

94TH GENERAL ASSEMBLY**State of Illinois****2005 and 2006****SB0050**

Introduced 1/26/2005, by Sen. John J. Cullerton

SYNOPSIS AS INTRODUCED:

See Index

Amends the Open Meetings Act, Counties Code, and Illinois Insurance Code. Allows certain counties to create a risk retention trust for the pooling of risks to provide professional liability coverage for physicians and health care professionals. Authorizes a county board to incur indebtedness to ensure the availability of and improve hospital and health services. Makes changes concerning medical liability insurance rates and regulation. Requires the Secretary of Financial and Professional Regulation to create a Professional Liability Insurance Resource Center on the World Wide Web. Requires insurers to report medical liability insurance claims to the Secretary. Provides that, for a medical liability insurance rate increase filing, the Secretary may hold a hearing and receive testimony. Requires court clerks to provide information to the Secretary to verify reports made to the Secretary, and amends the Clerks of Courts Act accordingly. Amends the Medical Practice Act of 1987. Provides for appointment of at least 2 deputy medical coordinators, and not less than one full time investigator for every 2,500 physicians. Makes changes concerning discipline, disciplinary proceedings, records, disclosures, incidents to which the Act applies, and immunity. Amends the Health Care Arbitration Act. Provides that: a copy of a health care arbitration agreement shall be given to a patient or his or her representative upon signing; no agreement is valid after 4 years from the date of execution; and an agreement may be canceled under specified circumstances. Amends the Code of Civil Procedure by: adding provisions concerning naming a respondent in discovery as a defendant; changing provisions concerning the affidavit and report based on the determination of a reviewing health professional; exempting a hospital from liability for medical care provided by a non-employee member of the medical staff under a claim based upon apparent or ostensible agency under specified conditions; providing that a statement that a health care provider is "sorry" for an outcome is not admissible as evidence under specified conditions; and changing provisions concerning expert witness standards. Amends the Illinois Good Samaritan Act to expand immunity from civil damages for services performed without compensation at, or upon referral from, free medical clinics. Creates the Sorry Works! Pilot Program Act under which hospitals and physicians may acknowledge and apologize for mistakes in patient care and offer fair settlements. Provides that, if the costs of cases handled under the Sorry Works! protocol by a hospital exceed the costs that would have been incurred otherwise, the hospital may apply for a grant from the Sorry Works! Fund. Creates the Medical Malpractice Working Study Committee Act and establishes a committee to research, assess, and report on other states' efforts in addressing caps on non-economic damages and annuities to pay medical malpractice judgments or settlements. Makes other changes. Contains severability provisions. Effective immediately.

LRB094 05093 WGH 35129 b

FISCAL NOTE ACT
MAY APPLY**A BILL FOR**

1 AN ACT in relation to insurance.

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

4 ARTICLE 1. FINDINGS

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

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

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

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

18 (4) In order to preserve the public health, safety, and
19 welfare of the people of Illinois, the current medical
20 malpractice situation requires reforms that enhance the
21 State's oversight of physicians and ability to discipline
22 physicians, that increase the State's oversight of medical
23 liability insurance carriers, that reduce the number of
24 nonmeritorious healing art malpractice actions, that encourage
25 physicians to provide voluntary services at free medical
26 clinics, and that encourage physicians and hospitals to
27 continue providing health care services in Illinois.

28 ARTICLE 2. RISK RETENTION ARRANGEMENTS

29 Section 205. The Open Meetings Act is amended by changing
30 Section 2 as follows:

1 (5 ILCS 120/2) (from Ch. 102, par. 42)

2 Sec. 2. Open meetings.

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

6 (b) Construction of exceptions. The exceptions contained
7 in subsection (c) are in derogation of the requirement that
8 public bodies meet in the open, and therefore, the exceptions
9 are to be strictly construed, extending only to subjects
10 clearly within their scope. The exceptions authorize but do not
11 require the holding of a closed meeting to discuss a subject
12 included within an enumerated exception.

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

15 (1) The appointment, employment, compensation,
16 discipline, performance, or dismissal of specific
17 employees of the public body or legal counsel for the
18 public body, including hearing testimony on a complaint
19 lodged against an employee of the public body or against
20 legal counsel for the public body to determine its
21 validity.

22 (2) Collective negotiating matters between the public
23 body and its employees or their representatives, or
24 deliberations concerning salary schedules for one or more
25 classes of employees.

26 (3) The selection of a person to fill a public office,
27 as defined in this Act, including a vacancy in a public
28 office, when the public body is given power to appoint
29 under law or ordinance, or the discipline, performance or
30 removal of the occupant of a public office, when the public
31 body is given power to remove the occupant under law or
32 ordinance.

33 (4) Evidence or testimony presented in open hearing, or
34 in closed hearing where specifically authorized by law, to
35 a quasi-adjudicative body, as defined in this Act, provided

1 that the body prepares and makes available for public
2 inspection a written decision setting forth its
3 determinative reasoning.

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

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

10 (7) The sale or purchase of securities, investments, or
11 investment contracts.

12 (8) Security procedures and the use of personnel and
13 equipment to respond to an actual, a threatened, or a
14 reasonably potential danger to the safety of employees,
15 students, staff, the public, or public property.

16 (9) Student disciplinary cases.

17 (10) The placement of individual students in special
18 education programs and other matters relating to
19 individual students.

20 (11) Litigation, when an action against, affecting or
21 on behalf of the particular public body has been filed and
22 is pending before a court or administrative tribunal, or
23 when the public body finds that an action is probable or
24 imminent, in which case the basis for the finding shall be
25 recorded and entered into the minutes of the closed
26 meeting.

27 (12) The establishment of reserves or settlement of
28 claims as provided in the Local Governmental and
29 Governmental Employees Tort Immunity Act, 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 insurer of the
34 public body or any intergovernmental risk management
35 association or self insurance pool of which the public body
36 is a member.

1 (13) Conciliation of complaints of discrimination in
2 the sale or rental of housing, when closed meetings are
3 authorized by the law or ordinance prescribing fair housing
4 practices and creating a commission or administrative
5 agency for their enforcement.

6 (14) Informant sources, the hiring or assignment of
7 undercover personnel or equipment, or ongoing, prior or
8 future criminal investigations, when discussed by a public
9 body with criminal investigatory responsibilities.

10 (15) Professional ethics or performance when
11 considered by an advisory body appointed to advise a
12 licensing or regulatory agency on matters germane to the
13 advisory body's field of competence.

14 (16) Self evaluation, practices and procedures or
15 professional ethics, when meeting with a representative of
16 a statewide association of which the public body is a
17 member.

18 (17) The recruitment, credentialing, discipline or
19 formal peer review of physicians or other health care
20 professionals for a hospital, or other institution
21 providing medical care, that is operated by the public
22 body.

23 (18) Deliberations for decisions of the Prisoner
24 Review Board.

25 (19) Review or discussion of applications received
26 under the Experimental Organ Transplantation Procedures
27 Act.

28 (20) The classification and discussion of matters
29 classified as confidential or continued confidential by
30 the State Employees Suggestion Award Board.

31 (21) Discussion of minutes of meetings lawfully closed
32 under this Act, whether for purposes of approval by the
33 body of the minutes or semi-annual review of the minutes as
34 mandated by Section 2.06.

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

1 (23) The operation by a municipality of a municipal
2 utility or the operation of a municipal power agency or
3 municipal natural gas agency when the discussion involves
4 (i) contracts relating to the purchase, sale, or delivery
5 of electricity or natural gas or (ii) the results or
6 conclusions of load forecast studies.

7 (24) Meetings of a residential health care facility
8 resident sexual assault and death review team or the
9 Residential Health Care Facility Resident Sexual Assault
10 and Death Review Teams Executive Council under the
11 Residential Health Care Facility Resident Sexual Assault
12 and Death Review Team Act.

13 (25) The establishment of reserves administration,
14 adjudication, or settlement of claims as provided in
15 Article XLV of the Illinois Insurance Code if otherwise the
16 disposition of a claim or potential claim might be
17 prejudiced, or the review or discussion of claims, loss or
18 risk management information, records, data, advice or
19 communications from or with respect to any self-insurance
20 trust administration or adjudication of any claim, or
21 insurer created by the public body.

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

23 "Employee" means a person employed by a public body whose
24 relationship with the public body constitutes an
25 employer-employee relationship under the usual common law
26 rules, and who is not an independent contractor.

