



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004

Introduced 2/6/2004, by Angelo Saviano

SYNOPSIS AS INTRODUCED:

225 ILCS 60/9	from Ch. 111, par. 4400-9
225 ILCS 60/23	from Ch. 111, par. 4400-23
225 ILCS 60/32 rep.	

Amends the Medical Practice Act of 1987. Makes changes in the determination of professional capacity. Requires certain applicants to submit proof of professional capacity. Removes provisions requiring the Disciplinary Board to send the summary report of final actions taken upon disciplinary files. Provides that the report must be made available to the public upon request and payment of the fees set by the Department and may be made available to the public on the Internet through the State of Illinois World Wide Web site. Repeals provisions allowing persons licensed in another state to practice medicine in Illinois pending examination.

LRB093 19330 AMC 45066 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning professional regulation.

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

4 Section 5. The Medical Practice Act of 1987 is amended by
5 changing Sections 9 and 23 as follows:

6 (225 ILCS 60/9) (from Ch. 111, par. 4400-9)

7 (Section scheduled to be repealed on January 1, 2007)

8 Sec. 9. Application for license. Each applicant for a
9 license shall:

10 (A) Make application on blank forms prepared and
11 furnished by the Department of Professional Regulation
12 hereinafter referred to as the Department.

13 (B) Submit evidence satisfactory to the Department
14 that the applicant:

15 (1) is of good moral character. In determining
16 moral character under this Section, the Department may
17 take into consideration whether the applicant has
18 engaged in conduct or activities which would
19 constitute grounds for discipline under this Act. The
20 Department may also request the applicant to submit,
21 and may consider as evidence of moral character,
22 endorsements from 2 or 3 individuals licensed under
23 this Act;

24 (2) has the preliminary and professional education
25 required by this Act;

26 (3) (blank); and

27 (4) is physically, mentally, and professionally
28 capable of practicing medicine with reasonable
29 judgment, skill, and safety. In determining physical,
30 mental and professional capacity under this Section,
31 the Medical Licensing Board may, upon a showing of a
32 possible incapacity, compel any applicant to submit to

1 a mental or physical examination, or both. The
2 Licensing Board may condition or restrict any license,
3 subject to the same terms and conditions as are
4 provided for the Medical Disciplinary Board under
5 Section 22 of this Act. Any such condition of a
6 restricted license shall provide that the Chief
7 Medical Coordinator or Deputy Medical Coordinator
8 shall have the authority to review the subject
9 physician's compliance with such conditions or
10 restrictions, including, where appropriate, the
11 physician's record of treatment and counseling
12 regarding the impairment, to the extent permitted by
13 applicable federal statutes and regulations
14 safeguarding the confidentiality of medical records of
15 patients.

16 In determining professional capacity under this
17 Section, an individual may be required to complete such
18 additional testing, training, or remedial education as the
19 Licensing Board may deem necessary in order to establish
20 the applicant's present capacity to practice medicine with
21 reasonable judgment, skill, and safety. The Medical
22 Licensing Board may consider, as part of its determination
23 of the professional capacity of the applicant, the
24 following:

25 (i) medical research in an established research
26 facility, hospital, university, or private
27 corporation;

28 (ii) specialized training or education;

29 (iii) publication of original work in learned,
30 medical, or scientific journals;

31 (iv) participation in federal, state, local, or
32 international public health programs or organizations;

33 (v) professional service in a federal, veterans,
34 or military institution; and

35 (vi) such other professional activities as would
36 maintain and enhance the clinical capabilities of the

1 applicant.

2 Any applicant applying for a license to practice
3 medicine in all of its branches or for a license as a
4 chiropractic physician that has not been engaged in the
5 active practice of medicine or has not been enrolled in a
6 medical program for 2 years prior to application must
7 submit proof of professional capacity.

8 Any applicant applying for a temporary license that has
9 not been engaged in the active practice of medicine or has
10 not been enrolled in a medical program for 5 years prior to
11 application must submit proof of professional capacity. ~~In~~
12 determining professional capacity under this Section any
13 individual who has not been actively engaged in the
14 practice of medicine or as a medical, osteopathic, or
15 chiropractic student or who has not been engaged in a
16 formal program of medical education during the 2 years
17 immediately preceding their application may be required to
18 complete such additional testing, training, or remedial
19 education as the Licensing Board may deem necessary in
20 order to establish the applicant's present capacity to
21 practice medicine with reasonable judgment, skill, and
22 safety.

23 (C) Designate specifically the name, location, and
24 kind of professional school, college, or institution of
25 which the applicant is a graduate and the category under
26 which the applicant seeks, and will undertake, to practice.

27 (D) Pay to the Department at the time of application
28 the required fees.

29 (E) Pursuant to Department rules, as required, pass an
30 examination authorized by the Department to determine the
31 applicant's fitness to receive a license.

32 (F) Complete the application process within 3 years
33 from the date of application. If the process has not been
34 completed within 3 years, the application shall be denied,
35 application fees shall be forfeited, and the applicant must
36 reapply and meet the requirements in effect at the time of

1 reapplication.

2 (Source: P.A. 89-387, eff. 8-20-95; 89-702, eff. 7-1-97.)

