to the extent
16 not inconsistent with this Article.

17 (215 ILCS 5/1506 new)

18 Sec. 1506. Participation.

19 (1) A physician or health care professional providing
20 medical care and related health care within the county's limits
21 may participate in a risk retention trust if the physician or
22 health care professional:

23 (a) meets the underwriting standards for acceptance
24 into the trust;

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

27 (c) provides medical care and related health care in
28 the county sponsoring the trust;

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

31 (e) pays premium contributions on a timely basis as
32 required; and

33 (f) pays predetermined annual required contributions
34 into the contingency reserve fund.

35 (2) A physician or health care professional accepted for

1 trust membership and participating in the trust is liable for
2 payment to the trust of the amount of his or her annual premium
3 contribution and his or her annual predetermined contingency
4 reserve fund contribution.

5 (215 ILCS 5/1507 new)

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

7 (1) A risk retention trust may not issue coverage grants
8 until it has established a contingency reserve fund in an
9 amount deemed appropriate by the trust and filed with the
10 Department. A risk retention trust must have and at all times
11 maintain a pool retention fund or a line or letter of credit at
12 least equal to its unpaid liabilities as determined by an
13 independent actuary.

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

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

22 (215 ILCS 5/1508 new)

23 Sec. 1508. Applicable Illinois Insurance Code provisions.
24 Other than this Article, only Sections 155.19, 155.20, and
25 155.25 and subsections (a) through (c) of Section 155.18 of
26 this Code shall apply to county risk retention trusts. The
27 Secretary shall advise the county board of any determinations
28 made pursuant to subsection (b) of Section 155.18 of this Code.

29 (215 ILCS 5/1509 new)

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

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

3 (2) stock and convertible debt investments, or
4 investment grade corporate bonds, in or issued by any
5 corporation, the book value of which may not exceed 5% of
6 the total intergovernmental risk management entity's
7 investment account at book value in which those securities
8 are held, determined as of the date of the investment,
9 provided that investments in the stock of any one
10 corporation may not exceed 5% of the total outstanding
11 stock of the corporation and that the investments in the
12 convertible debt of any one corporation may not exceed 5%
13 of the total amount of such debt that may be outstanding;

14 (3) the straight preferred stocks or convertible
15 preferred stocks and convertible debt securities issued or
16 guaranteed by a corporation whose common stock is listed on
17 a recognized exchange or market;

18 (4) mutual funds or commingled funds that meet the
19 following requirements:

20 (A) the mutual fund or commingled fund is managed
21 by an investment company as defined in and registered
22 under the federal Investment Company Act of 1940 and
23 registered under the Illinois Securities Law of 1953 or
24 an investment adviser as defined under the federal
25 Investment Advisers Act of 1940;

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

28 (C) the mutual fund has total net assets of
29 \$150,000,000 or more;

30 (5) commercial grade real estate located in the State
31 of Illinois.

32 Any investment adviser retained by a trust must be a
33 fiduciary who has the power to manage, acquire, or dispose of
34 any asset of the trust and has acknowledged in writing that he
35 or she is a fiduciary with respect to the trust and that he or
36 she will adhere to all of the guidelines of the trust and is

1 one or more of the following:

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

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

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

8 (iv) an insurance company authorized to transact
9 business in this State.

10 Nothing in this Section shall be construed to authorize a
11 risk retention trust to accept the deposit of public funds
12 except for trust risk retention purposes.

13 ARTICLE 3

14 Section 305. The Regulatory Sunset Act is amended by
15 changing Section 4.17 and adding Section 4.26 as follows:

16 (5 ILCS 80/4.17)

17 Sec. 4.17. Acts repealed on January 1, 2007. The following
18 are repealed on January 1, 2007:

19 The Boiler and Pressure Vessel Repairer Regulation
20 Act.

21 The Structural Pest Control Act.

22 Articles II, III, IV, V, V 1/2, VI, VIIA, VIIB, VIIC,
23 XVII, XXXI, XXXI 1/4, and XXXI 3/4 of the Illinois
24 Insurance Code.

25 The Clinical Psychologist Licensing Act.

26 The Illinois Optometric Practice Act of 1987.

27 ~~The Medical Practice Act of 1987.~~

28 The Environmental Health Practitioner Licensing Act.

29 (Source: P.A. 92-837, eff. 8-22-02.)

30 (5 ILCS 80/4.26 new)

31 Sec. 4.26. Act repealed on January 1, 2016. The following
32 Act is repealed on January 1, 2016:

1 The Medical Practice Act of 1987.

2 Section 310. The Medical Practice Act of 1987 is amended by
3 changing Sections 7, 22, 23, 24, and 36 as follows:

4 (225 ILCS 60/7) (from Ch. 111, par. 4400-7)

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

6 Sec. 7. Medical Disciplinary Board.

7 (A) There is hereby created the Illinois State Medical
8 Disciplinary Board (hereinafter referred to as the
9 "Disciplinary Board"). The Disciplinary Board shall consist of
10 9 members, to be appointed by the Governor by and with the
11 advice and consent of the Senate. All shall be residents of the
12 State, not more than 5 of whom shall be members of the same
13 political party. Five members shall be physicians licensed to
14 practice medicine in all of its branches in Illinois possessing
15 the degree of doctor of medicine. Two shall be members of the
16 public, who shall not be engaged in any way, directly or
17 indirectly, as providers of health care. The 2 public members
18 shall act as voting members. One member shall be a physician
19 licensed to practice in Illinois possessing the degree of
20 doctor of osteopathy or osteopathic medicine. One member shall
21 be a physician licensed to practice in Illinois and possessing
22 the degree of doctor of chiropractic.

23 (B) Members of the Disciplinary Board shall be appointed
24 for terms of 4 years. Upon the expiration of the term of any
25 member, their successor shall be appointed for a term of 4
26 years by the Governor by and with the advice and consent of the
27 Senate. The Governor shall fill any vacancy for the remainder
28 of the unexpired term by and with the advice and consent of the
29 Senate. Upon recommendation of the Board, any member of the
30 Disciplinary Board may be removed by the Governor for
31 misfeasance, malfeasance, or wilful neglect of duty, after
32 notice, and a public hearing, unless such notice and hearing
33 shall be expressly waived in writing. Each member shall serve
34 on the Disciplinary Board until their successor is appointed

1 and qualified. No member of the Disciplinary Board shall serve
2 more than 2 consecutive 4 year terms.

3 In making appointments the Governor shall attempt to insure
4 that the various social and geographic regions of the State of
5 Illinois are properly represented.

6 In making the designation of persons to act for the several
7 professions represented on the Disciplinary Board, the
8 Governor shall give due consideration to recommendations by
9 members of the respective professions and by organizations
10 therein.

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

16 (D) (Blank).

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

28 (F) Each member, and member-officer, of the Disciplinary
29 Board shall receive a per diem stipend as the Director of the
30 Department, hereinafter referred to as the Director, shall
31 determine. The Director shall also determine the per diem
32 stipend that each ex-officio member shall receive. Each member
33 shall be paid their necessary expenses while engaged in the
34 performance of their duties.