27 "Public office" means a position created by or under the
28 Constitution or laws of this State, the occupant of which is
29 charged with the exercise of some portion of the sovereign
30 power of this State. The term "public office" shall include
31 members of the public body, but it shall not include
32 organizational positions filled by members thereof, whether
33 established by law or by a public body itself, that exist to
34 assist the body in the conduct of its business.

35 "Quasi-adjudicative body" means an administrative body
36 charged by law or ordinance with the responsibility to conduct

1 hearings, receive evidence or testimony and make
2 determinations based thereon, but does not include local
3 electoral boards when such bodies are considering petition
4 challenges.

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

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

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

13 (55 ILCS 5/5-1005) (from Ch. 34, par. 5-1005)

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

15 1. To purchase and hold the real and personal estate
16 necessary for the uses of the county, and to purchase and hold,
17 for the benefit of the county, real estate sold by virtue of
18 judicial proceedings in which the county is plaintiff.

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

21 3. To make all contracts and do all other acts in relation
22 to the property and concerns of the county necessary to the
23 exercise of its corporate powers.

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

26 5. To purchase and hold or lease real estate upon which may
27 be erected and maintained buildings to be utilized for purposes
28 of agricultural experiments and to purchase, hold and use
29 personal property for the care and maintenance of such real
30 estate in connection with such experimental purposes.

31 6. To cause to be erected, or otherwise provided, suitable
32 buildings for, and maintain a county hospital and necessary
33 branch hospitals and/or a county sheltered care home or county
34 nursing home for the care of such sick, chronically ill or

1 infirm persons as may by law be proper charges upon the county,
2 or upon other governmental units, and to provide for the
3 management of the same. The county board may establish rates to
4 be paid by persons seeking care and treatment in such hospital
5 or home in accordance with their financial ability to meet such
6 charges, either personally or through a hospital plan or
7 hospital insurance, and the rates to be paid by governmental
8 units, including the State, for the care of sick, chronically
9 ill or infirm persons admitted therein upon the request of such
10 governmental units. Any hospital maintained by a county under
11 this Section is authorized to provide any service and enter
12 into any contract or other arrangement not prohibited for a
13 hospital that is licensed under the Hospital Licensing Act,
14 incorporated under the General Not-For-Profit Corporation Act,
15 and exempt from taxation under paragraph (3) of subsection (c)
16 of Section 501 of the Internal Revenue Code.

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

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

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

28 10. To appropriate funds from the county treasury to be
29 used in any manner to be determined by the board for the
30 suppression, eradication and control of tuberculosis among
31 domestic cattle in such county.

32 11. To take all necessary measures to prevent forest fires
33 and encourage the maintenance and planting of trees and the
34 preservation of forests.

35 12. To authorize the closing on Saturday mornings of all
36 offices of all county officers at the county seat of each

1 county, and to otherwise regulate and fix the days and the
2 hours of opening and closing of such offices, except when the
3 days and the hours of opening and closing of the office of any
4 county officer are otherwise fixed by law; but the power herein
5 conferred shall not apply to the office of State's Attorney and
6 the offices of judges and clerks of courts and, in counties of
7 500,000 or more population, the offices of county clerk.

8 13. To provide for the conservation, preservation and
9 propagation of insectivorous birds through the expenditure of
10 funds provided for such purpose.

11 14. To appropriate funds from the county treasury and
12 expend the same for care and treatment of tuberculosis
13 residents.

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

17 16. To install an adequate system of accounts and financial
18 records in the offices and divisions of the county, suitable to
19 the needs of the office and in accordance with generally
20 accepted principles of accounting for governmental bodies,
21 which system may include such reports as the county board may
22 determine.

23 17. To purchase and hold real estate for the construction
24 and maintenance of motor vehicle parking facilities for persons
25 using county buildings, but the purchase and use of such real
26 estate shall not be for revenue producing purposes.

27 18. To acquire and hold title to real property located
28 within the county, or partly within and partly outside the
29 county by dedication, purchase, gift, legacy or lease, for park
30 and recreational purposes and to charge reasonable fees for the
31 use of or admission to any such park or recreational area and
32 to provide police protection for such park or recreational
33 area. Personnel employed to provide such police protection
34 shall be conservators of the peace within such park or
35 recreational area and shall have power to make arrests on view
36 of the offense or upon warrants for violation of any of the

1 ordinances governing such park or recreational area or for any
2 breach of the peace in the same manner as the police in
3 municipalities organized and existing under the general laws of
4 the State. All such real property outside the county shall be
5 contiguous to the county and within the boundaries of the State
6 of Illinois.

7 19. To appropriate funds from the county treasury to be
8 used to provide supportive social services designed to prevent
9 the unnecessary institutionalization of elderly residents, or,
10 for operation of, and equipment for, senior citizen centers
11 providing social services to elderly residents.

12 20. To appropriate funds from the county treasury and loan
13 such funds to a county water commission created under the
14 "Water Commission Act", approved June 30, 1984, as now or
15 hereafter amended, in such amounts and upon such terms as the
16 county may determine or the county and the commission may
17 agree. The county shall not under any circumstances be
18 obligated to make such loans. The county shall not be required
19 to charge interest on any such loans.

20 21. To establish an independent entity to administer a
21 medical care risk retention trust program, to contribute such
22 sums of money to the risk retention trust program as the county
23 board of the county shall deem proper to operate the medical
24 care risk retention trust program, to establish uniform
25 eligibility requirements for participation in the risk
26 retention trust program, to appoint an administrator of the
27 risk retention trust program, to charge premiums, to establish
28 a billing procedure to collect premiums, and to ensure timely
29 administration and adjudication of claims under the program. A
30 single medical care risk retention trust program may be
31 established jointly by more than one county, in accordance with
32 an agreement between the participating counties, if at least
33 one of the participating counties has a population of 200,000
34 or more according to the most recent federal decennial census.

35 All contracts for the purchase of coal under this Section
36 shall be subject to the provisions of "An Act concerning the

1 use of Illinois mined coal in certain plants and institutions",
2 filed July 13, 1937, as amended.
3 (Source: P.A. 86-962; 86-1028.)

4 (55 ILCS 5/Div. 6-34 heading new)

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

6 (55 ILCS 5/6-34001 new)

7 Sec. 6-34001. Authorization. The county board of any county
8 with a population of 200,000 or more according to the most
9 recent federal decennial census (and a county with a population
10 of less than 200,000 according to the most recent federal
11 decennial census if that county is participating in a single
12 trust program with one or more other counties in accordance
13 with the requirements of paragraph (21) of Section 5-1005 of
14 this Code) may, upon finding such action necessary for
15 protection of the public health, safety, and welfare, incur an
16 indebtedness by the establishment of lines or letters of credit
17 or issue general obligation or revenue bonds for the purpose of
18 ensuring the availability of and improving hospital, medical,
19 and health services as authorized under paragraph (21) of
20 Section 5-1005 of this Code.

21 (55 ILCS 5/6-34002 new)

22 Sec. 6-34002. Bonds. The bonds authorized in Section
23 6-34001 shall be issued in such denominations, be for such term
24 or terms, and bear interest at such rate as may be specified in
25 the resolution of the county board authorizing the issuance of
26 those bonds.

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

29 (215 ILCS 5/Art. XLV heading new)

30 Article XLV. COUNTY RISK RETENTION ARRANGEMENTS
31 FOR THE PROVISION OF MEDICAL MALPRACTICE INSURANCE

1 (215 ILCS 5/1501 new)

2 Sec. 1501. Scope of Article. This Article applies only to
3 trusts sponsored by counties and organized under this Article
4 to provide medical malpractice insurance authorized under
5 paragraph (21) of Section 5-1005 of the Counties Code for
6 physicians and health care professionals providing medical
7 care and health care within the county's limits. In the case of
8 a single trust sponsored and organized by more than one county
9 in accordance with the requirements of paragraph (21) of
10 Section 5-1005 of the Counties Code, the powers and duties of a
11 county under this Article shall be exercised jointly by the
12 counties participating in the trust program in accordance with
13 the agreement between the counties.

14 (215 ILCS 5/1502 new)

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

16 "Risk retention trust" or "trust" means a risk retention
17 trust created under this Article.

18 "Trust sponsor" means a county that has created a risk
19 retention trust.

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

24 "Contingency reserve fund" means a separate fund
25 maintained for payment of claims in excess of the pool
26 retention fund amount.

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

30 "Licensed service company" means an entity licensed by the
31 Department to perform claims adjusting, loss control, and data
32 processing.

33 (215 ILCS 5/1503 new)

1 Sec. 1503. Name. The corporate name of any risk retention
2 trust shall not be the same as or deceptively similar to the
3 name of any domestic insurance company or of any foreign or
4 alien insurance company authorized to transact business in this
5 State.

