



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB1336

Introduced 2/9/2011, by Rep. Constance A. Howard

SYNOPSIS AS INTRODUCED:

New Act

5 ILCS 430/15-10

20 ILCS 415/19c.1

225 ILCS 60/22

from Ch. 127, par. 63b119c.1

from Ch. 111, par. 4400-22

Creates the Prohibition of Torture on Prisoners and Detainees by Health Care Professionals Act. Prohibits Acts of torture and improper treatment perpetrated upon prisoners and detainees. Establishes standards of conduct relating to health care professionals who provide care to prisoners and detainees. Amends various Acts to make corresponding changes. Effective January 1, 2012.

LRB097 06705 RLC 46792 b

1 AN ACT concerning torture of prisoners and detainees by
2 health care professionals.

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

5 Section 1. Short title. This Act may be cited as the
6 Prohibition of Torture on Prisoners and Detainees by Health
7 Care Professionals Act.

8 Section 5. Legislative policy and intent. This legislation
9 is based on, and is intended to give effect to, international
10 treaties and standards; federal, State and local law; and
11 professional standards relating to torture, improper treatment
12 of prisoners, and related matters. It is guided by 2 basic
13 principles: (1) health care professionals shall be dedicated to
14 providing the highest standard of health care, with compassion
15 and respect for human dignity and rights; and (2) torture and
16 improper treatment of prisoners are wrong and inconsistent with
17 the practice of the health care professions. The General
18 Assembly finds that the conduct prohibited by this Act violates
19 the ethical and legal obligations of licensed health care
20 professionals. This legislation will further protect the
21 professionalism of Illinois State licensed health care
22 professionals by authorizing and obligating them to refuse to
23 participate in torture and improper treatment of prisoners,

1 which in turn will protect the life and health of the people of
2 the State and those with whom Illinois licensed health care
3 professionals interact. A health care professional who comes to
4 the aid of a prisoner should not be presumed to be in violation
5 when she or he is fulfilling the ethical principle of
6 beneficence. In contrast, a health care professional who, for
7 example, attends to a prisoner in order to allow torture or
8 improper treatment to commence or continue, is not acting
9 beneficently. Such practices are inconsistent with
10 professional ethics and standards and are violations of this
11 legislation. The General Assembly is mindful that ordinarily
12 there are limits on the State's jurisdiction relating to
13 conduct outside the State or under federal authority. However,
14 it is proper for the State to regulate health care professional
15 licensure in relation to a professional's conduct, even where
16 the conduct occurs outside the State; certain wrongful
17 out-of-state conduct is already grounds for professional
18 discipline. Therefore, it is the General Assembly's intent that
19 this legislation be applied to the fullest extent possible.

20 Section 10. Definitions. As used in this Act, unless the
21 context clearly requires otherwise, the following terms have
22 the following meanings:

23 "Health care professional" means any person licensed,
24 registered, certified, or exempt to practice under the
25 Acupuncture Practice Act, Clinical Psychologist Licensing Act,

1 Clinical Social Work and Social Work Practice Act, Illinois
2 Dental Practice Act, Dietetic and Nutrition Services Practice
3 Act, Marriage and Family Therapy Licensing Act, Massage
4 Licensing Act, Medical Practice Act of 1987, Naprapathic
5 Practice Act, Nurse Practice Act, Illinois Occupational
6 Therapy Practice Act, Illinois Optometric Practice Act of 1987,
7 Orthotics, Prosthetics, and Pedorthics Practice Act, Pharmacy
8 Practice Act, Illinois Physical Therapy Act, Physician
9 Assistant Practice Act of 1987, Podiatric Medical Practice Act
10 of 1987, Respiratory Care Practice Act, Professional Counselor
11 and Clinical Professional Counselor Licensing Act,
12 Perfusionist Practice Act, or the Registered Surgical
13 Assistant and Registered Surgical Technologist Title
14 Protection Act.

15 "Torture" means any intentional act or intentional
16 omission by which severe pain or suffering, whether physical or
17 mental, is inflicted on a person for such purposes as obtaining
18 from the person or from a third person information or a
19 confession, punishing the person for an act the person or a
20 third person has committed (including the holding of a belief
21 or membership in any group) or is suspected of having
22 committed, or intimidating or coercing the person or a third
23 person, or for any reason based on discrimination of any kind.
24 "Torture" does not include pain or suffering arising only from,
25 inherent in, or incidental to lawful sanction.