35 (G) The Director shall select a Chief Medical Coordinator
36 and not less than 2 ~~a~~ Deputy Medical Coordinators ~~Coordinator~~

1 who shall not be members of the Disciplinary Board. Each
2 medical coordinator shall be a physician licensed to practice
3 medicine in all of its branches, and the Director shall set
4 their rates of compensation. The Director shall assign at least
5 one medical coordinator to a region composed of Cook County and
6 such other counties as the Director may deem appropriate, and
7 such medical coordinator or coordinators shall locate their
8 office in Chicago. The Director shall assign at least one ~~the~~
9 ~~remaining~~ medical coordinator to a region composed of the
10 balance of counties in the State, and such medical coordinator
11 or coordinators shall locate their office in Springfield. Each
12 medical coordinator shall be the chief enforcement officer of
13 this Act in his or her ~~their~~ assigned region and shall serve at
14 the will of the Disciplinary Board.

15 The Director shall employ, in conformity with the Personnel
16 Code, not less than one full time investigator for every 2,500
17 ~~5000~~ physicians licensed in the State. Each investigator shall
18 be a college graduate with at least 2 years' investigative
19 experience or one year advanced medical education. Upon the
20 written request of the Disciplinary Board, the Director shall
21 employ, in conformity with the Personnel Code, such other
22 professional, technical, investigative, and clerical help,
23 either on a full or part-time basis as the Disciplinary Board
24 deems necessary for the proper performance of its duties.

25 (H) Upon the specific request of the Disciplinary Board,
26 signed by either the chairman, vice chairman, or a medical
27 coordinator of the Disciplinary Board, the Department of Human
28 Services or the Department of State Police shall make available
29 any and all information that they have in their possession
30 regarding a particular case then under investigation by the
31 Disciplinary Board.

32 (I) Members of the Disciplinary Board shall be immune from
33 suit in any action based upon any disciplinary proceedings or
34 other acts performed in good faith as members of the
35 Disciplinary Board.

36 (J) The Disciplinary Board may compile and establish a

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

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

15 (225 ILCS 60/22) (from Ch. 111, par. 4400-22)

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

17 Sec. 22. Disciplinary action.

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

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

27 (a) a facility licensed pursuant to the Ambulatory
28 Surgical Treatment Center Act;

29 (b) an institution licensed under the Hospital
30 Licensing Act; or

31 (c) an ambulatory surgical treatment center or
32 hospitalization or care facility maintained by the
33 State or any agency thereof, where such department or
34 agency has authority under law to establish and enforce
35 standards for the ambulatory surgical treatment

1 centers, hospitalization, or care facilities under its
2 management and control; or

3 (d) ambulatory surgical treatment centers,
4 hospitalization or care facilities maintained by the
5 Federal Government; or

6 (e) ambulatory surgical treatment centers,
7 hospitalization or care facilities maintained by any
8 university or college established under the laws of
9 this State and supported principally by public funds
10 raised by taxation.

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

14 (3) The conviction of a felony in this or any other
15 jurisdiction, except as otherwise provided in subsection B
16 of this Section, whether or not related to practice under
17 this Act, or the entry of a guilty or nolo contendere plea
18 to a felony charge.

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

20 (5) Engaging in dishonorable, unethical or
21 unprofessional conduct of a character likely to deceive,
22 defraud or harm the public.

23 (6) Obtaining any fee by fraud, deceit, or
24 misrepresentation.

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

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

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

34 (10) Making a false or misleading statement regarding
35 their skill or the efficacy or value of the medicine,
36 treatment, or remedy prescribed by them at their direction

1 in the treatment of any disease or other condition of the
2 body or mind.

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

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

12 (13) Violation of any provision of this Act or of the
13 Medical Practice Act prior to the repeal of that Act, or
14 violation of the rules, or a final administrative action of
15 the Director, after consideration of the recommendation of
16 the Disciplinary Board.

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

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

17 (15) A finding by the Medical Disciplinary Board that
18 the registrant after having his or her license placed on
19 probationary status or subjected to conditions or
20 restrictions violated the terms of the probation or failed
21 to comply with such terms or conditions.

22 (16) Abandonment of a patient.

23 (17) Prescribing, selling, administering,
24 distributing, giving or self-administering any drug
25 classified as a controlled substance (designated product)
26 or narcotic for other than medically accepted therapeutic
27 purposes.

28 (18) Promotion of the sale of drugs, devices,
29 appliances or goods provided for a patient in such manner
30 as to exploit the patient for financial gain of the
31 physician.

32 (19) Offering, undertaking or agreeing to cure or treat
33 disease by a secret method, procedure, treatment or
34 medicine, or the treating, operating or prescribing for any
35 human condition by a method, means or procedure which the
36 licensee refuses to divulge upon demand of the Department.

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

4 (21) Wilfully making or filing false records or reports
5 in his or her practice as a physician, including, but not
6 limited to, false records to support claims against the
7 medical assistance program of the Department of Public Aid
8 under the Illinois Public Aid Code.

9 (22) Wilful omission to file or record, or wilfully
10 impeding the filing or recording, or inducing another
11 person to omit to file or record, medical reports as
12 required by law, or wilfully failing to report an instance
13 of suspected abuse or neglect as required by law.

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

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

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

31 (26) A pattern of practice or other behavior which
32 demonstrates incapacity or incompetence to practice under
33 this Act.

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

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

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

7 (30) Wilfully or negligently violating the
8 confidentiality between physician and patient except as
9 required by law.

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

13 (32) Aiding and abetting an individual not licensed
14 under this Act in the practice of a profession licensed
15 under this Act.

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

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

29 (35) Failure to report to the Department surrender of a
30 license or authorization to practice as a medical doctor, a
31 doctor of osteopathy, a doctor of osteopathic medicine, or
32 doctor of chiropractic in another state or jurisdiction, or
33 surrender of membership on any medical staff or in any
34 medical or professional association or society, while
35 under disciplinary investigation by any of those
36 authorities or bodies, for acts or conduct similar to acts

1 or conduct which would constitute grounds for action as
2 defined in this Section.

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

8 (37) Failure to transfer copies of medical records as
9 required by law.

10 (38) Failure to furnish the Department, its
11 investigators or representatives, relevant information,
12 legally requested by the Department after consultation
13 with the Chief Medical Coordinator or the Deputy Medical
14 Coordinator.

15 (39) Violating the Health Care Worker Self-Referral
16 Act.

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

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

21 (42) Entering into an excessive number of written
22 collaborative agreements with licensed advanced practice
23 nurses resulting in an inability to adequately collaborate
24 and provide medical direction.

25 (43) Repeated failure to adequately collaborate with
26 or provide medical direction to a licensed advanced
27 practice nurse.

28 Except for actions involving the ground numbered (26), all
29 ~~All~~ proceedings to suspend, revoke, place on probationary
30 status, or take any other disciplinary action as the Department
31 may deem proper, with regard to a license on any of the
32 foregoing grounds, must be commenced within 5 ~~3~~ years next
33 after receipt by the Department of a complaint alleging the
34 commission of or notice of the conviction order for any of the
35 acts described herein. Except for the grounds numbered (8),
36 (9), (26), and (29), no action shall be commenced more than 10

1 5 years after the date of the incident or act alleged to have
2 violated this Section. For actions involving the ground
3 numbered (26), a pattern of practice or other behavior includes
4 all incidents alleged to be part of the pattern of practice or
5 other behavior that occurred or a report pursuant to Section 23
6 of this Act received within the 10-year period preceding the
7 filing of the complaint. In the event of the settlement of any
8 claim or cause of action in favor of the claimant or the
9 reduction to final judgment of any civil action in favor of the
10 plaintiff, such claim, cause of action or civil action being
11 grounded on the allegation that a person licensed under this
12 Act was negligent in providing care, the Department shall have
13 an additional period of 2 years ~~one year~~ from the date of
14 notification to the Department under Section 23 of this Act of
15 such settlement or final judgment in which to investigate and
16 commence formal disciplinary proceedings under Section 36 of
17 this Act, except as otherwise provided by law. The Department
18 shall expunge the records of discipline solely for
19 administrative matters 3 years after final disposition or after
20 the statute of limitations has expired, whichever is later. The
21 time during which the holder of the license was outside the
22 State of Illinois shall not be included within any period of
23 time limiting the commencement of disciplinary action by the
24 Department.