6 (215 ILCS 5/1504 new)

7 Sec. 1504. Principal office place of business. The
8 principal office of any risk retention trust shall be located
9 in this State.

10 (215 ILCS 5/1505 new)

11 Sec. 1505. Creation.

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

26 (2) The trustees shall appoint a qualified licensed
27 administrator who shall administer the affairs of the risk
28 retention trust.

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

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

34 (5) A trust shall be consummated by a written trust

1 agreement and shall be subject to the laws of this State
2 governing the creation and operation of trusts, to the extent
3 not inconsistent with this Article.

4 (215 ILCS 5/1506 new)

5 Sec. 1506. Participation.

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

10 (a) meets the underwriting standards for acceptance
11 into the trust;

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

14 (c) provides medical care and related health care in
15 the county sponsoring the trust;

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

18 (e) pays premium contributions on a timely basis as
19 required; and

20 (f) pays predetermined annual required contributions
21 into the contingency reserve fund.

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

27 (215 ILCS 5/1507 new)

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

29 (1) A risk retention trust may not issue coverage grants
30 until it has established a contingency reserve fund in an
31 amount deemed appropriate by the trust and filed with the
32 Department of Financial and Professional Regulation. A risk
33 retention trust must have and at all times maintain a pool
34 retention fund or a line or letter of credit at least equal to

1 its unpaid liabilities as determined by an independent actuary.

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

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

10 (215 ILCS 5/1508 new)

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

17 (215 ILCS 5/1509 new)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 Nothing in this Section shall be construed to authorize a
34 risk retention trust to accept the deposit of public funds
35 except for trust risk retention purposes.

1 ARTICLE 3. AMENDATORY PROVISIONS

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

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

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

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

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

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

29 (2) Consideration shall be given, to the extent
30 applicable, to past and prospective loss experience within
31 and outside this State, to a reasonable margin for
32 underwriting profit and contingencies, to past and
33 prospective expenses both countrywide and those especially
34 applicable to this State, and to all other factors,

1 including judgment factors, deemed relevant within and
2 outside this State.

3 Consideration may also be given in the making and use
4 of rates to dividends, savings or unabsorbed premium
5 deposits allowed or returned by companies to their
6 policyholders, members or subscribers.

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

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

29 (c) Every company writing medical liability insurance
30 shall file with the Secretary of Financial and Professional
31 Regulation ~~Director of Insurance~~ the rates and rating schedules
32 it uses for medical liability insurance.

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

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

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

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

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

21 (2) that the violation of any of the provisions of this
22 Section ~~applicable to it~~ by any company which has been the
23 subject of the hearing was wilful or that any company has
24 repeatedly violated any provision of this Section, he may
25 take either or both of the following actions:

26 (A) Suspend ~~suspend~~ or revoke, in whole or in part,
27 the certificate of authority of such company with
28 respect to the class of insurance which has been the
29 subject of the hearing.

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

33 (e) Every company writing medical liability insurance in
34 this State shall offer to each of its medical liability
35 insureds the option to make premium payments in at least
36 quarterly installments as prescribed by and filed with the

1 Secretary. This offer shall be included in the initial offer or
2 in the first policy renewal occurring after the effective date
3 of this amendatory Act of the 94th General Assembly, but no
4 earlier than January 1, 2006.

5 (f) Every company writing medical liability insurance is
6 encouraged, but not required, to offer the opportunity for
7 participation in a plan offering deductibles to its medical
8 liability insureds. Any plan to offer deductibles shall be
9 filed with the Department of Financial and Professional
10 Regulation.

11 (g) Medical liability insurers are encouraged, but not
12 required, to offer the opportunity for participation in a plan
13 providing premium discounts for participation in risk
14 management activities to its medical liability insureds. Any
15 such plan shall be filed with the Department.

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

17 (215 ILCS 5/155.18a new)

18 Sec. 155.18a. Professional Liability Insurance Resource
19 Center. The Secretary of Financial and Professional Regulation
20 shall establish a Professional Liability Insurance Resource
21 Center on the World Wide Web containing the names and telephone
22 numbers of all licensed companies providing medical liability
23 insurance and producers who sell medical liability insurance.
24 Each company and producer shall submit the information to the
25 Department on or before September 30 of each year in order to
26 be listed on the website. The Department is under no obligation
27 to list a company or producer on the website. Hyperlinks to
28 company websites shall be included, if available. The
29 publication of the information on the Department's website
30 shall commence on January 1, 2006. The Department shall update
31 the information on the Professional Liability Insurance
32 Resource Center at least annually.

33 (215 ILCS 5/155.19) (from Ch. 73, par. 767.19)

34 Sec. 155.19. All claims filed after December 31, 1976 with

1 any insurer and all suits filed after December 31, 1976 in any
2 court in this State, alleging liability on the part of any
3 physician, hospital or other health care provider for medically
4 related injuries, shall be reported to the Secretary of
5 Financial and Professional Regulation ~~Director of Insurance~~ in
6 such form and under such terms and conditions as may be
7 prescribed by the Secretary ~~Director~~. Notwithstanding any
8 other provision of law to the contrary, any insurer, stop loss
9 insurer, captive insurer, risk retention group, county risk
10 retention trust, religious or charitable risk pooling trust,
11 surplus line insurer, or other entity authorized or permitted
12 by law to provide medical liability insurance in this State
13 shall report to the Secretary, in such form and under such
14 terms and conditions as may be prescribed by the Secretary, all
15 claims filed after December 31, 2005 and all suits filed after
16 December 31, 2005 in any court in this State alleging liability
17 on the part of any physician, hospital, or health care provider
18 for medically-related injuries. Each clerk of the circuit court
19 shall provide to the Secretary such information as the
20 Secretary may deem necessary to verify the accuracy and
21 completeness of reports made to the Secretary under this
22 Section. The Secretary ~~Director~~ shall maintain complete and
23 accurate records of all such claims and suits including their
24 nature, amount, disposition and other information as he may
25 deem useful or desirable in observing and reporting on health
26 care provider liability trends in this State. The Secretary
27 ~~Director~~ shall release to appropriate disciplinary and
28 licensing agencies any such data or information which may
29 assist such agencies in improving the quality of health care or
30 which may be useful to such agencies for the purpose of
31 professional discipline.

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

1 If the Secretary finds that any entity required to report
2 information in its possession under this Section has violated
3 any provision of this Section by filing late, incomplete, or
4 inaccurate reports, the Secretary may fine the entity up to
5 \$1,000 for each offense. Each day during which a violation
6 occurs constitutes a separate offense.

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

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

11 (215 ILCS 5/402) (from Ch. 73, par. 1014)

12 Sec. 402. Examinations, investigations and hearings. (1)
13 All examinations, investigations and hearings provided for by
14 this Code may be conducted either by the Secretary ~~Director~~
15 personally, or by one or more of the actuaries, technical
16 advisors, deputies, supervisors or examiners employed or
17 retained by the Department and designated by the Secretary
18 ~~Director~~ for such purpose. When necessary to supplement its
19 examination procedures, the Department may retain independent
20 actuaries deemed competent by the Secretary ~~Director~~,
21 independent certified public accountants, or qualified
22 examiners of insurance companies deemed competent by the
23 Secretary ~~Director~~, or any combination of the foregoing, the
24 cost of which shall be borne by the company or person being
25 examined. The Secretary ~~Director~~ may compensate independent
26 actuaries, certified public accountants and qualified
27 examiners retained for supplementing examination procedures in
28 amounts not to exceed the reasonable and customary charges for
29 such services. The Secretary ~~Director~~ may also accept as a part
30 of the Department's examination of any company or person (a) a
31 report by an independent actuary deemed competent by the
32 Secretary ~~Director~~ or (b) a report of an audit made by an
33 independent certified public accountant. Neither those persons
34 so designated nor any members of their immediate families shall
35 be officers of, connected with, or financially interested in

1 any company other than as policyholders, nor shall they be
2 financially interested in any other corporation or person
3 affected by the examination, investigation or hearing.

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

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

30 (215 ILCS 5/1204) (from Ch. 73, par. 1065.904)

31 Sec. 1204. (A) The Secretary ~~Director~~ shall promulgate
32 rules and regulations which shall require each insurer licensed
33 to write property or casualty insurance in the State and each
34 syndicate doing business on the Illinois Insurance Exchange to
35 record and report its loss and expense experience and other

1 data as may be necessary to assess the relationship of
2 insurance premiums and related income as compared to insurance
3 costs and expenses. The Secretary ~~Director~~ may designate one or
4 more rate service organizations or advisory organizations to
5 gather and compile such experience and data. The Secretary
6 ~~Director~~ shall require each insurer licensed to write property
7 or casualty insurance in this State and each syndicate doing
8 business on the Illinois Insurance Exchange to submit a report,
9 on a form furnished by the Secretary ~~Director~~, showing its
10 direct writings in this State and companywide.