26 "Improper treatment" means (i) cruel, inhuman or

1 degrading, treatment or punishment as defined by applicable
2 international treaties and their corresponding interpreting
3 bodies; or cruel and unusual punishment as defined in the
4 United States Constitution; or (ii) any violation of subsection
5 (d), (e), (f), or (g) of Section 15 of this Act.

6 "Torture" and "improper treatment" shall be interpreted in
7 accordance with applicable international treaties, principles,
8 and standards as well as the decisions, observations, and
9 recommendations of the corresponding interpreting bodies. It
10 is not an element of either "torture" or "improper treatment"
11 that such acts be committed by a government or non-government
12 actor, entity, or official; under color of law; or not under
13 color of law.

14 "Prisoner" means any person who is subject to punishment,
15 detention, incarceration, interrogation, intimidation or
16 coercion, regardless of whether such action is performed or
17 committed by a government or non-government actor, entity, or
18 official; under color of law; or not under color of law.

19 "Adversely affect" a person's physical or mental health or
20 condition does not include causing adverse effects that may
21 arise from treatment or care when that treatment or care is
22 performed in accordance with generally applicable legal,
23 health, and professional standards and for the purposes of
24 evaluating, treating, protecting, or improving the person's
25 health.

26 "Interrogation" means the questioning related to law

1 enforcement, the enforcement of rules or regulations of a
2 closed institution (such as a jail or other detention facility,
3 police facility, prison, immigration facility, or psychiatric
4 or military facility) or to military and national security
5 intelligence gathering, designed to prevent harm or danger to
6 individuals, the public, or national security, whether by a
7 government or non-government actor, entity, or official.
8 "Interrogation" shall also include questioning to aid or
9 accomplish any illegal activity or purpose, whether by a
10 government or non-government actor, entity, or official.

11 Section 15. Standards of conduct.

12 (a) It is an element of any violation of this Act that the
13 actor knew or reasonably should have known that his or her
14 conduct is of the kind prohibited under this Act. If a health
15 care professional who operates in a closed institution, such as
16 a jail or other detention facility, police facility, prison,
17 immigration facility or psychiatric or military facility, is
18 not given access by the institution to the information
19 necessary to ascertain whether torture or improper treatment
20 has occurred, is occurring, or will occur, in order to assess
21 the nature of his or her conduct as covered by this Act, the
22 health care professional must presume that the prisoner faces
23 risk of torture or improper treatment.

24 (b) Every health care professional shall provide every
25 prisoner under his or her professional care with care or

1 treatment consistent with generally applicable legal, health,
2 and professional standards to the extent that he or she is
3 reasonably able to do so under the circumstances, including
4 protecting the confidentiality of patient information.

5 (c) In all clinical assessments relating to a prisoner,
6 whether for therapeutic or evaluative purposes, health care
7 professionals shall exercise their professional judgment
8 independent of the interests of a government or other third
9 party.

10 (d) No health care professional shall apply his or her
11 knowledge or skills in relation to, engage in any professional
12 relationship with, or perform professional services in
13 relation to any prisoner where the purpose is not solely to
14 evaluate, treat, protect, or improve the physical or mental
15 health or condition of the prisoner, except as permitted by
16 subsections (b) and (c) of this Section.

17 (e) No health care professional shall engage, directly or
18 indirectly, in any act which constitutes participation in,
19 complicity in, incitement to, assistance in, planning or design
20 of, or attempt or conspiracy to commit torture or improper
21 treatment of a prisoner. Prohibited forms of engagement include
22 but are not limited to: (1) providing means, knowledge, or
23 skills, including clinical findings or treatment, with the
24 intent to facilitate the practice of torture or improper
25 treatment; (2) permitting his or her knowledge, skills, or
26 clinical findings or treatment to be used in the process of or

1 to facilitate torture or improper treatment; (3) examining,
2 evaluating, or treating a prisoner to certify whether torture
3 or improper treatment can begin, be continued, or be resumed;
4 (4) being present while torture or improper treatment is being
5 administered; (5) omitting or suppressing indications of
6 torture or improper treatment from records or reports; and (6)
7 altering health care records or reports to hide, misrepresent,
8 or destroy evidence of torture or improper treatment.

9 (f) No health care professional shall apply his or her
10 knowledge or skills or perform any professional service in
11 order to assist in the punishment, detention, incarceration,
12 intimidation, or coercion of a prisoner when such assistance is
13 provided in a manner that may adversely affect the physical or
14 mental health or condition of the prisoner, except as permitted
15 by subsection (c) or (d) of this Section.

