



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB0813

Introduced 2/9/2009, by Rep. Frank J. Mautino

SYNOPSIS AS INTRODUCED:

225 ILCS 80/24
320 ILCS 20/4

from Ch. 111, par. 3924
from Ch. 23, par. 6604

Amends the Illinois Optometric Practice Act of 1987 and the Elder Abuse and Neglect Act. Provides that willfully failing to report an instance of suspected abuse or neglect (instead of child abuse or neglect) as required by law (instead of as required by the Abused and Neglected Child Reporting Act) is grounds for disciplinary action against an optometrist. Provides that any optometrist who willfully fails to report suspected elder abuse, neglect, financial exploitation, or self-neglect shall be referred to the Department of Financial and Professional Regulation for disciplinary action.

LRB096 03125 ASK 13141 b

1 AN ACT concerning aging.

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

4 Section 5. The Illinois Optometric Practice Act of 1987 is
5 amended by changing Section 24 as follows:

6 (225 ILCS 80/24) (from Ch. 111, par. 3924)

7 (Section scheduled to be repealed on January 1, 2017)

8 Sec. 24. Grounds for disciplinary action.

9 (a) The Department may refuse to issue or to renew, or may
10 revoke, suspend, place on probation, reprimand or take other
11 disciplinary action as the Department may deem proper,
12 including fines not to exceed \$10,000 for each violation, with
13 regard to any license for any one or combination of the
14 following causes:

15 (1) Violations of this Act, or of the rules promulgated
16 hereunder.

17 (2) Conviction of or entry of a plea of guilty to any
18 crime under the laws of any U.S. jurisdiction thereof that
19 is a felony or that is a misdemeanor of which an essential
20 element is dishonesty, or any crime that is directly
21 related to the practice of the profession.

22 (3) Making any misrepresentation for the purpose of
23 obtaining a license.

1 (4) Professional incompetence or gross negligence in
2 the practice of optometry.

3 (5) Gross malpractice, prima facie evidence of which
4 may be a conviction or judgment of malpractice in any court
5 of competent jurisdiction.

6 (6) Aiding or assisting another person in violating any
7 provision of this Act or rules.

8 (7) Failing, within 60 days, to provide information in
9 response to a written request made by the Department that
10 has been sent by certified or registered mail to the
11 licensee's last known address.

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

15 (9) Habitual or excessive use or addiction to alcohol,
16 narcotics, stimulants or any other chemical agent or drug
17 that results in the inability to practice with reasonable
18 judgment, skill, or safety.

19 (10) Discipline by another U.S. jurisdiction or
20 foreign nation, if at least one of the grounds for the
21 discipline is the same or substantially equivalent to those
22 set forth herein.

23 (11) Directly or indirectly giving to or receiving from
24 any person, firm, corporation, partnership, or association
25 any fee, commission, rebate, or other form of compensation
26 for any professional services not actually or personally

1 rendered. This shall not be deemed to include (i) rent or
2 other remunerations paid to an individual, partnership, or
3 corporation by an optometrist for the lease, rental, or use
4 of space, owned or controlled, by the individual,
5 partnership, corporation or association, and (ii) the
6 division of fees between an optometrist and related
7 professional service providers with whom the optometrist
8 practices in a professional corporation organized under
9 Section 3.6 of the Professional Service Corporation Act.

10 (12) A finding by the Department that the licensee,
11 after having his or her license placed on probationary
12 status has violated the terms of probation.

13 (13) Abandonment of a patient.

14 (14) Willfully making or filing false records or
15 reports in his or her practice, including but not limited
16 to false records filed with State agencies or departments.

17 (15) Willfully failing to report an instance of
18 suspected ~~child~~ abuse or neglect as required by law ~~the~~
19 ~~Abused and Neglected Child Reporting Act~~.

20 (16) Physical illness, including but not limited to,
21 deterioration through the aging process, or loss of motor
22 skill, mental illness, or disability that results in the
23 inability to practice the profession with reasonable
24 judgment, skill, or safety.

25 (17) Solicitation of professional services other than
26 permitted advertising.

1 (18) Failure to provide a patient with a copy of his or
2 her record or prescription in accordance with federal law.

3 (19) Conviction by any court of competent
4 jurisdiction, either within or without this State, of any
5 violation of any law governing the practice of optometry,
6 conviction in this or another State of any crime that is a
7 felony under the laws of this State or conviction of a
8 felony in a federal court, if the Department determines,
9 after investigation, that such person has not been
10 sufficiently rehabilitated to warrant the public trust.

11 (20) A finding that licensure has been applied for or
12 obtained by fraudulent means.

13 (21) Continued practice by a person knowingly having an
14 infectious or contagious disease.

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

22 (23) Practicing or attempting to practice under a name
23 other than the full name as shown on his or her license.

24 (24) Immoral conduct in the commission of any act, such
25 as sexual abuse, sexual misconduct or sexual exploitation,
26 related to the licensee's practice.