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

14 (1) Political subdivision liability insurance reported
15 separately in the following categories:

16 (a) municipalities;

17 (b) school districts;

18 (c) other political subdivisions;

19 (2) Public official liability insurance;

20 (3) Dram shop liability insurance;

21 (4) Day care center liability insurance;

22 (5) Labor, fraternal or religious organizations
23 liability insurance;

24 (6) Errors and omissions liability insurance;

25 (7) Officers and directors liability insurance
26 reported separately as follows:

27 (a) non-profit entities;

28 (b) for-profit entities;

29 (8) Products liability insurance;

30 (9) Medical malpractice insurance;

31 (10) Attorney malpractice insurance;

32 (11) Architects and engineers malpractice insurance;

33 and

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

36 (a) motor vehicle physical damage insurance;

1 (b) motor vehicle liability insurance.

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

6 (1) Direct premiums written;

7 (2) Direct premiums earned;

8 (3) Number of policies;

9 (4) Net investment income, using appropriate estimates
10 where necessary;

11 (5) Losses paid;

12 (6) Losses incurred;

13 (7) Loss reserves:

14 (a) Losses unpaid on reported claims;

15 (b) Losses unpaid on incurred but not reported
16 claims;

17 (8) Number of claims:

18 (a) Paid claims;

19 (b) Arising claims;

20 (9) Loss adjustment expenses:

21 (a) Allocated loss adjustment expenses;

22 (b) Unallocated loss adjustment expenses;

23 (10) Net underwriting gain or loss;

24 (11) Net operation gain or loss, including net
25 investment income;

26 (12) Any other information requested by the Secretary
27 Director.

28 (C-5) Additional information required from medical
29 malpractice insurers.

30 (1) In addition to the other requirements of this
31 Section, all medical malpractice insurers shall include
32 the following information in the report required by
33 subsection (A) of this Section in such form and under such
34 terms and conditions as may be prescribed by the Secretary:

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

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

3 (2) All information collected by the Secretary under
4 paragraph (1) of this subsection (C-5) shall be made
5 available, on an aggregate basis, to the General Assembly
6 and the general public. This provision shall supersede any
7 other provision of law that may otherwise protect such
8 information from public disclosure as confidential. The
9 identity of the plaintiff, the defendant, the attorneys,
10 and the company shall not be disclosed.

11 (D) In addition to the information which may be requested
12 under subsection (C), the Secretary ~~Director~~ may also request
13 on a companywide, aggregate basis, Federal Income Tax
14 recoverable, net realized capital gain or loss, net unrealized
15 capital gain or loss, and all other expenses not requested in
16 subsection (C) above.

17 (E) Violations - Suspensions - Revocations.

18 (1) Any company or person subject to this Article, who
19 willfully or repeatedly fails to observe or who otherwise
20 violates any of the provisions of this Article or any rule
21 or regulation promulgated by the Secretary ~~Director~~ under
22 authority of this Article or any final order of the
23 Secretary ~~Director~~ entered under the authority of this
24 Article shall by civil penalty forfeit to the State of
25 Illinois a sum not to exceed \$2,000. Each day during which
26 a violation occurs constitutes a separate offense.

27 (2) No forfeiture liability under paragraph (1) of this
28 subsection may attach unless a written notice of apparent
29 liability has been issued by the Secretary ~~Director~~ and
30 received by the respondent, or the Secretary ~~Director~~ sends
31 written notice of apparent liability by registered or
32 certified mail, return receipt requested, to the last known
33 address of the respondent. Any respondent so notified must
34 be granted an opportunity to request a hearing within 10
35 days from receipt of notice, or to show in writing, why he
36 should not be held liable. A notice issued under this

1 Section must set forth the date, facts and nature of the
2 act or omission with which the respondent is charged and
3 must specifically identify the particular provision of
4 this Article, rule, regulation or order of which a
5 violation is charged.

6 (3) No forfeiture liability under paragraph (1) of this
7 subsection may attach for any violation occurring more than
8 2 years prior to the date of issuance of the notice of
9 apparent liability and in no event may the total civil
10 penalty forfeiture imposed for the acts or omissions set
11 forth in any one notice of apparent liability exceed
12 \$100,000.

13 (4) All administrative hearings conducted pursuant to
14 this Article are subject to 50 Ill. Adm. Code 2402 and all
15 administrative hearings are subject to the Administrative
16 Review Law.

17 (5) The civil penalty forfeitures provided for in this
18 Section are payable to the General Revenue Fund of the
19 State of Illinois, and may be recovered in a civil suit in
20 the name of the State of Illinois brought in the Circuit
21 Court in Sangamon County or in the Circuit Court of the
22 county where the respondent is domiciled or has its
23 principal operating office.

24 (6) In any case where the Secretary ~~Director~~ issues a
25 notice of apparent liability looking toward the imposition
26 of a civil penalty forfeiture under this Section that fact
27 may not be used in any other proceeding before the
28 Secretary ~~Director~~ to the prejudice of the respondent to
29 whom the notice was issued, unless (a) the civil penalty
30 forfeiture has been paid, or (b) a court has ordered
31 payment of the civil penalty forfeiture and that order has
32 become final.

33 (7) When any person or company has a license or
34 certificate of authority under this Code and knowingly
35 fails or refuses to comply with a lawful order of the
36 Secretary ~~Director~~ requiring compliance with this Article,

1 entered after notice and hearing, within the period of time
2 specified in the order, the Secretary ~~Director~~ may, in
3 addition to any other penalty or authority provided, revoke
4 or refuse to renew the license or certificate of authority
5 of such person or company, or may suspend the license or
6 certificate of authority of such person or company until
7 compliance with such order has been obtained.

8 (8) When any person or company has a license or
9 certificate of authority under this Code and knowingly
10 fails or refuses to comply with any provisions of this
11 Article, the Secretary ~~Director~~ may, after notice and
12 hearing, in addition to any other penalty provided, revoke
13 or refuse to renew the license or certificate of authority
14 of such person or company, or may suspend the license or
15 certificate of authority of such person or company, until
16 compliance with such provision of this Article has been
17 obtained.

18 (9) No suspension or revocation under this Section may
19 become effective until 5 days from the date that the notice
20 of suspension or revocation has been personally delivered
21 or delivered by registered or certified mail to the company
22 or person. A suspension or revocation under this Section is
23 stayed upon the filing, by the company or person, of a
24 petition for judicial review under the Administrative
25 Review Law.

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

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

29 (225 ILCS 60/7) (from Ch. 111, par. 4400-7)

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

31 Sec. 7. Medical Disciplinary Board.

32 (A) There is hereby created the Illinois State Medical
33 Disciplinary Board (hereinafter referred to as the
34 "Disciplinary Board"). The Disciplinary Board shall consist of

1 9 members, to be appointed by the Governor by and with the
2 advice and consent of the Senate. All shall be residents of the
3 State, not more than 5 of whom shall be members of the same
4 political party. Five members shall be physicians licensed to
5 practice medicine in all of its branches in Illinois possessing
6 the degree of doctor of medicine. Two shall be members of the
7 public, who shall not be engaged in any way, directly or
8 indirectly, as providers of health care. The 2 public members
9 shall act as voting members. One member shall be a physician
10 licensed to practice in Illinois possessing the degree of
11 doctor of osteopathy or osteopathic medicine. One member shall
12 be a physician licensed to practice in Illinois and possessing
13 the degree of doctor of chiropractic.

14 (B) Members of the Disciplinary Board shall be appointed
15 for terms of 4 years. Upon the expiration of the term of any
16 member, their successor shall be appointed for a term of 4
17 years by the Governor by and with the advice and consent of the
18 Senate. The Governor shall fill any vacancy for the remainder
19 of the unexpired term by and with the advice and consent of the
20 Senate. Upon recommendation of the Board, any member of the
21 Disciplinary Board may be removed by the Governor for
22 misfeasance, malfeasance, or wilful neglect of duty, after
23 notice, and a public hearing, unless such notice and hearing
24 shall be expressly waived in writing. Each member shall serve
25 on the Disciplinary Board until their successor is appointed
26 and qualified. No member of the Disciplinary Board shall serve
27 more than 2 consecutive 4 year terms.

28 In making appointments the Governor shall attempt to insure
29 that the various social and geographic regions of the State of
30 Illinois are properly represented.