3 (225 ILCS 60/23) (from Ch. 111, par. 4400-23)

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

5 Sec. 23. Reports relating to professional conduct and
6 capacity.

7 (A) Entities required to report.

8 (1) Health care institutions. The chief administrator
9 or executive officer of any health care institution
10 licensed by the Illinois Department of Public Health shall
11 report to the Disciplinary Board when any person's clinical
12 privileges are terminated or are restricted based on a
13 final determination, in accordance with that institution's
14 by-laws or rules and regulations, that a person has either
15 committed an act or acts which may directly threaten
16 patient care, and not of an administrative nature, or that
17 a person may be mentally or physically disabled in such a
18 manner as to endanger patients under that person's care.
19 Such officer also shall report if a person accepts
20 voluntary termination or restriction of clinical
21 privileges in lieu of formal action based upon conduct
22 related directly to patient care and not of an
23 administrative nature, or in lieu of formal action seeking
24 to determine whether a person may be mentally or physically
25 disabled in such a manner as to endanger patients under
26 that person's care. The Medical Disciplinary Board shall,
27 by rule, provide for the reporting to it of all instances
28 in which a person, licensed under this Act, who is impaired
29 by reason of age, drug or alcohol abuse or physical or
30 mental impairment, is under supervision and, where
31 appropriate, is in a program of rehabilitation. Such
32 reports shall be strictly confidential and may be reviewed
33 and considered only by the members of the Disciplinary
34 Board, or by authorized staff as provided by rules of the
35 Disciplinary Board. Provisions shall be made for the

1 periodic report of the status of any such person not less
2 than twice annually in order that the Disciplinary Board
3 shall have current information upon which to determine the
4 status of any such person. Such initial and periodic
5 reports of impaired physicians shall not be considered
6 records within the meaning of The State Records Act and
7 shall be disposed of, following a determination by the
8 Disciplinary Board that such reports are no longer
9 required, in a manner and at such time as the Disciplinary
10 Board shall determine by rule. The filing of such reports
11 shall be construed as the filing of a report for purposes
12 of subsection (C) of this Section.

13 (2) Professional associations. The President or chief
14 executive officer of any association or society, of persons
15 licensed under this Act, operating within this State shall
16 report to the Disciplinary Board when the association or
17 society renders a final determination that a person has
18 committed unprofessional conduct related directly to
19 patient care or that a person may be mentally or physically
20 disabled in such a manner as to endanger patients under
21 that person's care.

22 (3) Professional liability insurers. Every insurance
23 company which offers policies of professional liability
24 insurance to persons licensed under this Act, or any other
25 entity which seeks to indemnify the professional liability
26 of a person licensed under this Act, shall report to the
27 Disciplinary Board the settlement of any claim or cause of
28 action, or final judgment rendered in any cause of action,
29 which alleged negligence in the furnishing of medical care
30 by such licensed person when such settlement or final
31 judgment is in favor of the plaintiff.

32 (4) State's Attorneys. The State's Attorney of each
33 county shall report to the Disciplinary Board all instances
34 in which a person licensed under this Act is convicted or
35 otherwise found guilty of the commission of any felony. The
36 State's Attorney of each county may report to the

1 Disciplinary Board through a verified complaint any
2 instance in which the State's Attorney believes that a
3 physician has willfully violated the notice requirements
4 of the Parental Notice of Abortion Act of 1995.

5 (5) State agencies. All agencies, boards, commissions,
6 departments, or other instrumentalities of the government
7 of the State of Illinois shall report to the Disciplinary
8 Board any instance arising in connection with the
9 operations of such agency, including the administration of
10 any law by such agency, in which a person licensed under
11 this Act has either committed an act or acts which may be a
12 violation of this Act or which may constitute
13 unprofessional conduct related directly to patient care or
14 which indicates that a person licensed under this Act may
15 be mentally or physically disabled in such a manner as to
16 endanger patients under that person's 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 60
21 days after a determination that a report is required under this
22 Act. All reports shall contain the following information:

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

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

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

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

35 (5) If court action is involved, the identity of the
36 court in which the action is filed, along with the docket

1 number and date of filing of the action.

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

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

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

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

30 (C) Immunity from prosecution. Any individual or
31 organization acting in good faith, and not in a wilful and
32 wanton manner, in complying with this Act by providing any
33 report or other information to the Disciplinary Board, or
34 assisting in the investigation or preparation of such
35 information, or by participating in proceedings of the
36 Disciplinary Board, or by serving as a member of the

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

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

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

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

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

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

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

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

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

29 Should the Disciplinary Board find that there are not
30 sufficient facts to warrant further investigation, or action,
31 the report shall be accepted for filing and the matter shall be
32 deemed closed and so reported to the Director. The Director
33 shall then have 30 days to accept the Medical Disciplinary
34 Board's decision or request further investigation. The
35 Director shall inform the Board in writing of the decision to
36 request further investigation, including the specific reasons

1 for the decision. The individual or entity filing the original
2 report or complaint and the person who is the subject of the
3 report or complaint shall be notified in writing by the
4 Director of any final action on their report or complaint.

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

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

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

1 provided for by this Section.

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

4 (225 ILCS 60/32 rep.)

5 Section 10. The Medical Practice Act of 1987 is amended by
6 repealing Section 32.