

1 AN ACT concerning abortions.

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

4 Section 1. Short title. This Act may be cited as the
5 Parental Notice of Abortion Act of 2002.

6 Section 5. Legislative findings and purpose. The General
7 Assembly finds that notification of an adult family member as
8 defined in this Act is in the best interest of an
9 unemancipated minor, and the General Assembly's purpose in
10 enacting this parental notice law is to further the important
11 and compelling State interests of protecting the best
12 interests of an unemancipated minor, fostering the family
13 unit and preserving it as a viable social unit, protecting
14 the constitutional rights of parents to rear children who are
15 members of their household, and preventing the influx of
16 minors entering the State of Illinois to evade the laws of
17 their home state that require parental notification or
18 parental consent.

19 The medical, emotional, and psychological consequences of
20 abortion are sometimes serious and long-lasting, and immature
21 minors often lack the ability to make fully informed choices
22 that consider both the immediate and long-range consequences.

23 Parental consultation is usually in the best interest of
24 the minor and is desirable since the capacity to become
25 pregnant and the capacity for mature judgment concerning the
26 wisdom of an abortion are not necessarily related. Parents
27 ordinarily possess information essential to a physician's
28 exercise of his or her best medical judgment concerning the
29 minor, and parents who are aware their daughter has had an
30 abortion may better ensure her appropriate medical attention
31 after her abortion.

1 Section 10. Definitions. In this Act:

2 "Abortion" means the use of any instrument, medicine, or
3 drug, or any other substance or device, to terminate the
4 pregnancy of a woman known to be pregnant with an intention
5 other than to increase the probability of a live birth, to
6 preserve the life or health of a child after live birth, or
7 to remove a dead fetus.

8 "Actual notice" means the giving of notice directly, in
9 person or by telephone, and not by facsimile, voice mail, or
10 answering machine message.

11 "Adult family member" means a person over 18 years of age
12 who is:

- 13 (1) the parent of the minor or incompetent person;
- 14 (2) a step-parent married to and residing with the
15 custodial parent of the minor or incompetent person; or
- 16 (3) a legal guardian of the minor or incompetent
17 person.

18 "Constructive notice" means notice sent by certified mail
19 to the last known address of the person entitled to notice,
20 with delivery deemed to have occurred 48 hours after the
21 notice is mailed.

22 "Incompetent person" means a person who has been adjudged
23 as mentally ill or developmentally disabled and who, because
24 of her mental illness or developmental disability, is not
25 fully able to manage her person and for whom a guardian of
26 the person has been appointed under subdivision (a)(1) of
27 Section 11a-3 of the Probate Act of 1975.

28 "Medical emergency" means a condition that, on the basis
29 of a physician's good faith clinical judgment, so complicates
30 the medical condition of a pregnant woman as to necessitate
31 the immediate abortion of her pregnancy to avert her death or
32 for which a delay will create serious risk of substantial and
33 irreversible impairment of major bodily function.

34 "Minor" means any person under 18 years of age who is not

1 or has not been married or who has not been emancipated under
2 the Emancipation of Mature Minors Act.

3 "Neglect" means the failure of an adult family member to
4 supply a child with necessary food, clothing, shelter, or
5 medical care when reasonably able to do so or the failure to
6 protect a child from conditions or actions that imminently
7 and seriously endanger the child's physical or mental health
8 when reasonably able to do so.

9 "Physical abuse" means any physical injury intentionally
10 inflicted by an adult family member on a child.

11 "Physician" means a person licensed to practice medicine
12 in all its branches under the Medical Practice Act of 1987.

13 "Sexual abuse" means any sexual conduct or sexual
14 penetration as defined in Section 12-12 of the Criminal Code
15 of 1961 that is prohibited by the criminal laws of the State
16 of Illinois and committed against a minor by an adult family
17 member as defined in this Act.

18 Section 15. Notice to adult family member. No person
19 shall knowingly perform an abortion upon a minor or upon an
20 incompetent person unless the person or his or her agent has
21 given at least 48 hours actual notice to an adult family
22 member of the pregnant minor or incompetent person of his or
23 her intention to perform the abortion, unless that person or
24 his or her agent has received a written statement by a
25 referring physician certifying that the referring physician
26 or his or her agent has given at least 48 hours notice to an
27 adult family member of the pregnant minor or incompetent
28 person. If actual notice is not possible after a reasonable
29 effort, the person or his or her agent must give 48 hours
30 constructive notice.