31 In making the designation of persons to act for the several
32 professions represented on the Disciplinary Board, the
33 Governor shall give due consideration to recommendations by
34 members of the respective professions and by organizations
35 therein.

36 (C) The Disciplinary Board shall annually elect one of its

1 voting members as chairperson and one as vice chairperson. No
2 officer shall be elected more than twice in succession to the
3 same office. Each officer shall serve until their successor has
4 been elected and qualified.

5 (D) (Blank).

6 (E) Four voting members of the Disciplinary Board shall
7 constitute a quorum. A vacancy in the membership of the
8 Disciplinary Board shall not impair the right of a quorum to
9 exercise all the rights and perform all the duties of the
10 Disciplinary Board. Any action taken by the Disciplinary Board
11 under this Act may be authorized by resolution at any regular
12 or special meeting and each such resolution shall take effect
13 immediately. The Disciplinary Board shall meet at least
14 quarterly. The Disciplinary Board is empowered to adopt all
15 rules and regulations necessary and incident to the powers
16 granted to it under this Act.

17 (F) Each member, and member-officer, of the Disciplinary
18 Board shall receive a per diem stipend as the Secretary
19 ~~Director~~ of the Department, hereinafter referred to as the
20 Secretary Director, shall determine. The Secretary Director
21 shall also determine the per diem stipend that each ex-officio
22 member shall receive. Each member shall be paid their necessary
23 expenses while engaged in the performance of their duties.

24 (G) The Secretary Director shall select a Chief Medical
25 Coordinator and not less than 2 ~~a~~ Deputy Medical Coordinators
26 ~~Coordinator~~ who shall not be members of the Disciplinary Board.
27 Each medical coordinator shall be a physician licensed to
28 practice medicine in all of its branches, and the Secretary
29 ~~Director~~ shall set their rates of compensation. The Secretary
30 ~~Director~~ shall assign at least one medical coordinator to a
31 region composed of Cook County and such other counties as the
32 Secretary Director may deem appropriate, and such medical
33 coordinator or coordinators shall locate their office in
34 Chicago. The Secretary Director shall assign at least one ~~the~~
35 ~~remaining~~ medical coordinator to a region composed of the
36 balance of counties in the State, and such medical coordinator

1 or coordinators shall locate their office in Springfield. Each
2 medical coordinator shall be the chief enforcement officer of
3 this Act in his or her ~~their~~ assigned region and shall serve at
4 the will of the Disciplinary Board.

5 The Secretary ~~Director~~ shall employ, in conformity with the
6 Personnel Code, not less than one full time investigator for
7 every 2,500 ~~5000~~ physicians licensed in the State. Each
8 investigator shall be a college graduate with at least 2 years'
9 investigative experience or one year advanced medical
10 education. Upon the written request of the Disciplinary Board,
11 the Secretary ~~Director~~ shall employ, in conformity with the
12 Personnel Code, such other professional, technical,
13 investigative, and clerical help, either on a full or part-time
14 basis as the Disciplinary Board deems necessary for the proper
15 performance of its duties.

16 (H) Upon the specific request of the Disciplinary Board,
17 signed by either the chairman, vice chairman, or a medical
18 coordinator of the Disciplinary Board, the Department of Human
19 Services or the Department of State Police shall make available
20 any and all information that they have in their possession
21 regarding a particular case then under investigation by the
22 Disciplinary Board.

23 (I) Members of the Disciplinary Board shall be immune from
24 suit in any action based upon any disciplinary proceedings or
25 other acts performed in good faith as members of the
26 Disciplinary Board.

27 (J) The Disciplinary Board may compile and establish a
28 statewide roster of physicians and other medical
29 professionals, including the several medical specialties, of
30 such physicians and medical professionals, who have agreed to
31 serve from time to time as advisors to the medical
32 coordinators. Such advisors shall assist the medical
33 coordinators or the Disciplinary Board in their investigations
34 and participation in complaints against physicians. Such
35 advisors shall serve under contract and shall be reimbursed at
36 a reasonable rate for the services provided, plus reasonable

1 expenses incurred. While serving in this capacity, the advisor,
2 for any act undertaken in good faith and in the conduct of
3 their duties under this Section, shall be immune from civil
4 suit.

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

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

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

8 Sec. 22. Disciplinary action.

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

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

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

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

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

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

32 (e) ambulatory surgical treatment centers,
33 hospitalization or care facilities maintained by any
34 university or college established under the laws of
35 this State and supported principally by public funds

1 raised by taxation.

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

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

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

11 (5) Engaging in dishonorable, unethical or
12 unprofessional conduct of a character likely to deceive,
13 defraud or harm the public.

14 (6) Obtaining any fee by fraud, deceit, or
15 misrepresentation.

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

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

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

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

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

32 (12) Disciplinary action of another state or
33 jurisdiction against a license or other authorization to
34 practice as a medical doctor, doctor of osteopathy, doctor
35 of osteopathic medicine or doctor of chiropractic, a
36 certified copy of the record of the action taken by the

1 other state or jurisdiction being prima facie evidence
2 thereof.

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

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

1 abrogate the right of 2 or more persons, holding valid and
2 current licenses under this Act, to each receive adequate
3 compensation for concurrently rendering professional
4 services to a patient and divide a fee; provided, the
5 patient has full knowledge of the division, and, provided,
6 that the division is made in proportion to the services
7 performed and responsibility assumed by each.

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

13 (16) Abandonment of a patient.

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

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

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

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

31 (21) Wilfully making or filing false records or reports
32 in his or her practice as a physician, including, but not
33 limited to, false records to support claims against the
34 medical assistance program of the Department of Public Aid
35 under the Illinois Public Aid Code.

36 (22) Wilful omission to file or record, or wilfully

1 impeding the filing or recording, or inducing another
2 person to omit to file or record, medical reports as
3 required by law, or wilfully failing to report an instance
4 of suspected abuse or neglect as required by law.

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

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

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

22 (26) A pattern of practice or other behavior which
23 demonstrates incapacity or incompetence to practice under
24 this Act.

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

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

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

34 (30) Wilfully or negligently violating the
35 confidentiality between physician and patient except as
36 required by law.

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

4 (32) Aiding and abetting an individual not licensed
5 under this Act in the practice of a profession licensed
6 under this Act.

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

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

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

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

35 (37) Failure to transfer copies of medical records as
36 required by law.

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

6 (39) Violating the Health Care Worker Self-Referral
7 Act.

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

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

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

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

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

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

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

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

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

36 (a) when a person will be deemed sufficiently

1 rehabilitated to warrant the public trust;

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

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

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

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

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

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

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

29 The Department may promulgate rules for the imposition of
30 fines in disciplinary cases, not to exceed \$10,000 ~~\$5,000~~ for
31 each violation of this Act. Fines may be imposed in conjunction
32 with other forms of disciplinary action, but shall not be the
33 exclusive disposition of any disciplinary action arising out of
34 conduct resulting in death or injury to a patient. Any funds
35 collected from such fines shall be deposited in the Medical
36 Disciplinary Fund.

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

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

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

25 (225 ILCS 60/23) (from Ch. 111, par. 4400-23)

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

27 Sec. 23. Reports relating to professional conduct and
28 capacity.

29 (A) Entities required to report.

30 (1) Health care institutions. The chief administrator
31 or executive officer of any health care institution
32 licensed by the Illinois Department of Public Health shall
33 report to the Disciplinary Board when any person's clinical
34 privileges are terminated or are restricted based on a
35 final determination, in accordance with that institution's

1 by-laws or rules and regulations, that a person has either
2 committed an act or acts which may directly threaten
3 patient care, and not of an administrative nature, or that
4 a person may be mentally or physically disabled in such a
5 manner as to endanger patients under that person's care.
6 Such officer also shall report if a person accepts
7 voluntary termination or restriction of clinical
8 privileges in lieu of formal action based upon conduct
9 related directly to patient care and not of an
10 administrative nature, or in lieu of formal action seeking
11 to determine whether a person may be mentally or physically
12 disabled in such a manner as to endanger patients under
13 that person's care. The Medical Disciplinary Board shall,
14 by rule, provide for the reporting to it of all instances
15 in which a person, licensed under this Act, who is impaired
16 by reason of age, drug or alcohol abuse or physical or
17 mental impairment, is under supervision and, where
18 appropriate, is in a program of rehabilitation. Such
19 reports shall be strictly confidential and may be reviewed
20 and considered only by the members of the Disciplinary
21 Board, or by authorized staff as provided by rules of the
22 Disciplinary Board. Provisions shall be made for the
23 periodic report of the status of any such person not less
24 than twice annually in order that the Disciplinary Board
25 shall have current information upon which to determine the
26 status of any such person. Such initial and periodic
27 reports of impaired physicians shall not be considered
28 records within the meaning of The State Records Act and
29 shall be disposed of, following a determination by the
30 Disciplinary Board that such reports are no longer
31 required, in a manner and at such time as the Disciplinary
32 Board shall determine by rule. The filing of such reports
33 shall be construed as the filing of a report for purposes
34 of subsection (C) of this Section.