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

34 The Department may refuse to issue or take disciplinary
35 action concerning the license of any person who fails to file a
36 return, or to pay the tax, penalty or interest shown in a filed

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

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

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

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

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

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

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

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

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

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

1 of their license.

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

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

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

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

34 (225 ILCS 60/23) (from Ch. 111, par. 4400-23)

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

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

3 (A) Entities required to report.

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

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

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

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

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

36 (5) State agencies. All agencies, boards, commissions,

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

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

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

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

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

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

34 (5) If court action is involved, the identity of the
35 court in which the action is filed, along with the docket
36 number and date of filing of the action.

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

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

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

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

35 (C) Immunity from prosecution. Any individual or
36 organization acting in good faith, and not in a wilful and

1 wanton manner, in complying with this Act by providing any
2 report or other information to the Disciplinary Board or a peer
3 review committee, or assisting in the investigation or
4 preparation of such information, or by voluntarily reporting to
5 the Disciplinary Board or a peer review committee information
6 regarding alleged errors or negligence by a person licensed
7 under this Act, or by participating in proceedings of the
8 Disciplinary Board or a peer review committee, or by serving as
9 a member of the Disciplinary Board or a peer review committee,
10 shall not, as a result of such actions, be subject to criminal
11 prosecution or civil damages.

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

24 Should the Attorney General decline representation, the
25 member shall have the right to employ counsel of his or her
26 choice, whose fees shall be provided by the State, after
27 approval by the Attorney General, unless there is a
28 determination by a court that the member's actions were not in
29 good faith or were wilful and wanton.

30 The member must notify the Attorney General within 7 days
31 of receipt of notice of the initiation of any action involving
32 services of the Disciplinary Board. Failure to so notify the
33 Attorney General shall constitute an absolute waiver of the
34 right to a defense and indemnification.

35 The Attorney General shall determine within 7 days after
36 receiving such notice, whether he or she will undertake to

1 represent the member.

2 (E) Deliberations of Disciplinary Board. Upon the receipt
3 of any report called for by this Act, other than those reports
4 of impaired persons licensed under this Act required pursuant
5 to the rules of the Disciplinary Board, the Disciplinary Board
6 shall notify in writing, by certified mail, the person who is
7 the subject of the report. Such notification shall be made
8 within 30 days of receipt by the Disciplinary Board of the
9 report.

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

25 The Disciplinary Board shall review all reports received by
26 it, together with any supporting information and responding
27 statements submitted by persons who are the subject of reports.
28 The review by the Disciplinary Board shall be in a timely
29 manner but in no event, shall the Disciplinary Board's initial
30 review of the material contained in each disciplinary file be
31 less than 61 days nor more than 180 days after the receipt of
32 the initial report by the Disciplinary Board.

33 When the Disciplinary Board makes its initial review of the
34 materials contained within its disciplinary files, the
35 Disciplinary Board shall, in writing, make a determination as
36 to whether there are sufficient facts to warrant further

1 investigation or action. Failure to make such determination
2 within the time provided shall be deemed to be a determination
3 that there are not sufficient facts to warrant further
4 investigation or action.

5 Should the Disciplinary Board find that there are not
6 sufficient facts to warrant further investigation, or action,
7 the report shall be accepted for filing and the matter shall be
8 deemed closed and so reported to the Director. The Director
9 shall then have 30 days to accept the Medical Disciplinary
10 Board's decision or request further investigation. The
11 Director shall inform the Board in writing of the decision to
12 request further investigation, including the specific reasons
13 for the decision. The individual or entity filing the original
14 report or complaint and the person who is the subject of the
15 report or complaint shall be notified in writing by the
16 Director of any final action on their report or complaint.

17 (F) Summary reports. The Disciplinary Board shall prepare,
18 on a timely basis, but in no event less than one every other
19 month, a summary report of final actions taken upon
20 disciplinary files maintained by the Disciplinary Board. The
21 summary reports shall be sent by the Disciplinary Board to
22 every health care facility licensed by the Illinois Department
23 of Public Health, every professional association and society of
24 persons licensed under this Act functioning on a statewide
25 basis in this State, the American Medical Association, the
26 American Osteopathic Association, the American Chiropractic
27 Association, all insurers providing professional liability
28 insurance to persons licensed under this Act in the State of
29 Illinois, the Federation of State Medical Licensing Boards, and
30 the Illinois Pharmacists Association.

31 (G) Any violation of this Section shall be a Class A
32 misdemeanor.

33 (H) If any such person violates the provisions of this
34 Section an action may be brought in the name of the People of
35 the State of Illinois, through the Attorney General of the
36 State of Illinois, for an order enjoining such violation or for

1 an order enforcing compliance with this Section. Upon filing of
2 a verified petition in such court, the court may issue a
3 temporary restraining order without notice or bond and may
4 preliminarily or permanently enjoin such violation, and if it
5 is established that such person has violated or is violating
6 the injunction, the court may punish the offender for contempt
7 of court. Proceedings under this paragraph shall be in addition
8 to, and not in lieu of, all other remedies and penalties
9 provided for by this Section.

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

12 (225 ILCS 60/24) (from Ch. 111, par. 4400-24)

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

14 Sec. 24. Report of violations; medical associations. Any
15 physician licensed under this Act, the Illinois State Medical
16 Society, the Illinois Association of Osteopathic Physicians
17 and Surgeons, the Illinois Chiropractic Society, the Illinois
18 Prairie State Chiropractic Association, or any component
19 societies of any of these 4 groups, and any other person, may
20 report to the Disciplinary Board any information the physician,
21 association, society, or person may have that appears to show
22 that a physician is or may be in violation of any of the
23 provisions of Section 22 of this Act.

24 The Department may enter into agreements with the Illinois
25 State Medical Society, the Illinois Association of Osteopathic
26 Physicians and Surgeons, the Illinois Prairie State
27 Chiropractic Association, or the Illinois Chiropractic Society
28 to allow these organizations to assist the Disciplinary Board
29 in the review of alleged violations of this Act. Subject to the
30 approval of the Department, any organization party to such an
31 agreement may subcontract with other individuals or
32 organizations to assist in review.

33 Any physician, association, society, or person
34 participating in good faith in the making of a report, under
35 this Act or participating in or assisting with an investigation

1 or review under this Act ~~Section~~ shall have immunity from any
2 civil, criminal, or other liability that might result by reason
3 of those actions.