31 Section 20. Exceptions. Notice is not required under
32 this Act if:

1 (1) at the time the abortion is performed, the minor
2 or incompetent person is accompanied by a person entitled
3 to notice under this Act; or

4 (2) notice under this Act is waived in writing by a
5 person who is entitled to that notice; or

6 (3) the attending physician certifies in the
7 patient's medical record that a medical emergency exists
8 and there is insufficient time to provide the required
9 notice; or

10 (4) the minor declares in writing that she is a
11 victim of sexual abuse, neglect, or physical abuse by an
12 adult family member as defined in this Act, in which case
13 (i) the attending physician must certify in the patient's
14 medical record that he or she has received the written
15 declaration of abuse or neglect and (ii) any notification
16 of public authorities of abuse that may be required under
17 other laws of this State need not be made by the person
18 performing the abortion until after the minor receives an
19 abortion that otherwise complies with the requirements of
20 this Act; or

21 (5) notice under this Act is waived under Section
22 25.

23 Section 25. Procedure for judicial waiver of notice.

24 (a) The requirements and procedures under this Section
25 are available to minors and incompetent persons whether or
26 not they are residents of this State.

27 (b) A minor or incompetent person may petition any
28 circuit court for a waiver of the parental notice of abortion
29 requirement under this Act and may participate in proceedings
30 on her own behalf. The court shall appoint a guardian ad
31 litem for her in any such proceedings. A guardian ad litem
32 appointed under this Act must act to maintain the
33 confidentiality of the proceedings. The circuit court shall

1 advise the minor or incompetent person that she has a right
2 to court-appointed counsel and shall provide her with counsel
3 upon her request.

4 (c) Court proceedings under this Section shall be
5 confidential and must ensure the anonymity of the minor or
6 incompetent person. All court proceedings under this Section
7 shall be sealed. The minor or incompetent person has the
8 right to file her petition in the circuit court using a
9 pseudonym or using solely her initials. All documents
10 related to the petition shall be confidential and shall not
11 be made available to the public. These proceedings shall be
12 given precedence over other pending matters to the extent
13 necessary to ensure that the court reaches a decision
14 promptly. The court shall rule and issue written findings of
15 fact and conclusions of law within 48 hours after the
16 petition is filed, except that the 48-hour limitation may be
17 extended at the request of the minor or incompetent person.
18 If the court fails to rule within the 48-hour period and an
19 extension is not requested, then the petition shall be deemed
20 to have been granted, and the notice requirement shall be
21 waived.

22 (d) Notice under this Act shall be waived if the court
23 finds by clear and convincing evidence either:

24 (1) that the minor or incompetent person is
25 sufficiently mature and well-enough informed to decide
26 intelligently whether to have an abortion; or

27 (2) that notification under Section 15 of this Act
28 would not be in the best interests of the minor or
29 incompetent person.

30 (e) A court that conducts proceedings under this Section
31 shall issue written and specific factual findings and legal
32 conclusions supporting its decision and shall order that a
33 confidential record of the evidence and the judge's findings
34 and conclusions be maintained.

1 (f) An expedited confidential appeal shall be available
2 to any minor or incompetent person to whom the circuit court
3 denies a waiver of notice under this Act. An order
4 authorizing an abortion without notice is not subject to
5 appeal.

6 (g) The following rules apply to the appeal of a denial
7 of a petition for waiver of parental notice of abortion under
8 this Section. These rules shall remain in effect only until
9 the Illinois Supreme Court issues its own rules providing for
10 an expedited confidential appeal of a denial of a petition
11 for waiver of parental notice. If the rules adopted by the
12 Illinois Supreme Court are declared unconstitutional, the
13 following rules are thereafter once again in effect.

14 (1) Review of the denial of a waiver of parental
15 notice under this Act shall be by petition filed in the
16 Appellate Court. An appropriate supporting record must
17 accompany the petition. The record must include the
18 notice of interlocutory appeal; the pleadings filed in
19 the circuit court, if any; the decision of the circuit
20 court, including the specific findings of fact and legal
21 conclusions supporting the decision; and any supporting
22 documents of record the petition may offer. The record
23 may be authenticated by the certificate of the clerk of
24 the trial court or by the affidavit of an attorney or
25 party filing it.

26 (2) The minor or incompetent petitioner may file a
27 brief statement of facts and a short memorandum of law
28 supporting her petition. These may be filed instead of a
29 brief and abstract and must be filed within 2 days after
30 the denial of the petition for waiver of parental notice.

31 (3) Except by order of the court upon request of the
32 minor or incompetent petitioner or her guardian ad litem
33 or counsel, no extension of time may be granted.

