



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB6941

by Rep. Jack D. Franks

SYNOPSIS AS INTRODUCED:

225 ILCS 60/22
225 ILCS 60/36

from Ch. 111, par. 4400-22
from Ch. 111, par. 4400-36

Amends the Medical Practice Act of 1987. Provides that the Department of Financial and Professional Regulation shall revoke the license or visiting permit of any person issued under this Act to practice medicine or to treat human ailments without the use of drugs and without operative surgery, who has been convicted of committing (1) any felony under the Illinois Controlled Substances Act or the Methamphetamine Control and Community Protection Act, (2) a Class 1 felony under Sections 8A-3 and 8A-6 of the Illinois Public Aid Code, or (3) a sexual assault or other battery against his or her patient. Provides that the Department shall investigate any licensee upon notification from any law enforcement agency of a criminal complaint setting forth facts which, if proven, would constitute grounds for suspension or revocation under the Act. Provides that any law enforcement agency in the State must provide immediate notification to the Department when it receives a criminal complaint against a licensee under this Act that alleges sexual assault or other battery on a patient. Effective immediately.

LRB096 23804 ASK 43189 b

1 AN ACT concerning professional regulation.

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

4 Section 5. The Medical Practice Act of 1987 is amended by
5 changing Sections 22 and 36 as follows:

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

7 (Section scheduled to be repealed on December 31, 2010)

8 (Text of Section WITHOUT the changes made by P.A. 94-677,
9 which has been held unconstitutional)

10 Sec. 22. Disciplinary action.

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

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

20 (a) a facility licensed pursuant to the Ambulatory
21 Surgical Treatment Center Act;

22 (b) an institution licensed under the Hospital
23 Licensing Act;

1 (c) an ambulatory surgical treatment center or
2 hospitalization or care facility maintained by the
3 State or any agency thereof, where such department or
4 agency has authority under law to establish and enforce
5 standards for the ambulatory surgical treatment
6 centers, hospitalization, or care facilities under its
7 management and control;

8 (d) ambulatory surgical treatment centers,
9 hospitalization or care facilities maintained by the
10 Federal Government; or

11 (e) ambulatory surgical treatment centers,
12 hospitalization or care facilities maintained by any
13 university or college established under the laws of
14 this State and supported principally by public funds
15 raised by taxation.

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

19 (3) The conviction of a felony in this or any other
20 jurisdiction, except as otherwise provided in subsection B
21 of this Section, whether or not related to practice under
22 this Act, or the entry of a guilty or nolo contendere plea
23 to a felony charge.

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

25 (5) Engaging in dishonorable, unethical or
26 unprofessional conduct of a character likely to deceive,

1 defraud or harm the public.

2 (6) Obtaining any fee by fraud, deceit, or
3 misrepresentation.

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

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

10 (9) Fraud or misrepresentation in applying for, or
11 procuring, a license under this Act or in connection with
12 applying for renewal of a license under this Act.

13 (10) Making a false or misleading statement regarding
14 their skill or the efficacy or value of the medicine,
15 treatment, or remedy prescribed by them at their direction
16 in the treatment of any disease or other condition of the
17 body or mind.

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

20 (12) Disciplinary action of another state or
21 jurisdiction against a license or other authorization to
22 practice as a medical doctor, doctor of osteopathy, doctor
23 of osteopathic medicine or doctor of chiropractic, a
24 certified copy of the record of the action taken by the
25 other state or jurisdiction being prima facie evidence
26 thereof.

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

6 (14) Violation of the prohibition against fee
7 splitting in Section 22.2 of this Act.

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

1 licensee refuses to divulge upon demand of the Department.

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

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

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

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

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

26 (25) Gross and wilful and continued overcharging for

1 professional services, including filing false statements
2 for collection of fees for which services are not rendered,
3 including, but not limited to, filing such false statements
4 for collection of monies for services not rendered from the
5 medical assistance program of the Department of Healthcare
6 and Family Services (formerly Department of Public Aid)
7 under the Illinois Public Aid Code.

8 (26) A pattern of practice or other behavior which
9 demonstrates incapacity or incompetence to practice under
10 this Act.

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

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

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

20 (30) Wilfully or negligently violating the
21 confidentiality between physician and patient except as
22 required by law.

23 (31) The use of any false, fraudulent, or deceptive
24 statement in any document connected with practice under
25 this Act.

26 (32) Aiding and abetting an individual not licensed

1 under this Act in the practice of a profession licensed
2 under this Act.

3 (33) Violating state or federal laws or regulations
4 relating to controlled substances.

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

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

25 (36) Failure to report to the Department any adverse
26 judgment, settlement, or award arising from a liability

1 claim related to acts or conduct similar to acts or conduct
2 which would constitute grounds for action as defined in
3 this Section.

4 (37) Failure to provide copies of medical records as
5 required by law.

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

11 (39) Violating the Health Care Worker Self-Referral
12 Act.