16 (g) No health care professional shall participate in the
17 interrogation of a prisoner, including being present in the
18 interrogation room, asking or suggesting questions, advising
19 on the use of specific interrogation techniques, monitoring the
20 interrogation, or medically or psychologically evaluating a
21 person for the purpose of identifying potential interrogation
22 methods or strategies. however, this subsection shall not bar a
23 health care professional from engaging in conduct under
24 subsection (d) of this Section.

25 (h) A health care professional may engage in the following
26 conduct so long as it does not violate subsections (d) through

1 (g) of this Section, it does not adversely affect the physical
2 or mental health or condition of a prisoner or potential
3 subject, and is not otherwise unlawful:

4 (1) appropriately participating or aiding in the
5 investigation, prosecution, or defense of a criminal,
6 administrative, or civil matter;

7 (2) participating in an act that restrains a prisoner
8 or temporarily alters the physical or mental activity of a
9 prisoner, where the act complies with generally applicable
10 legal, health, and professional standards, is necessary
11 for the protection of the physical or mental health,
12 condition, or safety of the prisoner, other prisoners, or
13 persons caring for, guarding, or confining the prisoner;

14 (3) training related to the following purposes, so long
15 as it is not provided in support of specific ongoing or
16 anticipated interrogations:

17 (A) recognizing and responding to persons with
18 physical or mental illness or conditions,

19 (B) the possible physical and mental effects of
20 particular techniques and conditions of interrogation,
21 or

22 (C) the development of effective interrogation
23 strategies not involving the practice of torture or
24 improper treatment.

25 Section 20. Duty to report. A health care professional who

1 has reasonable grounds (not based solely on publicly available
2 information) to believe that torture, improper treatment, or
3 other conduct in violation of this Act has occurred, is
4 occurring, or will occur shall, as soon as is possible without
5 jeopardizing the physical safety of himself or herself, the
6 prisoner, or other parties, report such conduct to:

7 (1) a government agency that the health care professional
8 reasonably believes has legal authority to punish or prevent
9 the continuation of torture or the improper treatment of a
10 prisoner or conduct in violation of this Act and is reasonably
11 likely to attempt to do so; or

12 (2) a governmental or non-governmental entity that the
13 health care professional reasonably believes will notify such a
14 government agency of the torture or the improper treatment of a
15 prisoner or conduct in violation of this Act or take other
16 action to publicize or prevent such torture, treatment or
17 conduct; and

18 (3) In addition to reporting under paragraph (1) or (2) of
19 this Section:

20 (A) in the case of an alleged violation by a health
21 care professional licensed under the Medical Practice Act
22 of 1987, a report shall be filed with the Illinois State
23 Medical Disciplinary Board; and

24 (B) in the case of an alleged violation by any other
25 health care professional licensed, registered, or
26 certified under any other licensing law, a report shall be

1 filed with the Illinois State Medical Disciplinary Board;
2 provided that for the purpose of this paragraph, where a
3 person holds a license, registration, or certification
4 under the laws of a jurisdiction other than this State that
5 is for a profession substantially comparable to one listed
6 in Section 10, the person shall be deemed to be a health
7 care professional and the person's license, registration,
8 or certification shall be deemed to be under the
9 appropriate State law.

10 Section 25. Mitigation. The following may be considered in
11 full or partial mitigation of a violation of this Act by the
12 health care professional:

13 (1) compliance with Section 19c.1 of the Personnel Code; or
14 (2) cooperation in good faith with an investigation of a
15 violation of this Act.

16 Section 30. Applicability. This Act applies to conduct
17 taking place within or outside the State of Illinois, and
18 without regard to whether the conduct is committed by a
19 governmental or non-governmental entity, official, or actor or
20 under actual or asserted color of law.

21 Section 35. Scope of practice not expanded. This Act shall
22 not be construed to expand the lawful scope of practice of any
23 health care professional.

1 Section 40. Construction. This Act shall not be construed
2 to mean that:

3 (1) conduct described by this Act does not already violate
4 State law or constitute professional misconduct; or

5 (2) conduct other than that described by this Act does not
6 violate other State law or otherwise constitute professional
7 misconduct.