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

9 Upon request by the Department after a mandatory report has
10 been filed with the Department, an attorney for any party
11 seeking to recover damages for injuries or death by reason of
12 medical, hospital, or other healing art malpractice shall
13 provide patient records related to the physician involved in
14 the disciplinary proceeding to the Department within 30 days of
15 the Department's request for use by the Department in any
16 disciplinary matter under this Act. An attorney who provides
17 patient records to the Department in accordance with this
18 requirement shall not be deemed to have violated any
19 attorney-client privilege. Notwithstanding any other provision
20 of law, consent by a patient shall not be required for the
21 provision of patient records in accordance with this
22 requirement.

23 For the purpose of any civil or criminal proceedings, the
24 good faith of any physician, association, society or person
25 shall be presumed. The Disciplinary Board may request the
26 Illinois State Medical Society, the Illinois Association of
27 Osteopathic Physicians and Surgeons, the Illinois Prairie
28 State Chiropractic Association, or the Illinois Chiropractic
29 Society to assist the Disciplinary Board in preparing for or
30 conducting any medical competency examination as the Board may
31 deem appropriate.

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

33 (225 ILCS 60/36) (from Ch. 111, par. 4400-36)

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

35 Sec. 36. Upon the motion of either the Department or the

1 Disciplinary Board or upon the verified complaint in writing of
2 any person setting forth facts which, if proven, would
3 constitute grounds for suspension or revocation under Section
4 22 of this Act, the Department shall investigate the actions of
5 any person, so accused, who holds or represents that they hold
6 a license. Such person is hereinafter called the accused.

7 The Department shall, before suspending, revoking, placing
8 on probationary status, or taking any other disciplinary action
9 as the Department may deem proper with regard to any license at
10 least 30 days prior to the date set for the hearing, notify the
11 accused in writing of any charges made and the time and place
12 for a hearing of the charges before the Disciplinary Board,
13 direct them to file their written answer thereto to the
14 Disciplinary Board under oath within 20 days after the service
15 on them of such notice and inform them that if they fail to
16 file such answer default will be taken against them and their
17 license may be suspended, revoked, placed on probationary
18 status, or have other disciplinary action, including limiting
19 the scope, nature or extent of their practice, as the
20 Department may deem proper taken with regard thereto.

21 Where a physician has been found, upon complaint and
22 investigation of the Department, and after hearing, to have
23 performed an abortion procedure in a wilful and wanton manner
24 upon a woman who was not pregnant at the time such abortion
25 procedure was performed, the Department shall automatically
26 revoke the license of such physician to practice medicine in
27 Illinois.

28 Such written notice and any notice in such proceedings
29 thereafter may be served by delivery of the same, personally,
30 to the accused person, or by mailing the same by registered or
31 certified mail to the address last theretofore specified by the
32 accused in their last notification to the Department.

33 All information gathered by the Department during its
34 investigation including information subpoenaed under Section
35 23 or 38 of this Act and the investigative file shall be kept
36 for the confidential use of the Director, Disciplinary Board,

1 the Medical Coordinators, persons employed by contract to
2 advise the Medical Coordinator or the Department, the
3 Disciplinary Board's attorneys, the medical investigative
4 staff, and authorized clerical staff, as provided in this Act
5 and shall be afforded the same status as is provided
6 information concerning medical studies in Part 21 of Article
7 VIII of the Code of Civil Procedure, except that the Department
8 may disclose information and documents to a federal, State, or
9 local law enforcement agency pursuant to a subpoena in an
10 ongoing criminal investigation. Furthermore, information and
11 documents disclosed to a federal, State, or local law
12 enforcement agency may be used by that agency only for the
13 investigation and prosecution of a criminal offense.

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

15 Section 315. The Clerks of Courts Act is amended by adding
16 Section 27.10 as follows:

17 (705 ILCS 105/27.10 new)

18 Sec. 27.10. Secretary of Financial and Professional
19 Regulation. Each clerk of the circuit court shall provide to
20 the Secretary of Financial and Professional Regulation such
21 information as he or she requests under Section 155.19 of the
22 Illinois Insurance Code.

23 ARTICLE 4

24 Section 405. The Health Care Arbitration Act is amended by
25 changing Sections 8 and 9 as follows:

26 (710 ILCS 15/8) (from Ch. 10, par. 208)

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

29 (a) The agreement is not a condition to the rendering of
30 health care services by any party and the agreement has been
31 executed by the recipient of health care services at the

1 inception of or during the term of provision of services ~~for a~~
2 ~~specific cause~~ by either a health care provider or a hospital;
3 and

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

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

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

15 ~~(e) As a part of the discharge planning process the patient~~
16 ~~or, if appropriate, members of his family must be given a copy~~
17 ~~of the health care arbitration agreement previously executed by~~
18 ~~or for the patient and shall re affirm it.~~

19 ~~Failure to comply with this provision during the discharge~~
20 ~~planning process shall void the health care arbitration~~
21 ~~agreement.~~

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

23 (710 ILCS 15/9) (from Ch. 10, par. 209)

24 Sec. 9. Mandatory Provisions.

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

27 (b) (Blank). ~~Every health care arbitration agreement in~~
28 ~~relation to health care services rendered during~~
29 ~~hospitalization shall specify the date of commencement of~~
30 ~~hospitalization. Every health care arbitration agreement in~~
31 ~~relation to health care services not rendered during~~
32 ~~hospitalization shall state the specific cause for which the~~
33 ~~services are provided.~~

34 (c) Every health care arbitration agreement may be
35 cancelled by any signatory ~~(1)~~ within 30 ~~60~~ days of its

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

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

33 "AGREEMENT TO ARBITRATE HEALTH CARE

34 NEGLIGENCE CLAIMS

35 NOTICE TO PATIENT

36 YOU CANNOT BE REQUIRED TO SIGN THIS AGREEMENT IN ORDER TO

1 RECEIVE TREATMENT. BY SIGNING THIS AGREEMENT, YOUR RIGHT TO
2 TRIAL BY A JURY OR A JUDGE IN A COURT WILL BE BARRED AS TO
3 ANY DISPUTE RELATING TO INJURIES THAT MAY RESULT FROM
4 NEGLIGENCE DURING YOUR TREATMENT OR CARE, AND WILL BE
5 REPLACED BY AN ARBITRATION PROCEDURE.

6 THIS AGREEMENT MAY BE CANCELLED WITHIN 30 ~~60~~ DAYS OF
7 SIGNING ~~OR 60 DAYS AFTER YOUR HOSPITAL DISCHARGE OR 60 DAYS~~
8 ~~AFTER YOUR LAST MEDICAL TREATMENT IN RELATION TO HEALTH~~
9 ~~CARE SERVICES NOT RENDERED DURING HOSPITALIZATION.~~

10 THIS AGREEMENT PROVIDES THAT ANY CLAIMS WHICH MAY ARISE OUT
11 OF YOUR HEALTH CARE WILL BE SUBMITTED TO A PANEL OF
12 ARBITRATORS, RATHER THAN TO A COURT FOR DETERMINATION. THIS
13 AGREEMENT REQUIRES ALL PARTIES SIGNING IT TO ABIDE BY THE
14 DECISION OF THE ARBITRATION PANEL."

15 (e) An ~~an~~ executed copy of the AGREEMENT TO ARBITRATE
16 HEALTH CARE CLAIMS ~~and any reaffirmation of that agreement as~~
17 ~~required by this Act~~ shall be given to the patient or the
18 patient's legally authorized representative upon signing
19 ~~during the time of the discharge planning process or at the~~
20 ~~time of discharge.~~

21 (f) The changes to this Section made by this amendatory Act
22 of the 94th General Assembly apply to health care arbitration
23 agreements executed on or after its effective date.