34 (4) After the petitioner has filed the petition,

1 supporting record, and any memorandum, the Appellate
2 Court shall consider and decide the petition within 2
3 days. No oral argument on the petition may be heard.

4 (5) The minor or incompetent petitioner may appear
5 and file her notice of appeal and her petition using only
6 her initials or a pseudonym. If she does not use her own
7 name, however, she must provide the Clerk of the
8 Appellate Court with a name, telephone number, and
9 address where she can be reached to be informed of the
10 time and place of any hearing and the decision of the
11 court.

12 (6) The Appellate Court shall appoint counsel to
13 assist the minor or incompetent petitioner if she so
14 requests.

15 (7) All Appellate Court records concerning an appeal
16 under this Section shall be sealed as confidential.
17 Inspection and copying of any court records relating to
18 the proceeding and the minor or incompetent person who is
19 the subject of the proceeding shall not be available to
20 the minor or incompetent person who is the subject of the
21 proceeding or to her guardian ad litem or counsel.

22 (8) Any further appeal to the Illinois Supreme Court
23 may be taken in a manner similar to that provided in
24 other civil cases.

25 (h) No fees shall be required of any minor or incompetent
26 person who avails herself of the procedures provided by this
27 Section.

28 Section 30. Minor's consent to abortion. A person may
29 not perform an abortion on a minor without the minor's
30 consent, except in a medical emergency.

31 Section 35. Reports. The Department of Public Health
32 must comply with the reporting requirements set forth in the

1 consent decree in *Herbst v. O'Malley*, case no. 84-C-5602 in
2 the U.S. District Court for the Northern District of
3 Illinois, Eastern Division. These reports must also include
4 a statement of whether the required notice under Section 15
5 of this Act was given and, if an exception to the notice
6 requirement applies, which exception was used. No patient's
7 name or any other information that could lead to the
8 identification of the patient may be used in any report
9 submitted under this Section.

10 Section 40. Penalties.

11 (a) A physician who willfully fails to provide notice as
12 required under this Act before performing an abortion on a
13 minor or an incompetent person shall be referred to the
14 Illinois State Medical Disciplinary Board for action in
15 accordance with Section 22 of the Medical Practice Act of
16 1987.

17 (b) A person, not authorized under this Act, who signs
18 any waiver of notice under this Act for a minor or
19 incompetent person seeking an abortion is guilty of a Class C
20 misdemeanor.

21 (c) A person who discloses confidential information in
22 violation of Section 25 is guilty of a Class C misdemeanor.

23 Section 45. Immunity. A physician who, in good faith,
24 provides notice in accordance with Section 15 or relies on an
25 exception under Section 20 is not subject to any type of
26 civil or criminal liability or discipline for unprofessional
27 conduct for failure to give notice required under this Act.

28 Section 50. Severability. If any provision, word,
29 phrase, or clause of this Act, or its application to any
30 person or circumstance, is held invalid, the invalidity of
31 that provision or application does not affect the provisions,

1 words, phrases, clauses, or applications of the Act that can
2 be given effect without the invalid provision, word, phrase,
3 clause, or application, and to this end the provisions,
4 words, phrases, and clauses of this Act are declared to be
5 severable.

6 Section 90. The Medical Practice Act of 1987 is amended
7 by changing Sections 22 and 23 as follows:

8 (225 ILCS 60/22) (from Ch. 111, par. 4400-22)

9 Sec. 22. Disciplinary action.

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

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

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

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

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

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

1 (e) ambulatory surgical treatment centers,
2 hospitalization or care facilities maintained by any
3 university or college established under the laws of
4 this State and supported principally by public funds
5 raised by taxation.

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

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

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

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

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

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

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

26 (9) Fraud or misrepresentation in applying for, or
27 procuring, a license under this Act or in connection with
28 applying for renewal of a license under this Act.

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

34 (11) Allowing another person or organization to use

1 their license, procured under this Act, to practice.

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

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

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

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

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

22 (16) Abandonment of a patient.

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

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

32 (19) Offering, undertaking or agreeing to cure or
33 treat disease by a secret method, procedure, treatment or
34 medicine, or the treating, operating or prescribing for

1 any human condition by a method, means or procedure which
2 the licensee refuses to divulge upon demand of the
3 Department.

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

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

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

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

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

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

1 Code.

2 (26) A pattern of practice or other behavior which
3 demonstrates incapacity or incompetence to practice under
4 this Act.