8 Section 105. The State Officials and Employees Ethics Act
9 is amended by changing Section 15-10 as follows:

10 (5 ILCS 430/15-10)

11 Sec. 15-10. Protected activity. An officer, a member, a
12 State employee, or a State agency shall not take any
13 retaliatory action against a State employee because the State
14 employee does any of the following:

15 (1) Discloses or threatens to disclose to a supervisor
16 or to a public body an activity, policy, or practice of any
17 officer, member, State agency, or other State employee that
18 the State employee reasonably believes is in violation of a
19 law, rule, or regulation.

20 (2) Provides information to or testifies before any
21 public body conducting an investigation, hearing, or
22 inquiry into any violation of a law, rule, or regulation by
23 any officer, member, State agency, or other State employee.

1 (3) Assists or participates in a proceeding to enforce
2 the provisions of this Act.

3 (4) Reports or threatens to report any violation of the
4 Prohibition of Torture on Prisoners and Detainees by Health
5 Care Professionals Act relating to participation in
6 torture or improper treatment of prisoners by health care
7 professionals.

8 (Source: P.A. 93-615, eff. 11-19-03; 93-617, eff. 12-9-03.)

9 Section 110. The Personnel Code is amended by changing
10 Section 19c.1 as follows:

11 (20 ILCS 415/19c.1) (from Ch. 127, par. 63b119c.1)

12 Sec. 19c.1. (1) In any case involving any disclosure of
13 information by an employee which the employee reasonably
14 believes evidences-

15 (i) a violation of any law, rule, or regulation; ~~or~~

16 (ii) mismanagement, a gross waste of funds, an abuse of
17 authority, or a substantial and specific danger to public
18 health or safety if the disclosure is not specifically
19 prohibited by law, the identity of the employee may not be
20 disclosed without the consent of the employee during any
21 investigation of the information and any related matters; or

22 (iii) reports or threatens to report any violation of the
23 Prohibition of Torture on Prisoners and Detainees by Health
24 Care Professionals Act relating to participation in torture or

1 improper treatment of prisoners by health care professionals.

2 (2) No disciplinary action shall be taken against any
3 employee for the disclosure of any alleged prohibited activity
4 under investigation or for any related activity. For the
5 purposes of this Section, disciplinary action means any
6 retaliatory action taken against an employee, including but not
7 limited to reprimand, suspension, discharge, demotion or
8 denial of promotion or transfer; however, this subsection (2)
9 does not apply to any report of a violation of the Prohibition
10 of Torture on Prisoners and Detainees by Health Care
11 Professionals Act relating to participation in torture or
12 improper treatment of prisoners by health care professionals.

13 (Source: P.A. 85-470.)

14 Section 115. The Medical Practice Act of 1987 is amended by
15 changing Section 22 as follows:

16 (225 ILCS 60/22) (from Ch. 111, par. 4400-22)

17 (Section scheduled to be repealed on November 30, 2011)

18 (Text of Section WITH the changes made by P.A. 94-677,
19 which has been held unconstitutional)

20 Sec. 22. Disciplinary action.

21 (A) The Department may revoke, suspend, place on
22 probationary status, refuse to renew, or take any other
23 disciplinary action as the Department may deem proper with
24 regard to the license or visiting professor permit of any

1 person issued under this Act to practice medicine, or to treat
2 human ailments without the use of drugs and without operative
3 surgery upon any of the following grounds:

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

6 (a) a facility licensed pursuant to the Ambulatory
7 Surgical Treatment Center Act;

8 (b) an institution licensed under the Hospital
9 Licensing Act;

10 (c) an ambulatory surgical treatment center or
11 hospitalization or care facility maintained by the
12 State or any agency thereof, where such department or
13 agency has authority under law to establish and enforce
14 standards for the ambulatory surgical treatment
15 centers, hospitalization, or care facilities under its
16 management and control;

17 (d) ambulatory surgical treatment centers,
18 hospitalization or care facilities maintained by the
19 Federal Government; or

20 (e) ambulatory surgical treatment centers,
21 hospitalization or care facilities maintained by any
22 university or college established under the laws of
23 this State and supported principally by public funds
24 raised by taxation.

25 (2) Performance of an abortion procedure in a wilful
26 and wanton manner on a woman who was not pregnant at the

1 time the abortion procedure was performed.

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

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

8 (5) Engaging in dishonorable, unethical or
9 unprofessional conduct of a character likely to deceive,
10 defraud or harm the public.

11 (6) Obtaining any fee by fraud, deceit, or
12 misrepresentation.

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

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

19 (9) Fraud or misrepresentation in applying for, or
20 procuring, a license under this Act or in connection with
21 applying for renewal of a license under this Act.