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

25 Section 410. The Code of Civil Procedure is amended by
26 reenacting and changing Sections 2-402, 2-622, 2-1107.1,
27 2-1109, 2-1701, 2-1702, and 8-2501, by changing Sections
28 2-1114, 2-1704, and 8-1901, and by adding Sections 2-1105.01,
29 2-1704.5, 2-1706.5, 2-1721 as follows:

30 (735 ILCS 5/2-402) (from Ch. 110, par. 2-402)

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

33 Sec. 2-402. Respondents in discovery. The plaintiff in any
34 civil action may designate as respondents in discovery in his

1 or her pleading those individuals or other entities, other than
2 the named defendants, believed by the plaintiff to have
3 information essential to the determination of who should
4 properly be named as additional defendants in the action.

5 Persons or entities so named as respondents in discovery
6 shall be required to respond to discovery by the plaintiff in
7 the same manner as are defendants and may, on motion of the
8 plaintiff, be added as defendants if the evidence discloses the
9 existence of probable cause for such action.

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

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

16 Each respondent in discovery shall be paid expenses and
17 fees as provided for witnesses.

18 A person or entity named as a respondent in discovery in
19 any civil action may be made a defendant in the same action at
20 any time within 6 months after being named as a respondent in
21 discovery, even though the time during which an action may
22 otherwise be initiated against him or her may have expired
23 during such 6 month period. An extension from the original
24 6-month period for good cause may be granted only once for up
25 to 90 days for (i) withdrawal of plaintiff's counsel or (ii)
26 good cause. Notwithstanding the limitations in this Section,
27 the court may grant additional reasonable extensions from this
28 6-month period for a failure or refusal on the part of the
29 respondent to comply with timely filed discovery.

30 The changes to this Section made by this amendatory Act of
31 the 94th General Assembly apply to causes of action pending on
32 or after its effective date.

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

34 (735 ILCS 5/2-622) (from Ch. 110, par. 2-622)

35 (Text of Section WITHOUT the changes made by P.A. 89-7,

1 which has been held unconstitutional)

2 Sec. 2-622. Healing art malpractice.

3 (a) In any action, whether in tort, contract or otherwise,
4 in which the plaintiff seeks damages for injuries or death by
5 reason of medical, hospital, or other healing art malpractice,
6 the plaintiff's attorney or the plaintiff, if the plaintiff is
7 proceeding pro se, shall file an affidavit, attached to the
8 original and all copies of the complaint, declaring one of the
9 following:

10 1. That the affiant has consulted and reviewed the
11 facts of the case with a health professional who the
12 affiant reasonably believes: (i) is knowledgeable in the
13 relevant issues involved in the particular action; (ii)
14 practices or has practiced within the last 5 ~~6~~ years or
15 teaches or has taught within the last 5 ~~6~~ years in the same
16 area of health care or medicine that is at issue in the
17 particular action; and (iii) meets the expert witness
18 standards set forth in paragraphs (a) through (d) of
19 Section 8-2501; is qualified by experience or demonstrated
20 ~~competence in the subject of the case;~~ that the reviewing
21 health professional has determined in a written report,
22 after a review of the medical record and other relevant
23 material involved in the particular action that there is a
24 reasonable and meritorious cause for the filing of such
25 action; and that the affiant has concluded on the basis of
26 the reviewing health professional's review and
27 consultation that there is a reasonable and meritorious
28 cause for filing of such action. A single written report
29 must be filed to cover each defendant in the action. As to
30 defendants who are individuals, the ~~If the affidavit is~~
31 ~~filed as to a defendant who is a physician licensed to~~
32 ~~treat human ailments without the use of drugs or medicines~~
33 ~~and without operative surgery, a dentist, a podiatrist, a~~
34 ~~psychologist, or a naprapath, The written report must be~~
35 from a health professional licensed in the same profession,
36 with the same class of license, as the defendant in

1 accordance with items (i) through (iii) of this paragraph
2 1. For ~~written reports~~ ~~affidavits~~ filed as to all other
3 defendants, ~~who are not individuals,~~ the written report
4 must be from a physician licensed to practice medicine in
5 all its branches ~~who is qualified by experience with the~~
6 ~~standard of care, methods, procedures and treatments~~
7 ~~relevant to the allegations at issue in the case.~~ In either
8 event, the ~~written report~~ ~~affidavit~~ must identify the
9 profession of the reviewing health professional. A copy of
10 the written report, clearly identifying the plaintiff and
11 the reasons for the reviewing health professional's
12 determination that a reasonable and meritorious cause for
13 the filing of the action exists, ~~including the reviewing~~
14 ~~health care professional's name, address, telephone~~
15 ~~number, current license number, and state of licensure,~~
16 must be attached to the affidavit, ~~but information which~~
17 ~~would identify the reviewing health professional may be~~
18 ~~deleted from the copy so attached.~~

19 2. That the affiant was unable to obtain a consultation
20 required by paragraph 1 because a statute of limitations
21 would impair the action and the consultation required could
22 not be obtained before the expiration of the statute of
23 limitations. If an affidavit is executed pursuant to this
24 paragraph, the affidavit ~~certificate~~ and written report
25 required by paragraph 1 shall be filed within 90 days after
26 the filing of the complaint. No additional 90-day
27 extensions pursuant to this paragraph 2 shall be granted,
28 except where there has been a withdrawal of the plaintiff's
29 counsel. The defendant shall be excused from answering or
30 otherwise pleading until 30 days after being served with an
31 affidavit and a report ~~a certificate~~ required by paragraph
32 1.

33 3. That a request has been made by the plaintiff or his
34 attorney for examination and copying of records pursuant to
35 Part 20 of Article VIII of this Code and the party required
36 to comply under those Sections has failed to produce such

1 records within 60 days of the receipt of the request. If an
2 affidavit is executed pursuant to this paragraph, the
3 affidavit ~~certificate~~ and written report required by
4 paragraph 1 shall be filed within 90 days following receipt
5 of the requested records. All defendants except those whose
6 failure to comply with Part 20 of Article VIII of this Code
7 is the basis for an affidavit under this paragraph shall be
8 excused from answering or otherwise pleading until 30 days
9 after being served with the affidavit and report
10 ~~certificate~~ required by paragraph 1.

11 (b) Where an affidavit ~~a certificate~~ and written report are
12 required pursuant to this Section a separate affidavit
13 ~~certificate~~ and written report shall be filed as to each
14 defendant who has been named in the complaint and shall be
15 filed as to each defendant named at a later time.

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

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

31 (e) Allegations and denials in the affidavit, made without
32 reasonable cause and found to be untrue, shall subject the
33 party pleading them or his attorney, or both, to the payment of
34 reasonable expenses, actually incurred by the other party by
35 reason of the untrue pleading, together with reasonable
36 attorneys' fees to be summarily taxed by the court upon motion

1 made within 30 days of the judgment or dismissal. In no event
2 shall the award for attorneys' fees and expenses exceed those
3 actually paid by the moving party, including the insurer, if
4 any. In proceedings under this paragraph (e), the moving party
5 shall have the right to depose and examine any and all
6 reviewing health professionals who prepared reports used in
7 conjunction with an affidavit required by this Section.