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

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

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

15 (30) Wilfully or negligently violating the
16 confidentiality between physician and patient except as
17 required by law.

18 (31) The use of any false, fraudulent, or deceptive
19 statement in any document connected with practice under
20 this Act.

21 (32) Aiding and abetting an individual not licensed
22 under this Act in the practice of a profession licensed
23 under this Act.

24 (33) Violating state or federal laws or regulations
25 relating to controlled substances.

26 (34) Failure to report to the Department any
27 adverse final action taken against them by another
28 licensing jurisdiction (any other state or any territory
29 of the United States or any foreign state or country), by
30 any peer review body, by any health care institution, by
31 any professional society or association related to
32 practice under this Act, by any governmental agency, by
33 any law enforcement agency, or by any court for acts or
34 conduct similar to acts or conduct which would constitute

1 grounds for action as defined in this Section.

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

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

17 (37) Failure to transfer copies of medical records
18 as required by law.

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

24 (39) Violating the Health Care Worker Self-Referral
25 Act.

26 (40) Willful failure to provide notice when notice
27 is required under the Parental Notice of Abortion Act of
28 2002. Willful-failure-to-provide-notice--when--notice--is
29 required--under--the--Parental--Notice-of-Abortion-Act-of
30 1995.

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

33 (42) Entering into an excessive number of written
34 collaborative agreements with licensed advanced practice

1 nurses resulting in an inability to adequately
2 collaborate and provide medical direction.

3 (43) Repeated failure to adequately collaborate
4 with or provide medical direction to a licensed advanced
5 practice nurse.

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

30 The entry of an order or judgment by any circuit court
31 establishing that any person holding a license under this Act
32 is a person in need of mental treatment operates as a
33 suspension of that license. That person may resume their
34 practice only upon the entry of a Departmental order based

1 upon a finding by the Medical Disciplinary Board that they
2 have been determined to be recovered from mental illness by
3 the court and upon the Disciplinary Board's recommendation
4 that they be permitted to resume their practice.

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

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

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

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

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

25 (d) what constitutes gross negligence in the
26 practice of medicine.

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

30 In enforcing this Section, the Medical Disciplinary
31 Board, upon a showing of a possible violation, may compel any
32 individual licensed to practice under this Act, or who has
33 applied for licensure or a permit pursuant to this Act, to
34 submit to a mental or physical examination, or both, as

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

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

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

15 The Department may promulgate rules for the imposition of
16 fines in disciplinary cases, not to exceed \$5,000 for each
17 violation of this Act. Fines may be imposed in conjunction
18 with other forms of disciplinary action, but shall not be the
19 exclusive disposition of any disciplinary action arising out
20 of conduct resulting in death or injury to a patient. Any
21 funds collected from such fines shall be deposited in the
22 Medical Disciplinary Fund.

23 (B) The Department shall revoke the license or visiting
24 permit of any person issued under this Act to practice
25 medicine or to treat human ailments without the use of drugs
26 and without operative surgery, who has been convicted a
27 second time of committing any felony under the Illinois
28 Controlled Substances Act, or who has been convicted a second
29 time of committing a Class 1 felony under Sections 8A-3 and
30 8A-6 of the Illinois Public Aid Code. A person whose license
31 or visiting permit is revoked under this subsection B of
32 Section 22 of this Act shall be prohibited from practicing
33 medicine or treating human ailments without the use of drugs
34 and without operative surgery.

1 (C) The Medical Disciplinary Board shall recommend to
2 the Department civil penalties and any other appropriate
3 discipline in disciplinary cases when the Board finds that a
4 physician willfully performed an abortion with actual
5 knowledge that the person upon whom the abortion has been
6 performed is a minor or an incompetent person without notice
7 as required under the Parental Notice of Abortion Act of
8 2002. Upon the Board's recommendation, the Department shall
9 impose, for the first violation, a civil penalty of \$1,000
10 and for a second or subsequent violation, a civil penalty of
11 \$5,000. ~~The Medical Disciplinary Board shall recommend to the~~
12 ~~Department civil penalties and any other appropriate~~
13 ~~discipline in disciplinary cases when the Board finds that a~~
14 ~~physician willfully performed an abortion with actual~~
15 ~~knowledge that the person upon whom the abortion has been~~
16 ~~performed is a minor or an incompetent person without notice~~
17 ~~as required under the Parental Notice of Abortion Act of~~
18 ~~1995. Upon the Board's recommendation, the Department shall~~
19 ~~impose, for the first violation, a civil penalty of \$1,000~~
20 ~~and for a second or subsequent violation, a civil penalty of~~
21 ~~\$5,000.~~

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

25 (225 ILCS 60/23) (from Ch. 111, par. 4400-23)
26 Sec. 23. Reports relating to professional conduct and
27 capacity.