1 (25) Maintaining a professional relationship with any
2 person, firm, or corporation when the optometrist knows, or
3 should know, that such person, firm, or corporation is
4 violating this Act.

5 (26) Promotion of the sale of drugs, devices,
6 appliances or goods provided for a client or patient in
7 such manner as to exploit the patient or client for
8 financial gain of the licensee.

9 (27) Using the title "Doctor" or its abbreviation
10 without further qualifying that title or abbreviation with
11 the word "optometry" or "optometrist".

12 (28) Use by a licensed optometrist of the word
13 "infirmary", "hospital", "school", "university", in
14 English or any other language, in connection with the place
15 where optometry may be practiced or demonstrated.

16 (29) Continuance of an optometrist in the employ of any
17 person, firm or corporation, or as an assistant to any
18 optometrist or optometrists, directly or indirectly, after
19 his or her employer or superior has been found guilty of
20 violating or has been enjoined from violating the laws of
21 the State of Illinois relating to the practice of
22 optometry, when the employer or superior persists in that
23 violation.

24 (30) The performance of optometric service in
25 conjunction with a scheme or plan with another person, firm
26 or corporation known to be advertising in a manner contrary

1 to this Act or otherwise violating the laws of the State of
2 Illinois concerning the practice of optometry.

3 (31) Failure to provide satisfactory proof of having
4 participated in approved continuing education programs as
5 determined by the Board and approved by the Secretary.
6 Exceptions for extreme hardships are to be defined by the
7 rules of the Department.

8 (32) Willfully making or filing false records or
9 reports in the practice of optometry, including, but not
10 limited to false records to support claims against the
11 medical assistance program of the Department of Healthcare
12 and Family Services (formerly Department of Public Aid)
13 under the Illinois Public Aid Code.

14 (33) Gross and willful overcharging for professional
15 services including filing false statements for collection
16 of fees for which services are not rendered, including, but
17 not limited to filing false statements for collection of
18 monies for services not rendered from the medical
19 assistance program of the Department of Healthcare and
20 Family Services (formerly Department of Public Aid) under
21 the Illinois Public Aid Code.

22 (34) In the absence of good reasons to the contrary,
23 failure to perform a minimum eye examination as required by
24 the rules of the Department.

25 (35) Violation of the Health Care Worker Self-Referral
26 Act.

1 The Department may refuse to issue or may suspend the
2 license of any person who fails to file a return, or to pay the
3 tax, penalty or interest shown in a filed return, or to pay any
4 final assessment of the tax, penalty or interest, as required
5 by any tax Act administered by the Illinois Department of
6 Revenue, until such time as the requirements of any such tax
7 Act are satisfied.

8 (a-5) In enforcing this Section, the Board upon a showing
9 of a possible violation, may compel any individual licensed to
10 practice under this Act, or who has applied for licensure or
11 certification pursuant to this Act, to submit to a mental or
12 physical examination, or both, as required by and at the
13 expense of the Department. The examining physicians or clinical
14 psychologists shall be those specifically designated by the
15 Board. The Board or the Department may order the examining
16 physician or clinical psychologist to present testimony
17 concerning this mental or physical examination of the licensee
18 or applicant. No information shall be excluded by reason of any
19 common law or statutory privilege relating to communications
20 between the licensee or applicant and the examining physician
21 or clinical psychologist. Eye examinations may be provided by a
22 licensed optometrist. The individual to be examined may have,
23 at his or her own expense, another physician of his or her
24 choice present during all aspects of the examination. Failure
25 of any individual to submit to a mental or physical
26 examination, when directed, shall be grounds for suspension of

1 a license until such time as the individual submits to the
2 examination if the Board finds, after notice and hearing, that
3 the refusal to submit to the examination was without reasonable
4 cause.

5 If the Board finds an individual unable to practice because
6 of the reasons set forth in this Section, the Board shall
7 require such individual to submit to care, counseling, or
8 treatment by physicians or clinical psychologists approved or
9 designated by the Board, as a condition, term, or restriction
10 for continued, reinstated, or renewed licensure to practice, or
11 in lieu of care, counseling, or treatment, the Board may
12 recommend to the Department to file a complaint to immediately
13 suspend, revoke, or otherwise discipline the license of the
14 individual, or the Board may recommend to the Department to
15 file a complaint to suspend, revoke, or otherwise discipline
16 the license of the individual. Any individual whose license was
17 granted pursuant to this Act, or continued, reinstated,
18 renewed, disciplined, or supervised, subject to such
19 conditions, terms, or restrictions, who shall fail to comply
20 with such conditions, terms, or restrictions, shall be referred
21 to the Secretary for a determination as to whether the
22 individual shall have his or her license suspended immediately,
23 pending a hearing by the Board.

24 (b) The determination by a circuit court that a licensee is
25 subject to involuntary admission or judicial admission as
26 provided in the Mental Health and Developmental Disabilities

1 Code operates as an automatic suspension. The suspension will
2 end only upon a finding by a court that the patient is no
3 longer subject to involuntary admission or judicial admission
4 and issues an order so finding and discharging the patient; and
5 upon the recommendation of the Board to the Secretary that the
6 licensee be allowed to resume his or her practice.