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

13 (g) The failure of the plaintiff to file an affidavit and
14 report in compliance with ~~to file a certificate required by~~
15 this Section shall be grounds for dismissal under Section
16 2-619.

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

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

23 (j) The changes to this Section made by this amendatory Act
24 of the 94th General Assembly apply to causes of action accruing
25 on or after its effective date.

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

27 (735 ILCS 5/2-1105.01 new)

28 Sec. 2-1105.01. Personal assets protected in healing art
29 malpractice cases. In all cases, whether tort, contract, or
30 otherwise, in which the plaintiff seeks damages by reason of
31 healing art malpractice, a health care professional who
32 maintains at least a minimum of \$1,000,000 in professional
33 liability insurance coverage to cover a claim against him or
34 her is entitled to an exemption of all of his or her assets
35 from attachment, garnishment, or other form of forfeiture to

1 satisfy any judgment, decision, award, or verdict. Corporate
2 assets are subject to attachment for satisfaction of a
3 judgment. For the purposes of this Section, (i) "health care
4 professional" includes, without limitation, a physician,
5 advanced practice nurse, physician assistant, dentist,
6 podiatrist, and physical therapist and (ii) "asset" includes,
7 without limitation, any asset, property (real or personal),
8 interest, or other thing of value, of any kind or character
9 whatsoever that would otherwise be subject to immediate
10 execution to satisfy a judgment.

11 This Section shall not restrict, impair, or otherwise
12 affect the amount of damages that may be awarded to the
13 plaintiff or the amount of any judgment in favor of the
14 plaintiff. This Section shall not restrict, impair, or
15 otherwise affect the statutory and common law causes of action
16 a health care professional or the health care professional's
17 assignee has against the health care professional's insurer for
18 the insurer acting in bad faith or vexatiously and without
19 reasonable cause by failing to settle the action against the
20 health care professional within the health care professional's
21 insurance policy limits. The plaintiff shall be required to
22 prove all the elements of any such cause of action. This
23 Section shall not reduce or limit the damages that otherwise
24 would have been recoverable in any such action.

25 This Section applies to all causes of action pending on the
26 effective date of this amendatory Act of the 94th General
27 Assembly and to all causes of action filed on or after the
28 effective date of this amendatory Act of the 94th General
29 Assembly.

30 (735 ILCS 5/2-1107.1) (from Ch. 110, par. 2-1107.1)

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

33 Sec. 2-1107.1. Jury instruction in tort actions.

34 (a) In all actions on account of bodily injury or death or
35 physical damage to property based on negligence, or product

1 liability based on strict tort liability, the court shall
2 instruct the jury in writing that the defendant shall be found
3 not liable if the jury finds that the contributory fault of the
4 plaintiff is more than 50% of the proximate cause of the injury
5 or damage for which recovery is sought.

6 (b) In all healing art malpractice actions, the court shall
7 instruct the jury in writing whether or not any award of
8 compensatory damages will be taxable under federal or State
9 income tax law.

10 (c) In all healing art malpractice actions, the court shall
11 instruct the jury in writing that punitive damages may not be
12 awarded in any form under Illinois law.

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

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

17 (735 ILCS 5/2-1109) (from Ch. 110, par. 2-1109)

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

20 Sec. 2-1109. Itemized verdicts.

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

1 compensate for losses which have been incurred prior to the
2 verdict and amounts intended to compensate for future losses
3 ~~which will be incurred in the future.~~

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

7 "Economic loss" or "economic damages" means all damages
8 that are tangible, such as damages for past and future medical
9 expenses, loss of income or earnings, and other property loss.

10 "Non-economic loss" or "non-economic damages" means
11 damages that are intangible, including, but not limited to,
12 damages for pain and suffering, disability, disfigurement, and
13 loss of society.

14 "Compensatory damages" or "actual damages" are the sum of
15 economic and non-economic damages.

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

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

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

22 (735 ILCS 5/2-1114) (from Ch. 110, par. 2-1114)

23 Sec. 2-1114. Contingent fees for attorneys in medical
24 malpractice actions.

25 (a) In all medical malpractice actions the total contingent
26 fee for plaintiff's attorney or attorneys shall not exceed the
27 following amounts:

28 33 1/3% of the first \$150,000 of the sum recovered;

29 25% of the next \$850,000 of the sum recovered; and

30 20% of any amount recovered over \$1,000,000 of the sum
31 recovered.

32 (b) For purposes of determining any lump sum contingent
33 fee, any future damages recoverable by the plaintiff in
34 periodic installments shall be reduced to a lump sum value.

35 (c) The court may review contingent fee agreements for

1 fairness. In special circumstances, where an attorney performs
2 extraordinary services involving more than usual participation
3 in time and effort the attorney may apply to the court for
4 approval of additional compensation. Any application for
5 additional compensation and the court's decision on additional
6 compensation shall be made part of the record.

7 (d) As used in this Section, "contingent fee basis"
8 includes any fee arrangement under which the compensation is to
9 be determined in whole or in part on the result obtained.

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

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

14 (735 ILCS 5/2-1701) (from Ch. 110, par. 2-1701)

15 Sec. 2-1701. Application. ~~In Subject to the provisions of~~
16 ~~Section 2-1705, in~~ all medical malpractice actions the
17 provisions of this Act shall be applicable.

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

19 (735 ILCS 5/2-1702) (from Ch. 110, par. 2-1702)

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

22 Sec. 2-1702. Economic/Non-Economic Loss. As used in this
23 Part, "economic loss" and "non-economic loss" have the same
24 meanings as in subsection (b) of Section 2-1109. ÷

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

27 ~~(b) "Non economic loss" means loss of consortium and all~~
28 ~~nonpecuniary harm for which damages are recoverable,~~
29 ~~including, without limitation, damages for pain and suffering,~~
30 ~~inconvenience, disfigurement, and physical impairment.~~

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

32 (735 ILCS 5/2-1704) (from Ch. 110, par. 2-1704)

33 Sec. 2-1704. Healing art malpractice ~~Medical Malpractice~~

1 ~~Action~~. As used in this Code Part, "healing art ~~medical~~
2 malpractice action" means any action, whether in tort, contract
3 or otherwise, in which the plaintiff seeks damages for injuries
4 or death by reason of medical, hospital, or other healing art
5 malpractice including but not limited to medical, hospital,
6 nursing, dental, or podiatric malpractice. The term "healing
7 art" shall not include care and treatment by spiritual means
8 through prayer in accord with the tenets and practices of a
9 recognized church or religious denomination.

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

11 (735 ILCS 5/2-1704.5 new)

12 Sec. 2-1704.5. Guaranteed payment of future medical
13 expenses.

14 (a) Either party in a medical malpractice action may elect
15 to have the payment of the plaintiff's future medical expenses
16 and costs of life care determined under this Section. The
17 election must be made not less than 60 days before commencement
18 of a trial involving issues of damages for such future medical
19 and life care. If found liable for damages for a plaintiff's
20 future medical and life care, the defendant shall compensate
21 the plaintiff for such expenses and costs by purchasing an
22 annuity as described in this Section that will pay for these
23 costs and expenses for as long as the plaintiff needs medical
24 and life care.