28 (A) Entities required to report.
29 (1) Health care institutions. The chief
30 administrator or executive officer of any health care
31 institution licensed by the Illinois Department of Public
32 Health shall report to the Disciplinary Board when any
33 person's clinical privileges are terminated or are

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

1 of such reports shall be construed as the filing of a
2 report for purposes of subsection (C) of this Section.

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

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

23 (4) State's Attorneys. The State's Attorney of
24 each county shall report to the Disciplinary Board all
25 instances in which a person licensed under this Act is
26 convicted or otherwise found guilty of the commission of
27 any felony. The State's Attorney of each county may
28 report to the Disciplinary Board through a verified
29 complaint any instance in which the State's Attorney
30 believes that a physician has willfully violated the
31 notice requirements of the Parental Notice of Abortion
32 Act of 2002. The State's Attorney of each county may
33 report to the Disciplinary Board through a verified
34 complaint any instance in which the State's Attorney

1 believes--that--a--physician--has--willfully-violated-the
2 notice-requirements-of-the-Parental--Notice--of--Abortion
3 Act-of-1995-

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

17 (B) Mandatory reporting. All reports required by items
18 (34), (35), and (36) of subsection (A) of Section 22 and by
19 Section 23 shall be submitted to the Disciplinary Board in a
20 timely fashion. The reports shall be filed in writing within
21 60 days after a determination that a report is required under
22 this Act. All reports shall contain the following
23 information:

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

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

28 (3) The name or other means of identification of
29 any patient or patients whose treatment is a subject of
30 the report, provided, however, no medical records may be
31 revealed without the written consent of the patient or
32 patients.

33 (4) A brief description of the facts which gave
34 rise to the issuance of the report, including the dates

1 of any occurrences deemed to necessitate the filing of
2 the report.

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

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

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

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

25 Nothing contained in this Section shall act to in any
26 way, waive or modify the confidentiality of medical reports
27 and committee reports to the extent provided by law. Any
28 information reported or disclosed shall be kept for the
29 confidential use of the Disciplinary Board, the Medical
30 Coordinators, the Disciplinary Board's attorneys, the medical
31 investigative staff, and authorized clerical staff, as
32 provided in this Act, and shall be afforded the same status
33 as is provided information concerning medical studies in Part
34 21 of Article VIII of the Code of Civil Procedure.

1 (C) Immunity from prosecution. Any individual or
2 organization acting in good faith, and not in a wilful and
3 wanton manner, in complying with this Act by providing any
4 report or other information to the Disciplinary Board, or
5 assisting in the investigation or preparation of such
6 information, or by participating in proceedings of the
7 Disciplinary Board, or by serving as a member of the
8 Disciplinary Board, shall not, as a result of such actions,
9 be subject to criminal prosecution or civil damages.

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

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

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

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

1 represent the member.

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

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

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

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

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

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

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

33 (G) Any violation of this Section shall be a Class A
34 misdemeanor.

1 (H) If any such person violates the provisions of this
2 Section an action may be brought in the name of the People of
3 the State of Illinois, through the Attorney General of the
4 State of Illinois, for an order enjoining such violation or
5 for an order enforcing compliance with this Section. Upon
6 filing of a verified petition in such court, the court may
7 issue a temporary restraining order without notice or bond
8 and may preliminarily or permanently enjoin such violation,
9 and if it is established that such person has violated or is
10 violating the injunction, the court may punish the offender
11 for contempt of court. Proceedings under this paragraph
12 shall be in addition to, and not in lieu of, all other
13 remedies and penalties provided for by this Section.

14 (Source: P.A. 89-18, eff. 6-1-95; 89-702, eff. 7-1-97;
15 90-699, eff. 1-1-99.)

16 (720 ILCS 515/Act rep.)

17 Section 95. The Illinois Abortion Parental Consent Act
18 of 1977, which was repealed by Public Act 89-18, is again
19 repealed.

20 (720 ILCS 520/Act rep.)

21 Section 96. The Parental Notice of Abortion Act of 1983,
22 which was repealed by Public Act 89-18, is again repealed.

23 (750 ILCS 70/Act rep.)

24 Section 97. The Parental Notice of Abortion Act of 1995
25 is repealed.

26 Section 99. Effective Date. This Act takes effect upon
27 becoming law.