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

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

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

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

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

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

22 (16) Abandonment of a patient.

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

1 purposes.

2 (18) Promotion of the sale of drugs, devices,
3 appliances or goods provided for a patient in such manner
4 as to exploit the patient for financial gain of the
5 physician.

6 (19) Offering, undertaking or agreeing to cure or treat
7 disease by a secret method, procedure, treatment or
8 medicine, or the treating, operating or prescribing for any
9 human condition by a method, means or procedure which the
10 licensee refuses to divulge upon demand of the Department.

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

14 (21) Wilfully making or filing false records or reports
15 in his or her practice as a physician, including, but not
16 limited to, false records to support claims against the
17 medical assistance program of the Department of Healthcare
18 and Family Services (formerly Department of Public Aid)
19 under the Illinois Public Aid Code.

20 (22) Wilful omission to file or record, or wilfully
21 impeding the filing or recording, or inducing another
22 person to omit to file or record, medical reports as
23 required by law, or wilfully failing to report an instance
24 of suspected abuse or neglect as required by law.

25 (23) Being named as a perpetrator in an indicated
26 report by the Department of Children and Family Services

1 under the Abused and Neglected Child Reporting Act, and
2 upon proof by clear and convincing evidence that the
3 licensee has caused a child to be an abused child or
4 neglected child as defined in the Abused and Neglected
5 Child Reporting Act.

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

9 (25) Gross and wilful and continued overcharging for
10 professional services, including filing false statements
11 for collection of fees for which services are not rendered,
12 including, but not limited to, filing such false statements
13 for collection of monies for services not rendered from the
14 medical assistance program of the Department of Healthcare
15 and Family Services (formerly Department of Public Aid)
16 under the Illinois Public Aid Code.

17 (26) A pattern of practice or other behavior which
18 demonstrates incapacity or incompetence to practice under
19 this Act.

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

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

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

3 (30) Wilfully or negligently violating the
4 confidentiality between physician and patient except as
5 required by law.

6 (31) The use of any false, fraudulent, or deceptive
7 statement in any document connected with practice under
8 this Act.

9 (32) Aiding and abetting an individual not licensed
10 under this Act in the practice of a profession licensed
11 under this Act.

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

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

25 (35) Failure to report to the Department surrender of a
26 license or authorization to practice as a medical doctor, a

1 doctor of osteopathy, a doctor of osteopathic medicine, or
2 doctor of chiropractic in another state or jurisdiction, or
3 surrender of membership on any medical staff or in any
4 medical or professional association or society, while
5 under disciplinary investigation by any of those
6 authorities or bodies, for acts or conduct similar to acts
7 or conduct which would constitute grounds for action as
8 defined in this Section.

9 (36) Failure to report to the Department any adverse
10 judgment, settlement, or award arising from a liability
11 claim related to acts or conduct similar to acts or conduct
12 which would constitute grounds for action as defined in
13 this Section.

14 (37) Failure to provide copies of medical records as
15 required by law.

16 (38) Failure to furnish the Department, its
17 investigators or representatives, relevant information,
18 legally requested by the Department after consultation
19 with the Chief Medical Coordinator or the Deputy Medical
20 Coordinator.

21 (39) Violating the Health Care Worker Self-Referral
22 Act.

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

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

1 (42) Entering into an excessive number of written
2 collaborative agreements with licensed advanced practice
3 nurses resulting in an inability to adequately
4 collaborate.

5 (43) Repeated failure to adequately collaborate with a
6 licensed advanced practice nurse.

7 Except for actions involving the ground numbered (26), all
8 proceedings to suspend, revoke, place on probationary status,
9 or take any other disciplinary action as the Department may
10 deem proper, with regard to a license on any of the foregoing
11 grounds, must be commenced within 5 years next after receipt by
12 the Department of a complaint alleging the commission of or
13 notice of the conviction order for any of the acts described
14 herein. Except for the grounds numbered (8), (9), (26), and
15 (29), no action shall be commenced more than 10 years after the
16 date of the incident or act alleged to have violated this
17 Section. For actions involving the ground numbered (26), a
18 pattern of practice or other behavior includes all incidents
19 alleged to be part of the pattern of practice or other behavior
20 that occurred or a report pursuant to Section 23 of this Act
21 received within the 10-year period preceding the filing of the
22 complaint. In the event of the settlement of any claim or cause
23 of action in favor of the claimant or the reduction to final
24 judgment of any civil action in favor of the plaintiff, such
25 claim, cause of action or civil action being grounded on the
26 allegation that a person licensed under this Act was negligent

1 in providing care, the Department shall have an additional
2 period of 2 years from the date of notification to the
3 Department under Section 23 of this Act of such settlement or
4 final judgment in which to investigate and commence formal
5 disciplinary proceedings under Section 36 of this Act, except
6 as otherwise provided by law. The time during which the holder
7 of the license was outside the State of Illinois shall not be
8 included within any period of time limiting the commencement of
9 disciplinary action by the Department.