25 (b) If a defendant in a medical malpractice action is found
26 liable for the plaintiff's future medical expenses and costs of
27 care, the trier of fact, in addition to other appropriate
28 findings, shall make the following findings based on evidence
29 presented at trial:

30 (1) the current year annual cost of any future medical,
31 custodial, or life care required by the plaintiff
32 (including the cost of medical treatment, equipment,
33 supplies and medication, home nursing care, and
34 institutional or facility care) as described in the
35 plaintiff's life care plan determined to be acceptable by

1 the trier of fact; and

2 (2) the annual composite rate of inflation that should
3 be applied to the costs specified in item (1).

4 Based upon evidence presented at trial, the trier of fact may
5 also vary the amount of future costs under this Section from
6 year to year to account for different annual expenditures,
7 including the immediate medical and life care needs of the
8 plaintiff. If the trier of fact determines that the plaintiff
9 will need future medical and life care for less than the
10 plaintiff's entire life, the trier of fact shall specify the
11 number of years such care will be needed, but in no event shall
12 the payments required under this Section be required for a
13 period in excess of the plaintiff's life.

14 (c) When an election is made to pay for future medical and
15 life care costs by purchasing an annuity, the circuit court
16 shall enter a judgment ordering that such future costs be paid
17 through the use of an annuity purchased by or on behalf of the
18 defendant from a company that has itself, or is irrevocably
19 supported financially by a company that has, at least 2 of the
20 following 4 ratings: "A+x" or higher from A.M. Best Company;
21 "AA-" or higher from Standard & Poor's; "Aa3" or higher from
22 Moody's; and "AA-" or higher from Fitch. The judgment shall
23 specify the recipient of the payments, the dollar amount of the
24 payments, the interval between payments, and the number of
25 payments or the period of time over which payments shall be
26 made if the trier of fact determines that such costs will be
27 incurred for less than the plaintiff's entire life. Such
28 payments shall only be subject to modification with leave of
29 court pursuant to subsection (d).

30 (d) A plaintiff receiving future payments by means of an
31 annuity under this Section may seek leave of court to assign or
32 otherwise transfer the right to receive such payments in
33 exchange for a negotiated lump sum value of the remaining
34 future payments or any portion of the remaining future payments
35 under the annuity to address an unanticipated financial
36 hardship under such terms as approved by the court.

1 (e) In determining contingent attorneys' fees under
2 Section 2-1114 of this Code, the sum recovered shall be
3 determined on the basis of the cost of the annuity purchased in
4 accordance with this Section.

5 (735 ILCS 5/2-1706.5 new)

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

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

11 (1) In a case of an award against a hospital and its
12 personnel or hospital affiliates, as defined in Section
13 10.8 of the Hospital Licensing Act, the total amount of
14 non-economic damages shall not exceed \$500,000 awarded to
15 all plaintiffs in any civil action arising out of the care.

16 (2) In a case of an award against a physician and the
17 physician's business or corporate entity and personnel or
18 health care professional, the total amount of non-economic
19 damages shall not exceed \$250,000 awarded to all plaintiffs
20 in any civil action arising out of the care.

21 (3) In awarding damages in a medical malpractice case,
22 the trier 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 trier of fact about the time
33 value of an award and its ability to cover the plaintiff's
34 damages 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 5/2-1721 new)

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

6 (a) In addition to any other defense, a hospital shall not
7 be liable for the conduct of a non-employee member of its
8 medical staff under any claim based upon apparent or ostensible
9 agency as a matter of law, provided that:

10 (1) the plaintiff came to the hospital's emergency
11 department for care, where the hospital posted a sign or
12 provided the plaintiff with a document stating the
13 following: "Some of the physicians who may provide care or
14 consultation for you at this hospital are NOT employees of
15 the hospital, and while they have qualified to practice at
16 the hospital, their treatment decisions are their own
17 independent judgments. Do not assume your physician is a
18 hospital employee. If you have any questions about this,
19 please ask your physician or a hospital administrator or
20 representative before receiving treatment."; or

21 (2) the patient was unconscious or unaware of his or
22 her surroundings when brought to the hospital and the
23 patient's legal representative was not present at the time
24 to be informed of the non-employee status of the treating
25 physician.

26 (b) In any other action against a hospital arising out of
27 the provision of health care in which the plaintiff seeks
28 damages for any loss, bodily injury, or death in a claim based
29 upon apparent or ostensible agency, the plaintiff must allege
30 and prove the following:

31 (1) that the hospital, through its own specific
32 advertising or other public representations, caused the
33 plaintiff to reasonably believe that the physicians
34 treating the plaintiff at the hospital were the hospital's
35 agents or employees;

1 (2) that the plaintiff selected the hospital for
2 treatment primarily because of the hospital's public
3 representations described in item (1); and

4 (3) that a reasonable plaintiff would have selected a
5 different hospital for treatment if the plaintiff knew that
6 the treating physicians at the hospital might not be the
7 hospital's agents or employees.

8 (c) A plaintiff basing a claim upon apparent or ostensible
9 agency must allege facts describing the specific advertising or
10 other public representations that gave rise to a reasonable
11 belief that the hospital employs its treating physicians. The
12 plaintiff must also allege why the employment status of the
13 hospital's physicians played a primary role in the plaintiff's
14 selection of the hospital and why the plaintiff would have
15 selected a different hospital if the plaintiff knew that the
16 treating physicians might not be hospital agents or employees.

17 (d) As used in this Section, "public representations" does
18 not include granting a physician medical staff membership or
19 clinical privileges or making any statements about the granting
20 of such membership or privileges.

21 (e) Nothing in this Section precludes any other defense to
22 a claim of apparent or ostensible agency.

23 (f) The changes to this Section made by this amendatory Act
24 of the 94th General Assembly apply to causes of action accruing
25 on or after its effective date.

26 (735 ILCS 5/8-1901) (from Ch. 110, par. 8-1901)

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

28 (a) The providing of, or payment for, medical, surgical,
29 hospital, or rehabilitation services, facilities, or equipment
30 by or on behalf of any person, or the offer to provide, or pay
31 for, any one or more of the foregoing, shall not be construed
32 as an admission of any liability by such person or persons.
33 Testimony, writings, records, reports or information with
34 respect to the foregoing shall not be admissible in evidence as
35 an admission of any liability in any action of any kind in any

1 court or before any commission, administrative agency, or other
2 tribunal in this State, except at the instance of the person or
3 persons so making any such provision, payment or offer.

4 (b) Any expression of grief, apology, or explanation
5 provided by a health care provider, including, but not limited
6 to, a statement that the health care provider is "sorry" for
7 the outcome to a patient, the patient's family, or the
8 patient's legal representative about an inadequate or
9 unanticipated treatment or care outcome that is provided within
10 72 hours of when the provider knew or should have known of the
11 potential cause of such outcome shall not be admissible as
12 evidence in any action of any kind in any court or before any
13 tribunal, board, agency, or person. The disclosure of any such
14 information, whether proper, or improper, shall not waive or
15 have any effect upon its confidentiality or inadmissibility. As
16 used in this Section, a "health care provider" is any hospital,
17 nursing home or other facility, or employee or agent thereof, a
18 physician, or other licensed health care professional. Nothing
19 in this Section precludes the discovery or admissibility of any
20 other facts regarding the patient's treatment or outcome as
21 otherwise permitted by law.