7 (Source: P.A. 94-787, eff. 5-19-06.)

8 Section 10. The Elder Abuse and Neglect Act is amended by
9 changing Section 4 as follows:

10 (320 ILCS 20/4) (from Ch. 23, par. 6604)

11 Sec. 4. Reports of abuse or neglect.

12 (a) Any person who suspects the abuse, neglect, financial
13 exploitation, or self-neglect of an eligible adult may report
14 this suspicion to an agency designated to receive such reports
15 under this Act or to the Department.

16 (a-5) If any mandated reporter has reason to believe that
17 an eligible adult, who because of dysfunction is unable to seek
18 assistance for himself or herself, has, within the previous 12
19 months, been subjected to abuse, neglect, or financial
20 exploitation, the mandated reporter shall, within 24 hours
21 after developing such belief, report this suspicion to an
22 agency designated to receive such reports under this Act or to
23 the Department. Whenever a mandated reporter is required to
24 report under this Act in his or her capacity as a member of the

1 staff of a medical or other public or private institution,
2 facility, board and care home, or agency, he or she shall make
3 a report to an agency designated to receive such reports under
4 this Act or to the Department in accordance with the provisions
5 of this Act and may also notify the person in charge of the
6 institution, facility, board and care home, or agency or his or
7 her designated agent that the report has been made. Under no
8 circumstances shall any person in charge of such institution,
9 facility, board and care home, or agency, or his or her
10 designated agent to whom the notification has been made,
11 exercise any control, restraint, modification, or other change
12 in the report or the forwarding of the report to an agency
13 designated to receive such reports under this Act or to the
14 Department. The privileged quality of communication between
15 any professional person required to report and his or her
16 patient or client shall not apply to situations involving
17 abused, neglected, or financially exploited eligible adults
18 and shall not constitute grounds for failure to report as
19 required by this Act.

20 (a-7) A person making a report under this Act in the belief
21 that it is in the alleged victim's best interest shall be
22 immune from criminal or civil liability or professional
23 disciplinary action on account of making the report,
24 notwithstanding any requirements concerning the
25 confidentiality of information with respect to such eligible
26 adult which might otherwise be applicable.

1 (a-9) Law enforcement officers shall continue to report
2 incidents of alleged abuse pursuant to the Illinois Domestic
3 Violence Act of 1986, notwithstanding any requirements under
4 this Act.

5 (b) Any person, institution or agency participating in the
6 making of a report, providing information or records related to
7 a report, assessment, or services, or participating in the
8 investigation of a report under this Act in good faith, or
9 taking photographs or x-rays as a result of an authorized
10 assessment, shall have immunity from any civil, criminal or
11 other liability in any civil, criminal or other proceeding
12 brought in consequence of making such report or assessment or
13 on account of submitting or otherwise disclosing such
14 photographs or x-rays to any agency designated to receive
15 reports of alleged or suspected abuse or neglect. Any person,
16 institution or agency authorized by the Department to provide
17 assessment, intervention, or administrative services under
18 this Act shall, in the good faith performance of those
19 services, have immunity from any civil, criminal or other
20 liability in any civil, criminal, or other proceeding brought
21 as a consequence of the performance of those services. For the
22 purposes of any civil, criminal, or other proceeding, the good
23 faith of any person required to report, permitted to report, or
24 participating in an investigation of a report of alleged or
25 suspected abuse, neglect, or financial exploitation shall be
26 presumed.

1 (c) The identity of a person making a report of alleged or
2 suspected abuse or neglect under this Act may be disclosed by
3 the Department or other agency provided for in this Act only
4 with such person's written consent or by court order.

5 (d) The Department shall by rule establish a system for
6 filing and compiling reports made under this Act.

7 (e) Any physician who willfully fails to report as required
8 by this Act shall be referred to the Illinois State Medical
9 Disciplinary Board for action in accordance with subdivision
10 (A) (22) of Section 22 of the Medical Practice Act of 1987. Any
11 dentist or dental hygienist who willfully fails to report as
12 required by this Act shall be referred to the Department of
13 Professional Regulation for action in accordance with
14 paragraph 19 of Section 23 of the Illinois Dental Practice Act.
15 Any optometrist who willfully fails to report as required by
16 this Act shall be referred to the Department of Financial and
17 Professional Regulation for action in accordance with
18 paragraph (15) of subsection (a) of Section 24 of the Illinois
19 Optometric Practice Act of 1987. Any other mandated reporter
20 required by this Act to report suspected abuse, neglect, or
21 financial exploitation who willfully fails to report the same
22 is guilty of a Class A misdemeanor.

23 (Source: P.A. 93-300, eff. 1-1-04; 93-301, eff. 1-1-04;
24 94-1064, eff. 1-1-07.)