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

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

1 The Department, upon the recommendation of the
2 Disciplinary Board, shall adopt rules which set forth standards
3 to be used in determining:

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

6 (b) what constitutes dishonorable, unethical or
7 unprofessional conduct of a character likely to deceive,
8 defraud, or harm the public;

9 (c) what constitutes immoral conduct in the commission
10 of any act, including, but not limited to, commission of an
11 act of sexual misconduct related to the licensee's
12 practice; and

13 (d) what constitutes gross negligence in the practice
14 of medicine.

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

18 In enforcing this Section, the Medical Disciplinary Board,
19 upon a showing of a possible violation, may compel any
20 individual licensed to practice under this Act, or who has
21 applied for licensure or a permit pursuant to this Act, to
22 submit to a mental or physical examination, or both, as
23 required by and at the expense of the Department. The examining
24 physician or physicians shall be those specifically designated
25 by the Disciplinary Board. The Medical Disciplinary Board or
26 the Department may order the examining physician to present

1 testimony concerning this mental or physical examination of the
2 licensee or applicant. No information shall be excluded by
3 reason of any common law or statutory privilege relating to
4 communication between the licensee or applicant and the
5 examining physician. The individual to be examined may have, at
6 his or her own expense, another physician of his or her choice
7 present during all aspects of the examination. Failure of any
8 individual to submit to mental or physical examination, when
9 directed, shall be grounds for suspension of his or her license
10 until such time as the individual submits to the examination if
11 the Disciplinary Board finds, after notice and hearing, that
12 the refusal to submit to the examination was without reasonable
13 cause. If the Disciplinary Board finds a physician unable to
14 practice because of the reasons set forth in this Section, the
15 Disciplinary Board shall require such physician to submit to
16 care, counseling, or treatment by physicians approved or
17 designated by the Disciplinary Board, as a condition for
18 continued, reinstated, or renewed licensure to practice. Any
19 physician, whose license was granted pursuant to Sections 9,
20 17, or 19 of this Act, or, continued, reinstated, renewed,
21 disciplined or supervised, subject to such terms, conditions or
22 restrictions who shall fail to comply with such terms,
23 conditions or restrictions, or to complete a required program
24 of care, counseling, or treatment, as determined by the Chief
25 Medical Coordinator or Deputy Medical Coordinators, shall be
26 referred to the Secretary for a determination as to whether the

1 licensee shall have their license suspended immediately,
2 pending a hearing by the Disciplinary Board. In instances in
3 which the Secretary immediately suspends a license under this
4 Section, a hearing upon such person's license must be convened
5 by the Disciplinary Board within 15 days after such suspension
6 and completed without appreciable delay. The Disciplinary
7 Board shall have the authority to review the subject
8 physician's record of treatment and counseling regarding the
9 impairment, to the extent permitted by applicable federal
10 statutes and regulations safeguarding the confidentiality of
11 medical records.

12 An individual licensed under this Act, affected under this
13 Section, shall be afforded an opportunity to demonstrate to the
14 Disciplinary Board that they can resume practice in compliance
15 with acceptable and prevailing standards under the provisions
16 of their license.

17 The Department may promulgate rules for the imposition of
18 fines in disciplinary cases, not to exceed \$10,000 for each
19 violation of this Act. Fines may be imposed in conjunction with
20 other forms of disciplinary action, but shall not be the
21 exclusive disposition of any disciplinary action arising out of
22 conduct resulting in death or injury to a patient. Any funds
23 collected from such fines shall be deposited in the Medical
24 Disciplinary Fund.

25 (B) The Department shall revoke the license or visiting
26 permit of any person issued under this Act to practice medicine

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

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

22 (Source: P.A. 94-566, eff. 9-11-05; 94-677, eff. 8-25-05;
23 95-331, eff. 8-21-07; 96-608, eff. 8-24-09; 96-1000, eff.
24 7-2-10.)