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

23 (735 ILCS 5/8-2501) (from Ch. 110, par. 8-2501)

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

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

32 (a) Whether the witness is board certified or board
33 eligible, or has completed a residency, in the same or
34 substantially similar medical specialties as the defendant and
35 is otherwise qualified by significant experience with the

1 standard of care, methods, procedures, and treatments relevant
2 to the allegations against the defendant ~~Relationship of the~~
3 ~~medical specialties of the witness to the medical problem or~~
4 ~~problems and the type of treatment administered in the case;~~

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

10 (c) whether the witness is licensed in the same profession
11 with the same class of license as the defendant if the
12 defendant is an individual; and

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

16 An expert shall provide evidence of active practice,
17 teaching, or engaging in university-based research. If
18 retired, an expert must provide evidence of attendance and
19 completion of continuing education courses for 3 years previous
20 to giving testimony. An expert who has not actively practiced,
21 taught, or been engaged in university-based research, or any
22 combination thereof, during the preceding 5 years may not be
23 qualified as an expert witness.

24 The changes to this Section made by this amendatory Act of
25 the 94th General Assembly apply to causes of action filed on or
26 after its effective date.

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

28 (735 ILCS 5/2-1705 rep.) (from Ch. 110, par. 2-1705)

29 (735 ILCS 5/2-1706 rep.) (from Ch. 110, par. 2-1706)

30 (735 ILCS 5/2-1707 rep.) (from Ch. 110, par. 2-1707)

31 (735 ILCS 5/2-1708 rep.) (from Ch. 110, par. 2-1708)

32 (735 ILCS 5/2-1709 rep.) (from Ch. 110, par. 2-1709)

33 (735 ILCS 5/2-1710 rep.) (from Ch. 110, par. 2-1710)

34 (735 ILCS 5/2-1711 rep.) (from Ch. 110, par. 2-1711)

35 (735 ILCS 5/2-1712 rep.) (from Ch. 110, par. 2-1712)

1 (735 ILCS 5/2-1713 rep.) (from Ch. 110, par. 2-1713)

2 (735 ILCS 5/2-1714 rep.) (from Ch. 110, par. 2-1714)

3 (735 ILCS 5/2-1715 rep.) (from Ch. 110, par. 2-1715)

4 (735 ILCS 5/2-1716 rep.) (from Ch. 110, par. 2-1716)

5 (735 ILCS 5/2-1717 rep.) (from Ch. 110, par. 2-1717)

6 (735 ILCS 5/2-1718 rep.) (from Ch. 110, par. 2-1718)

7 (735 ILCS 5/2-1719 rep.) (from Ch. 110, par. 2-1719)

8 Section 415. The Code of Civil Procedure is amended by
9 repealing Sections 2-1705, 2-1706, 2-1707, 2-1708, 2-1709,
10 2-1710, 2-1711, 2-1712, 2-1713, 2-1714, 2-1715, 2-1716,
11 2-1717, 2-1718, and 2-1719.

12 Section 420. The Good Samaritan Act is amended by changing
13 Sections 25 and 30 as follows:

14 (745 ILCS 49/25)

15 Sec. 25. Physicians; exemption from civil liability for
16 emergency care. Any person licensed under the Medical Practice
17 Act of 1987 or any person licensed to practice the treatment of
18 human ailments in any other state or territory of the United
19 States who, in good faith, provides emergency care without fee
20 to a person, shall not, as a result of his or her acts or
21 omissions, except willful or wanton misconduct on the part of
22 the person, in providing the care, be liable for civil damages.
23 This good faith immunity applies to physicians licensed to
24 practice medicine in all its branches, including retired
25 physicians providing care without fee to a person pursuant to
26 an emergency department on call list.

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

28 (745 ILCS 49/30)

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

31 (a) A person licensed under the Medical Practice Act of
32 1987, a person licensed to practice the treatment of human
33 ailments in any other state or territory of the United States,

1 or a health care professional, including but not limited to an
2 advanced practice nurse, retired physician, physician
3 assistant, nurse, pharmacist, physical therapist, podiatrist,
4 or social worker licensed in this State or any other state or
5 territory of the United States, who, in good faith, provides
6 medical treatment, diagnosis, or advice as a part of the
7 services of an established free medical clinic providing care,
8 including but not limited to home visits, without charge to
9 ~~medically indigent~~ patients which is limited to care that does
10 not require the services of a licensed hospital or ambulatory
11 surgical treatment center and who receives no fee or
12 compensation from that source shall not be liable for civil
13 damages as a result of his or her acts or omissions in
14 providing that medical treatment, except for willful or wanton
15 misconduct.

16 (b) For purposes of this Section, a "free medical clinic"
17 is an organized community based program providing medical care
18 without charge to individuals ~~unable to pay for it,~~ at which
19 the care provided does not include ~~the use of general~~
20 ~~anesthesia or require~~ an overnight stay in a health-care
21 facility.

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

26 (d) The immunity from civil damages provided under
27 subsection (a) also applies to physicians, retired physicians,
28 hospitals, and other health care providers that provide further
29 medical treatment, diagnosis, or advice, including but not
30 limited to hospitalization, office visits, and home visits, to
31 a patient upon referral from an established free medical clinic
32 without fee or compensation.

33 (d-5) A free medical clinic may receive reimbursement from
34 the Illinois Department of Public Aid, provided any
35 reimbursements shall be used only to pay overhead expenses of
36 operating the free medical clinic and may not be used, in whole

1 or in part, to provide a fee or other compensation to any
2 person licensed under the Medical Practice Act of 1987 or any
3 other health care professional who is receiving an exemption
4 under this Section. Any health care professional receiving an
5 exemption under this Section may not receive any fee or other
6 compensation in connection with any services provided to, or
7 any ownership interest in, the clinic. Medical care shall not
8 include an overnight stay in a health care facility.

9 (e) Nothing in this Section prohibits a free medical clinic
10 from accepting voluntary contributions for medical services
11 provided to a patient who has acknowledged his or her ability
12 and willingness to pay a portion of the value of the medical
13 services provided.

14 (f) Any voluntary contribution collected for providing
15 care at a free medical clinic shall be used only to pay
16 overhead expenses of operating the clinic. No portion of any
17 moneys collected shall be used to provide a fee or other
18 compensation to any person licensed under Medical Practice Act
19 of 1987.

20 (g) The changes to this Section made by this amendatory Act
21 of the 94th General Assembly apply to causes of action accruing
22 on or after its effective date.

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

24 ARTICLE 9

25 Section 995. Liberal construction; inseverability.

26 (a) This Act, being necessary for the welfare of the State
27 and its inhabitants, shall be liberally construed to effect its
28 purposes.

29 (b) The provisions of this Act are mutually dependent and
30 inseverable. If any provision is held invalid other than as
31 applied to a particular person or circumstance, then this
32 entire Act is invalid.

33 Section 999. Effective date. This Act takes effect upon

1 becoming law.

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3	New Act	
4	5 ILCS 120/2	from Ch. 102, par. 42
5	30 ILCS 105/5.640 new	
6	55 ILCS 5/5-1005	from Ch. 34, par. 5-1005
7	55 ILCS 5/Div. 6-34	
8	heading new	
9	55 ILCS 5/6-34001 new	
10	55 ILCS 5/6-34002 new	
11	215 ILCS 5/155.18	from Ch. 73, par. 767.18
12	215 ILCS 5/155.18a new	
13	215 ILCS 5/155.19	from Ch. 73, par. 767.19
14	215 ILCS 5/1204	from Ch. 73, par. 1065.904
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26	5 ILCS 80/4.17	
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