35 (2) Professional associations. The President or chief
36 executive officer of any association or society, of persons

1 licensed under this Act, operating within this State shall
2 report to the Disciplinary Board when the association or
3 society renders a final determination that a person has
4 committed unprofessional conduct related directly to
5 patient care or that a person may be mentally or physically
6 disabled in such a manner as to endanger patients under
7 that person's care.

8 (3) Professional liability insurers. Every insurance
9 company which offers policies of professional liability
10 insurance to persons licensed under this Act, or any other
11 entity which seeks to indemnify the professional liability
12 of a person licensed under this Act, shall report to the
13 Disciplinary Board the settlement of any claim or cause of
14 action, or final judgment rendered in any cause of action,
15 which alleged negligence in the furnishing of medical care
16 by such licensed person when such settlement or final
17 judgment is in favor of the plaintiff.

18 (4) State's Attorneys. The State's Attorney of each
19 county shall report to the Disciplinary Board all instances
20 in which a person licensed under this Act is convicted or
21 otherwise found guilty of the commission of any felony. The
22 State's Attorney of each county may report to the
23 Disciplinary Board through a verified complaint any
24 instance in which the State's Attorney believes that a
25 physician has willfully violated the notice requirements
26 of the Parental Notice of Abortion Act of 1995.

27 (5) State agencies. All agencies, boards, commissions,
28 departments, or other instrumentalities of the government
29 of the State of Illinois shall report to the Disciplinary
30 Board any instance arising in connection with the
31 operations of such agency, including the administration of
32 any law by such agency, in which a person licensed under
33 this Act has either committed an act or acts which may be a
34 violation of this Act or which may constitute
35 unprofessional conduct related directly to patient care or
36 which indicates that a person licensed under this Act may

1 be mentally or physically disabled in such a manner as to
2 endanger patients under that person's care.

3 (B) Mandatory reporting. All reports required by items
4 (34), (35), and (36) of subsection (A) of Section 22 and by
5 Section 23 shall be submitted to the Disciplinary Board in a
6 timely fashion. The reports shall be filed in writing within 60
7 days after a determination that a report is required under this
8 Act. All reports shall contain the following information:

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

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

13 (3) The name and date of birth ~~or other means of~~
14 ~~identification~~ of any patient or patients whose treatment
15 is a subject of the report, if available, or other means of
16 identification if such information is not available,
17 identification of the hospital or other healthcare
18 facility where the care at issue in the report was
19 rendered, provided, however, no medical records may be
20 revealed ~~without the written consent of the patient or~~
21 ~~patients.~~

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

25 (5) If court action is involved, the identity of the
26 court in which the action is filed, along with the docket
27 number and date of filing of the action.

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

31 ~~The Department shall have the right to inform patients of~~
32 ~~the right to provide written consent for the Department to~~
33 ~~obtain copies of hospital and medical records.~~ The Disciplinary
34 Board or Department may also exercise the power under Section
35 38 of this Act to subpoena copies of hospital or medical
36 records in mandatory report cases alleging death or permanent

1 bodily injury ~~when consent to obtain records is not provided by~~
2 ~~a patient or legal representative~~. Appropriate rules shall be
3 adopted by the Department with the approval of the Disciplinary
4 Board.

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

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

26 (C) Immunity from prosecution. Any individual or
27 organization acting in good faith, and not in a wilful and
28 wanton manner, in complying with this Act by providing any
29 report or other information to the Disciplinary Board or a peer
30 review committee, or assisting in the investigation or
31 preparation of such information, or by voluntarily reporting to
32 the Disciplinary Board or a peer review committee information
33 regarding alleged errors or negligence by a person licensed
34 under this Act, or by participating in proceedings of the
35 Disciplinary Board or a peer review committee, or by serving as
36 a member of the Disciplinary Board or a peer review committee,

1 shall not, as a result of such actions, be subject to criminal
2 prosecution or civil damages.

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

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

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

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

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

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

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

24 When the Disciplinary Board makes its initial review of the
25 materials contained within its disciplinary files, the
26 Disciplinary Board shall, in writing, make a determination as
27 to whether there are sufficient facts to warrant further
28 investigation or action. Failure to make such determination
29 within the time provided shall be deemed to be a determination
30 that there are not sufficient facts to warrant further
31 investigation or action.

32 Should the Disciplinary Board find that there are not
33 sufficient facts to warrant further investigation, or action,
34 the report shall be accepted for filing and the matter shall be
35 deemed closed and so reported to the Secretary ~~Director~~. The
36 Secretary ~~Director~~ shall then have 30 days to accept the

1 Medical Disciplinary Board's decision or request further
2 investigation. The Secretary ~~Director~~ shall inform the Board in
3 writing of the decision to request further investigation,
4 including the specific reasons for the decision. The individual
5 or entity filing the original report or complaint and the
6 person who is the subject of the report or complaint shall be
7 notified in writing by the Secretary ~~Director~~ of any final
8 action on their report or complaint.

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

23 (G) Any violation of this Section shall be a Class A
24 misdemeanor.

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

1 provided for by this Section.

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

4 (225 ILCS 60/24) (from Ch. 111, par. 4400-24)

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

6 Sec. 24. Report of violations; medical associations. Any
7 physician licensed under this Act, the Illinois State Medical
8 Society, the Illinois Association of Osteopathic Physicians
9 and Surgeons, the Illinois Chiropractic Society, the Illinois
10 Prairie State Chiropractic Association, or any component
11 societies of any of these 4 groups, and any other person, may
12 report to the Disciplinary Board any information the physician,
13 association, society, or person may have that appears to show
14 that a physician is or may be in violation of any of the
15 provisions of Section 22 of this Act.

16 The Department may enter into agreements with the Illinois
17 State Medical Society, the Illinois Association of Osteopathic
18 Physicians and Surgeons, the Illinois Prairie State
19 Chiropractic Association, or the Illinois Chiropractic Society
20 to allow these organizations to assist the Disciplinary Board
21 in the review of alleged violations of this Act. Subject to the
22 approval of the Department, any organization party to such an
23 agreement may subcontract with other individuals or
24 organizations to assist in review.

25 Any physician, association, society, or person
26 participating in good faith in the making of a report, under
27 this Act or participating in or assisting with an investigation
28 or review under this Act ~~Section~~ shall have immunity from any
29 civil, criminal, or other liability that might result by reason
30 of those actions.

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

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

15 For the purpose of any civil or criminal proceedings, the
16 good faith of any physician, association, society or person
17 shall be presumed. The Disciplinary Board may request the
18 Illinois State Medical Society, the Illinois Association of
19 Osteopathic Physicians and Surgeons, the Illinois Prairie
20 State Chiropractic Association, or the Illinois Chiropractic
21 Society to assist the Disciplinary Board in preparing for or
22 conducting any medical competency examination as the Board may
23 deem appropriate.

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

25 (225 ILCS 60/36) (from Ch. 111, par. 4400-36)

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

27 Sec. 36. Upon the motion of either the Department or the
28 Disciplinary Board or upon the verified complaint in writing of
29 any person setting forth facts which, if proven, would
30 constitute grounds for suspension or revocation under Section
31 22 of this Act, the Department shall investigate the actions of
32 any person, so accused, who holds or represents that they hold
33 a license. Such person is hereinafter called the accused.

34 The Department shall, before suspending, revoking, placing
35 on probationary status, or taking any other disciplinary action

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

13 Where a physician has been found, upon complaint and
14 investigation of the Department, and after hearing, to have
15 performed an abortion procedure in a wilful and wanton manner
16 upon a woman who was not pregnant at the time such abortion
17 procedure was performed, the Department shall automatically
18 revoke the license of such physician to practice medicine in
19 Illinois.

20 Such written notice and any notice in such proceedings
21 thereafter may be served by delivery of the same, personally,
22 to the accused person, or by mailing the same by registered or
23 certified mail to the address last theretofore specified by the
24 accused in their last notification to the Department.