25 (Text of Section WITHOUT the changes made by P.A. 94-677,

1 which has been held unconstitutional)

2 Sec. 22. Disciplinary action.

3 (A) The Department may revoke, suspend, place on
4 probationary status, or take any other disciplinary action as
5 the Department may deem proper with regard to the license or
6 visiting professor permit of any person issued under this Act
7 to practice medicine, or to treat human ailments without the
8 use of drugs and without operative surgery upon any of the
9 following grounds:

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

12 (a) a facility licensed pursuant to the Ambulatory
13 Surgical Treatment Center Act;

14 (b) an institution licensed under the Hospital
15 Licensing Act;

16 (c) an ambulatory surgical treatment center or
17 hospitalization or care facility maintained by the
18 State or any agency thereof, where such department or
19 agency has authority under law to establish and enforce
20 standards for the ambulatory surgical treatment
21 centers, hospitalization, or care facilities under its
22 management and control;

23 (d) ambulatory surgical treatment centers,
24 hospitalization or care facilities maintained by the
25 Federal Government; or

26 (e) ambulatory surgical treatment centers,

1 hospitalization or care facilities maintained by any
2 university or college established under the laws of
3 this State and supported principally by public funds
4 raised by taxation.

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

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

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

14 (5) Engaging in dishonorable, unethical or
15 unprofessional conduct of a character likely to deceive,
16 defraud or harm the public.

17 (6) Obtaining any fee by fraud, deceit, or
18 misrepresentation.

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

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

25 (9) Fraud or misrepresentation in applying for, or
26 procuring, a license under this Act or in connection with

1 applying for renewal of a license under this Act.

2 (10) Making a false or misleading statement regarding
3 their skill or the efficacy or value of the medicine,
4 treatment, or remedy prescribed by them at their direction
5 in the treatment of any disease or other condition of the
6 body or mind.

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

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

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

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

23 (15) A finding by the Medical Disciplinary Board that
24 the registrant after having his or her license placed on
25 probationary status or subjected to conditions or
26 restrictions violated the terms of the probation or failed

1 to comply with such terms or conditions.

2 (16) Abandonment of a patient.

3 (17) Prescribing, selling, administering,
4 distributing, giving or self-administering any drug
5 classified as a controlled substance (designated product)
6 or narcotic for other than medically accepted therapeutic
7 purposes.

8 (18) Promotion of the sale of drugs, devices,
9 appliances or goods provided for a patient in such manner
10 as to exploit the patient for financial gain of the
11 physician.

12 (19) Offering, undertaking or agreeing to cure or treat
13 disease by a secret method, procedure, treatment or
14 medicine, or the treating, operating or prescribing for any
15 human condition by a method, means or procedure which the
16 licensee refuses to divulge upon demand of the Department.

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

20 (21) Wilfully making or filing false records or reports
21 in his or her practice as a physician, including, but not
22 limited to, false records to support claims against the
23 medical assistance program of the Department of Healthcare
24 and Family Services (formerly Department of Public Aid)
25 under the Illinois Public Aid Code.

26 (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 Healthcare
21 and Family Services (formerly Department of Public Aid)
22 under the Illinois Public Aid Code.

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

26 (27) Mental illness or disability which results in the

1 inability to practice under this Act with reasonable
2 judgment, skill or safety.

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

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

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

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

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

18 (33) Violating state or federal laws or regulations
19 relating to controlled substances.

20 (34) Failure to report to the Department any adverse
21 final action taken against them by another licensing
22 jurisdiction (any other state or any territory of the
23 United States or any foreign state or country), by any peer
24 review body, by any health care institution, by any
25 professional society or association related to practice
26 under this Act, by any governmental agency, by any law

1 enforcement agency, or by any court for acts or conduct
2 similar to acts or conduct which would constitute grounds
3 for action as defined in this Section.

4 (35) Failure to report to the Department surrender of a
5 license or authorization to practice as a medical doctor, a
6 doctor of osteopathy, a doctor of osteopathic medicine, or
7 doctor of chiropractic in another state or jurisdiction, or
8 surrender of membership on any medical staff or in any
9 medical or professional association or society, while
10 under disciplinary investigation by any of those
11 authorities or bodies, for acts or conduct similar to acts
12 or conduct which would constitute grounds for action as
13 defined in this Section.

14 (36) Failure to report to the Department any adverse
15 judgment, settlement, or award arising from a liability
16 claim related to acts or conduct similar to acts or conduct
17 which would constitute grounds for action as defined in
18 this Section.