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

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

17 (42) Entering into an excessive number of written
18 collaborative agreements with licensed advanced practice
19 nurses resulting in an inability to adequately
20 collaborate.

21 (43) Repeated failure to adequately collaborate with a
22 licensed advanced practice nurse.

23 All proceedings to suspend, revoke, place on probationary
24 status, or take any other disciplinary action as the Department
25 may deem proper, with regard to a license on any of the
26 foregoing grounds, must be commenced within 3 years next after

1 receipt by the Department of a complaint alleging the
2 commission of or notice of the conviction order for any of the
3 acts described herein. Except for the grounds numbered (8), (9)
4 and (29), no action shall be commenced more than 5 years after
5 the date of the incident or act alleged to have violated this
6 Section. In the event of the settlement of any claim or cause
7 of action in favor of the claimant or the reduction to final
8 judgment of any civil action in favor of the plaintiff, such
9 claim, cause of action or civil action being grounded on the
10 allegation that a person licensed under this Act was negligent
11 in providing care, the Department shall have an additional
12 period of one year from the date of notification to the
13 Department under Section 23 of this Act of such settlement or
14 final judgment in which to investigate and commence formal
15 disciplinary proceedings under Section 36 of this Act, except
16 as otherwise provided by law. The time during which the holder
17 of the license was outside the State of Illinois shall not be
18 included within any period of time limiting the commencement of
19 disciplinary action by the Department.

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

1 upon the Disciplinary Board's recommendation that they be
2 permitted to resume their practice.

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

11 The Department, upon the recommendation of the
12 Disciplinary Board, shall adopt rules which set forth standards
13 to be used in determining:

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

16 (b) what constitutes dishonorable, unethical or
17 unprofessional conduct of a character likely to deceive,
18 defraud, or harm the public;

19 (c) what constitutes immoral conduct in the commission
20 of any act, including, but not limited to, commission of an
21 act of sexual misconduct related to the licensee's
22 practice; and

23 (d) what constitutes gross negligence in the practice
24 of medicine.

25 However, no such rule shall be admissible into evidence in
26 any civil action except for review of a licensing or other

1 disciplinary action under this Act.

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

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

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

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

9 (B) The Department shall revoke the license or visiting
10 permit of any person issued under this Act to practice medicine
11 or to treat human ailments without the use of drugs and without
12 operative surgery, who has been convicted ~~a second time~~ of
13 committing:

14 (1) any felony under the Illinois Controlled
15 Substances Act or the Methamphetamine Control and
16 Community Protection Act,

17 ~~(2) or who has been convicted a second time of~~
18 ~~committing~~ a Class 1 felony under Sections 8A-3 and 8A-6 of
19 the Illinois Public Aid Code, or

20 (3) a sexual assault or other battery against his or
21 her patient.

22 A person whose license or visiting permit is revoked under
23 this subsection B of Section 22 of this Act shall be prohibited
24 from practicing medicine or treating human ailments without the
25 use of drugs and without operative surgery.

26 (C) The Medical Disciplinary Board shall recommend to the

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

10 (Source: P.A. 94-566, eff. 9-11-05; 95-331, eff. 8-21-07;
11 96-608, eff. 8-24-09; 96-1000, eff. 7-2-10.)

12 (225 ILCS 60/36) (from Ch. 111, par. 4400-36)

13 (Section scheduled to be repealed on December 31, 2010)

14 (Text of Section WITHOUT the changes made by P.A. 94-677,
15 which has been held unconstitutional, and by P.A. 96-1372,
16 which amended language added by P.A. 94-677)

17 Sec. 36. Upon the motion of either the Department or the
18 Disciplinary Board or upon the verified complaint in writing of
19 any person or notification from any law enforcement agency of a
20 criminal complaint setting forth facts which, if proven, would
21 constitute grounds for suspension or revocation under Section
22 of this Act, the Department shall investigate the actions of
23 any person, so accused, who holds or represents that they hold
24 a license. Such person is hereinafter called the accused. Any
25 law enforcement agency in the State must provide immediate

1 notification to the Department when it receives a criminal
2 complaint against a licensee under this Act that alleges sexual
3 assault or other battery on a patient.

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

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

25 Such written notice and any notice in such proceedings
26 thereafter may be served by delivery of the same, personally,

1 to the accused person, or by mailing the same by registered or
2 certified mail to the address last theretofore specified by the
3 accused in their last notification to the Department.

4 All information gathered by the Department during its
5 investigation including information subpoenaed under Section
6 23 or 38 of this Act and the investigative file shall be kept
7 for the confidential use of the Director, Disciplinary Board,
8 the Medical Coordinators, persons employed by contract to
9 advise the Medical Coordinator or the Department, the
10 Disciplinary Board's attorneys, the medical investigative
11 staff, and authorized clerical staff, as provided in this Act
12 and shall be afforded the same status as is provided
13 information concerning medical studies in Part 21 of Article
14 VIII of the Code of Civil Procedure.

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

16 Section 99. Effective date. This Act takes effect upon
17 becoming law.