25 All information gathered by the Department during its
26 investigation including information subpoenaed under Section
27 23 or 38 of this Act and the investigative file shall be kept
28 for the confidential use of the Secretary ~~Director~~,
29 Disciplinary Board, the Medical Coordinators, persons employed
30 by contract to advise the Medical Coordinator or the
31 Department, the Disciplinary Board's attorneys, the medical
32 investigative staff, and authorized clerical staff, as
33 provided in this Act and shall be afforded the same status as
34 is provided information concerning medical studies in Part 21
35 of Article VIII of the Code of Civil Procedure, except that the
36 Department may disclose information and documents to a federal,

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

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

7 Section 320. The Clerks of Courts Act is amended by adding
8 Section 27.10 as follows:

9 (705 ILCS 105/27.10 new)

10 Sec. 27.10. Secretary of Financial and Professional
11 Regulation. Each clerk of the circuit court shall provide to
12 the Secretary of Financial and Professional Regulation such
13 information as the Secretary of Financial and Professional
14 Regulation requests under Section 155.19 of the Illinois
15 Insurance Code.

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

18 (710 ILCS 15/8) (from Ch. 10, par. 208)

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

21 (a) The agreement is not a condition to the rendering of
22 health care services by any party and the agreement has been
23 executed by the recipient of health care services at the
24 inception of or during the term of provision of services for a
25 specific cause by either a health care provider or a hospital;
26 and

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

31 (c) The agreement may not limit, impair, or waive any
32 substantive rights or defenses of any party, including the

1 statute of limitations; and

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

6 (e) (Blank). ~~As a part of the discharge planning process~~
7 ~~the patient or, if appropriate, members of his family must be~~
8 ~~given a copy of the health care arbitration agreement~~
9 ~~previously executed by or for the patient and shall re affirm~~
10 ~~it. Failure to comply with this provision during the discharge~~
11 ~~planning process shall void the health care arbitration~~
12 ~~agreement.~~

13 (f) This amendatory Act of the 94th General Assembly
14 applies to health care arbitration agreements executed on or
15 after its effective date.

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

17 (710 ILCS 15/9) (from Ch. 10, par. 209)

18 Sec. 9. Mandatory Provisions.

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

21 (b) Every health care arbitration agreement in relation to
22 health care services rendered during hospitalization shall
23 specify the date of commencement of hospitalization. Every
24 health care arbitration agreement in relation to health care
25 services not rendered during hospitalization shall state the
26 specific cause for which the services are provided.

27 (c) Every health care arbitration agreement may be
28 cancelled by any signatory (1) within 120 ~~60~~ days of its
29 execution or within 120 ~~60~~ days of the date of the patient's
30 discharge from the hospital, whichever is later, as to an
31 agreement in relation to health care services rendered during
32 hospitalization, ~~provided, that if executed other than at the~~
33 ~~time of discharge of the patient from the hospital, the health~~
34 ~~care arbitration agreement be reaffirmed at the time of the~~
35 ~~discharge planning process in the same manner as provided for~~

1 ~~in the execution of the original agreement;~~ or (2) within 120
2 ~~60~~ days of the date of its execution, or the last date of
3 treatment by the health care provider, whichever is later, as
4 to an agreement in relation to health care services not
5 rendered during hospitalization. Provided, that no health care
6 arbitration agreement shall be valid after 4 ~~2~~ years from the
7 date of its execution. An employee of a hospital or health care
8 provider who is not a signatory to an agreement may cancel such
9 agreement as to himself until 30 days following his
10 notification that he is a party to a dispute or issue on which
11 arbitration has been demanded pursuant to such agreement. If
12 any person executing a health care arbitration agreement dies
13 before the period of cancellation as outlined above, the
14 personal representative of the decedent shall have the right to
15 cancel the health care arbitration agreement within 60 days of
16 the date of his appointment as the legal representative of the
17 decedent's estate. ~~Provided, that if no legal representative is~~
18 ~~appointed within 6 months of the death of said decedent the~~
19 ~~next of kin of such decedent shall have the right to cancel the~~
20 ~~health care arbitration agreement within 8 months from the date~~
21 ~~of death.~~

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

26 "AGREEMENT TO ARBITRATE HEALTH CARE

27 NEGLIGENCE CLAIMS

28 NOTICE TO PATIENT

29 YOU CANNOT BE REQUIRED TO SIGN THIS AGREEMENT IN ORDER TO
30 RECEIVE TREATMENT. BY SIGNING THIS AGREEMENT, YOUR RIGHT TO
31 TRIAL BY A JURY OR A JUDGE IN A COURT WILL BE BARRED AS TO
32 ANY DISPUTE RELATING TO INJURIES THAT MAY RESULT FROM
33 NEGLIGENCE DURING YOUR TREATMENT OR CARE, AND WILL BE
34 REPLACED BY AN ARBITRATION PROCEDURE.

35 THIS AGREEMENT MAY BE CANCELLED WITHIN 120 ~~60~~ DAYS OF
36 SIGNING OR 120 ~~60~~ DAYS AFTER YOUR HOSPITAL DISCHARGE,

1 WHICHEVER IS LATER, OR 120 ~~60~~ DAYS AFTER YOUR LAST MEDICAL
2 TREATMENT IN RELATION TO HEALTH CARE SERVICES NOT RENDERED
3 DURING HOSPITALIZATION.

4 THIS AGREEMENT PROVIDES THAT ANY CLAIMS WHICH MAY ARISE OUT
5 OF YOUR HEALTH CARE WILL BE SUBMITTED TO A PANEL OF
6 ARBITRATORS, RATHER THAN TO A COURT FOR DETERMINATION. THIS
7 AGREEMENT REQUIRES ALL PARTIES SIGNING IT TO ABIDE BY THE
8 DECISION OF THE ARBITRATION PANEL."

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

15 (f) This amendatory Act of the 94th General Assembly
16 applies to health care arbitration agreements executed on or
17 after its effective date.

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

19 Section 330. The Code of Civil Procedure is amended by
20 reenacting and changing Sections 2-402, 2-622, and 8-2501, by
21 changing Sections 2-1704 and 8-1901, and by adding Section
22 2-1721 as follows:

23 (735 ILCS 5/2-402) (from Ch. 110, par. 2-402)

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

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

32 Persons or entities so named as respondents in discovery
33 shall be required to respond to discovery by the plaintiff in
34 the same manner as are defendants and may, on motion of the

1 plaintiff, be added as defendants if the evidence discloses the
2 existence of probable cause for such action.

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

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

9 Each respondent in discovery shall be paid expenses and
10 fees as provided for witnesses.

11 A person or entity named as a respondent in discovery in
12 any civil action may be made a defendant in the same action at
13 any time within 6 months after being named as a respondent in
14 discovery, even though the time during which an action may
15 otherwise be initiated against him or her may have expired
16 during such 6 month period. An extension from the original
17 6-month period for good cause may be granted only once for up
18 to 90 days for (i) withdrawal of plaintiff's counsel or (ii)
19 good cause. Notwithstanding the limitations in this Section,
20 the court may grant additional reasonable extensions from this
21 6-month period for a failure or refusal on the part of the
22 respondent to comply with timely filed discovery.

23 This amendatory Act of the 94th General Assembly applies to
24 causes of action pending on or after its effective date.

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

26 (735 ILCS 5/2-622) (from Ch. 110, par. 2-622)

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

29 Sec. 2-622. Healing art malpractice.

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

1 following:

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

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

1 and address of the reviewing health professional upon a
2 showing of good cause by the defendant who in good faith
3 challenges the qualifications of the health professional
4 based on information available to the defendant. If the
5 information is disclosed at the trial level, then it shall
6 be confidential and it shall not be disclosed by the
7 defendant to a third party.

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

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

36 (b) Where an affidavit ~~a certificate~~ and written report are

1 required pursuant to this Section a separate affidavit
2 ~~certificate~~ and written report shall be filed as to each
3 defendant who has been named in the complaint and shall be
4 filed as to each defendant named at a later time.

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

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

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

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

1 such report.

2 (g) The failure of the plaintiff to file an affidavit and
3 report in compliance with ~~to file a certificate required by~~
4 this Section shall be grounds for dismissal under Section
5 2-619.

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

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

12 (j) This amendatory Act of the 94th General Assembly
13 applies to causes of action accruing on or after its effective
14 date.

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

16 (735 ILCS 5/2-1704) (from Ch. 110, par. 2-1704)

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

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

28 (735 ILCS 5/2-1721 new)

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

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

34 (1) the patient was unconscious or unaware of his or

1 her surroundings upon arrival at the hospital and the
2 patient's legal representative was not present at the time
3 to be informed that the non-employee member of its medical
4 staff was not an agent or employee of the hospital; or

5 (2) the specific member of the hospital's medical staff
6 personally informed the patient, or his or her legal
7 representative, if present, before rendering treatment
8 that he or she was not an agent or employee of the
9 hospital.