19 (37) Failure to provide copies of medical records as
20 required by law.

21 (38) Failure to furnish the Department, its
22 investigators or representatives, relevant information,
23 legally requested by the Department after consultation
24 with the Chief Medical Coordinator or the Deputy Medical
25 Coordinator.

26 (39) Violating the Health Care Worker Self-Referral

1 Act.

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

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

6 (42) Entering into an excessive number of written
7 collaborative agreements with licensed advanced practice
8 nurses resulting in an inability to adequately
9 collaborate.

10 (43) Repeated failure to adequately collaborate with a
11 licensed advanced practice nurse.

12 (44) Any violation of the Prohibition of Torture on
13 Prisoners and Detainees by Health Care Professionals Act
14 relating to participation in torture or improper treatment
15 of prisoners by health care professionals, subject to
16 mitigation under that Act.

17 All proceedings to suspend, revoke, place on probationary
18 status, or take any other disciplinary action as the Department
19 may deem proper, with regard to a license on any of the
20 foregoing grounds, must be commenced within 3 years next after
21 receipt by the Department of a complaint alleging the
22 commission of or notice of the conviction order for any of the
23 acts described herein. Except for the grounds numbered (8), (9)
24 and (29), no action shall be commenced more than 5 years after
25 the date of the incident or act alleged to have violated this
26 Section. In the event of the settlement of any claim or cause

1 of action in favor of the claimant or the reduction to final
2 judgment of any civil action in favor of the plaintiff, such
3 claim, cause of action or civil action being grounded on the
4 allegation that a person licensed under this Act was negligent
5 in providing care, the Department shall have an additional
6 period of one year from the date of notification to the
7 Department under Section 23 of this Act of such settlement or
8 final judgment in which to investigate and commence formal
9 disciplinary proceedings under Section 36 of this Act, except
10 as otherwise provided by law. The time during which the holder
11 of the license was outside the State of Illinois shall not be
12 included within any period of time limiting the commencement of
13 disciplinary action by the Department.

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

23 The Department may refuse to issue or take disciplinary
24 action concerning the license of any person who fails to file a
25 return, or to pay the tax, penalty or interest shown in a filed
26 return, or to pay any final assessment of tax, penalty or

1 interest, as required by any tax Act administered by the
2 Illinois Department of Revenue, until such time as the
3 requirements of any such tax Act are satisfied as determined by
4 the Illinois Department of Revenue.

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

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

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

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

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

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

22 In enforcing this Section, the Medical Disciplinary Board,
23 upon a showing of a possible violation, may compel any
24 individual licensed to practice under this Act, or who has
25 applied for licensure or a permit pursuant to this Act, to
26 submit to a mental or physical examination, or both, as

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

1 conditions or restrictions, or to complete a required program
2 of care, counseling, or treatment, as determined by the Chief
3 Medical Coordinator or Deputy Medical Coordinators, shall be
4 referred to the Director for a determination as to whether the
5 licensee shall have their license suspended immediately,
6 pending a hearing by the Disciplinary Board. In instances in
7 which the Director immediately suspends a license under this
8 Section, a hearing upon such person's license must be convened
9 by the Disciplinary Board within 15 days after such suspension
10 and completed without appreciable delay. The Disciplinary
11 Board shall have the authority to review the subject
12 physician's record of treatment and counseling regarding the
13 impairment, to the extent permitted by applicable federal
14 statutes and regulations safeguarding the confidentiality of
15 medical records.

16 An individual licensed under this Act, affected under this
17 Section, shall be afforded an opportunity to demonstrate to the
18 Disciplinary Board that they can resume practice in compliance
19 with acceptable and prevailing standards under the provisions
20 of their license.

21 The Department may promulgate rules for the imposition of
22 fines in disciplinary cases, not to exceed \$5,000 for each
23 violation of this Act. Fines may be imposed in conjunction with
24 other forms of disciplinary action, but shall not be the
25 exclusive disposition of any disciplinary action arising out of
26 conduct resulting in death or injury to a patient. Any funds

1 collected from such fines shall be deposited in the Medical
2 Disciplinary Fund.

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

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

26 (Source: P.A. 94-566, eff. 9-11-05; 95-331, eff. 8-21-07;

1 96-608, eff. 8-24-09; 96-1000, eff. 7-2-10.)

2 Section 997. Severability. The provisions of this Act are
3 severable under Section 1.31 of the Statute on Statutes.

4 Section 999. Effective date. This Act takes effect January
5 1, 2012.