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

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

19 "NOTICE OF STATUS OF TREATING PHYSICIANS

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

24 and

25 (2) if the patient is asked to sign the disclosure, the
26 disclosure shall contain immediately above the signature
27 lines, in upper case bold type printed letters of at least
28 3/16 inch height, a statement that the patient cannot be
29 required to sign the disclosure in order to receive
30 treatment; and

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

33 (4) such disclosure is provided in a reasonable and
34 meaningful manner. In determining if a disclosure

1 satisfies the requirements of this item (4), the trier of
2 fact shall consider only the following factors:

3 (A) Whether the patient knowingly and voluntarily
4 signed the disclosure.

5 (B) Whether the hospital provided an opportunity
6 for the patient to ask questions.

7 (C) Whether the patient's questions about this
8 disclosure were answered and the contents of the
9 answers.

10 (D) Whether such disclosure was provided orally
11 and in writing.

12 (E) Whether a reasonable person under the
13 circumstances should have understood the disclosure,
14 taking into account any and all representations made by
15 or on behalf of the hospital.

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

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

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

23 (e) This amendatory Act of the 94th General Assembly
24 applies to causes of action accruing on or after its effective
25 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 This amendatory Act of the 94th General Assembly applies to
25 causes of action filed on or after its effective date.

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

27 Section 340. The Good Samaritan Act is amended by changing
28 Section 30 as follows:

29 (745 ILCS 49/30)

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

32 (a) A person licensed under the Medical Practice Act of
33 1987, a person licensed to practice the treatment of human
34 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) This amendatory Act of the 94th General Assembly
21 applies to causes of action accruing on or after its effective
22 date.

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

24 ARTICLE 4. SORRY WORKS! PILOT PROGRAM ACT

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

28 Section 405. Sorry Works! pilot program. The Sorry Works!
29 pilot program is established. During the first year of the
30 program's operation, participation in the program shall be open
31 to one hospital. Hospitals may participate only with the
32 approval of the hospital administration and the hospital's
33 organized medical staff. During the second year of the

1 program's operation, participation in the program shall be open
2 to one additional hospital.

3 The first participating hospital selected by the committee
4 established under Section 410 shall be located in a county with
5 a population greater than 200,000 that is contiguous with the
6 Mississippi River.

7 Under the program, participating hospitals and physicians
8 shall promptly acknowledge and apologize for mistakes in
9 patient care and promptly offer fair settlements.
10 Participating hospitals shall encourage patients and families
11 to retain their own legal counsel to ensure that their rights
12 are protected and to help facilitate negotiations for fair
13 settlements. Participating hospitals shall report to the
14 committee their total costs for healing art malpractice
15 verdicts, settlements, and defense litigation for the
16 preceding 5 years to enable the committee to determine average
17 costs for that hospital during that period. The committee shall
18 develop standards and protocols to compare costs for cases
19 handled by traditional means and cases handled under the Sorry
20 Works! protocol.

21 If the committee determines that the total costs of cases
22 handled under the Sorry Works! protocol by a hospital
23 participating in the program exceed the total costs that would
24 have been incurred if the cases had been handled by traditional
25 means, the hospital may apply for a grant from the Sorry Works!
26 Fund, a special fund that is created in the State Treasury, for
27 an amount, as determined by the committee, by which the total
28 costs exceed the total costs that would have been incurred if
29 the cases had been handled by traditional means; however, the
30 total of all grants from the Fund for cases in any single
31 participating hospital in any year may not exceed the amount in
32 the Fund or \$2,000,000, whichever is less. All grants shall be
33 subject to appropriation. Moneys in the Fund shall consist of
34 funds transferred into the Fund or otherwise made available
35 from any source.

1 Section 410. Establishment of committee.

2 (a) A committee is established to develop, oversee, and
3 implement the Sorry Works! pilot program. The committee shall
4 have 9 members, each of whom shall be a voting member. Six
5 members of the committee shall constitute a quorum. The
6 committee shall be comprised as follows:

7 (1) The President of the Senate, the Minority Leader of
8 the Senate, the Speaker of the House of Representatives,
9 and the Minority Leader of the House of Representatives
10 shall each appoint 2 members.

11 (2) The Secretary of Financial and Professional
12 Regulation or his or her designee.

13 (b) The committee shall establish criteria for the program,
14 including but not limited to: selection of hospitals,
15 physicians, and insurers to participate in the program; and
16 creation of a subcommittee to review cases from hospitals and
17 determine whether hospitals, physicians, and insurers are
18 entitled to compensation under the program.

19 (c) The committee shall communicate with hospitals,
20 physicians, and insurers that are interested in participating
21 in the program. The committee shall make final decisions as to
22 which applicants are accepted for the program.

23 (d) The committee shall report to the Governor and the
24 General Assembly annually.

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

26 (f) Committee members shall receive no compensation for the
27 performance of their duties as members, but each member shall
28 be paid necessary expenses while engaged in the performance of
29 those duties.

30 Section 415. Termination of program.

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

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

1 Section 495. The State Finance Act is amended by adding
2 Section 5.640 as follows:

3 (30 ILCS 105/5.640 new)
4 Sec. 5.640. The Sorry Works! Fund.

5 ARTICLE 5. WORKING STUDY COMMITTEE

6 Section 501. Short title. This Article 5 may be cited as
7 the Medical Malpractice Working Study Committee Act, and
8 references in this Article to "this Act" mean this Article.

9 Section 505. Working Study Committee. The Governor,
10 President of the Senate, Senate Minority Leader, Speaker of the
11 House of Representatives, and House Minority Leader shall each
12 appoint 2 persons to serve on a Working Study Committee to
13 research, assess, and report to the General Assembly on the
14 results and impacts of other states' efforts in addressing caps
15 on non-economic damages and annuities to pay judgments or
16 settlements in medical malpractice lawsuits. The Working Study
17 Committee shall submit its report within 12 months of the
18 effective date of this Act.

19 ARTICLE 9. MISCELLANEOUS

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

22 Section 999. Effective date. This Act takes effect upon
23 becoming law.

1 INDEX
2 Statutes amended in order of appearance

3 New Act

- 4 5 ILCS 120/2 from Ch. 102, par. 42
- 5 55 ILCS 5/5-1005 from Ch. 34, par. 5-1005
- 6 55 ILCS 5/Div. 6-34
- 7 heading new
- 8 55 ILCS 5/6-34001 new
- 9 55 ILCS 5/6-34002 new
- 10 215 ILCS 5/Art. XLV
- 11 heading new
- 12 215 ILCS 5/1501 new
- 13 215 ILCS 5/1502 new
- 14 215 ILCS 5/1503 new
- 15 215 ILCS 5/1504 new
- 16 215 ILCS 5/1505 new
- 17 215 ILCS 5/1506 new
- 18 215 ILCS 5/1507 new
- 19 215 ILCS 5/1508 new
- 20 215 ILCS 5/1509 new
- 21 215 ILCS 5/155.18 from Ch. 73, par. 767.18
- 22 215 ILCS 5/155.18a new
- 23 215 ILCS 5/155.19 from Ch. 73, par. 767.19
- 24 215 ILCS 5/402 from Ch. 73, par. 1014
- 25 215 ILCS 5/1204 from Ch. 73, par. 1065.904
- 26 225 ILCS 60/7 from Ch. 111, par. 4400-7
- 27 225 ILCS 60/22 from Ch. 111, par. 4400-22
- 28 225 ILCS 60/23 from Ch. 111, par. 4400-23
- 29 225 ILCS 60/24 from Ch. 111, par. 4400-24
- 30 225 ILCS 60/36 from Ch. 111, par. 4400-36
- 31 705 ILCS 105/27.10 new
- 32 710 ILCS 15/8 from Ch. 10, par. 208
- 33 710 ILCS 15/9 from Ch. 10, par. 209
- 34 735 ILCS 5/2-402 from Ch. 110, par. 2-402
- 35 735 ILCS 5/2-622 from Ch. 110, par. 2-622

- 1 735 ILCS 5/2-1704 from Ch. 110, par. 2-1704
- 2 735 ILCS 5/2-1721 new
- 3 735 ILCS 5/8-1901 from Ch. 110, par. 8-1901
- 4 735 ILCS 5/8-2501 from Ch. 110, par. 8-2501
- 5 745 ILCS 49/30
- 6 30 ILCS 105/5.640 new