

**SB0447**



**94TH GENERAL ASSEMBLY**  
**State of Illinois**  
**2005 and 2006**  
**SB0447**

Introduced 2/16/2005, by Sen. Martin A. Sandoval

**SYNOPSIS AS INTRODUCED:**

225 ILCS 60/22

from Ch. 111, par. 4400-22

Amends the Medical Practice Act of 1987. Provides that, if a person has been found to have committed 3 or more incidents of medical malpractice, then the Department must refuse to issue a license to the person and must revoke any license issued to the person under the Act. Effective January 1, 2006.

LRB094 10709 AMC 41112 b

A BILL FOR

1 AN ACT concerning 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 Section 22 as follows:

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

7 (Section scheduled to be repealed on January 1, 2007)

8 Sec. 22. Disciplinary action.

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

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

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

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

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

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

32 (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  
27 applying for renewal of a license under this Act.

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

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

35 (12) Disciplinary action of another state or  
36 jurisdiction against a license or other authorization to

1 practice as a medical doctor, doctor of osteopathy, doctor  
2 of osteopathic medicine or doctor of chiropractic, a  
3 certified copy of the record of the action taken by the  
4 other state or jurisdiction being prima facie evidence  
5 thereof.

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

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

1 fees and monies received by the partnership or joint  
2 venture in accordance with the partnership or joint venture  
3 agreement. Nothing contained in this subsection shall  
4 abrogate the right of 2 or more persons, holding valid and  
5 current licenses under this Act, to each receive adequate  
6 compensation for concurrently rendering professional  
7 services to a patient and divide a fee; provided, the  
8 patient has full knowledge of the division, and, provided,  
9 that the division is made in proportion to the services  
10 performed and responsibility assumed by each.

11 (15) A finding by the Medical Disciplinary Board that  
12 the registrant after having his or her license placed on  
13 probationary status or subjected to conditions or  
14 restrictions violated the terms of the probation or failed  
15 to comply with such terms or conditions.

16 (16) Abandonment of a patient.

17 (17) Prescribing, selling, administering,  
18 distributing, giving or self-administering any drug  
19 classified as a controlled substance (designated product)  
20 or narcotic for other than medically accepted therapeutic  
21 purposes.

22 (18) Promotion of the sale of drugs, devices,  
23 appliances or goods provided for a patient in such manner  
24 as to exploit the patient for financial gain of the  
25 physician.

26 (19) Offering, undertaking or agreeing to cure or treat  
27 disease by a secret method, procedure, treatment or  
28 medicine, or the treating, operating or prescribing for any  
29 human condition by a method, means or procedure which the  
30 licensee refuses to divulge upon demand of the Department.

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

34 (21) Wilfully making or filing false records or reports  
35 in his or her practice as a physician, including, but not  
36 limited to, false records to support claims against the

1 medical assistance program of the Department of Public Aid  
2 under the Illinois Public Aid Code.

3 (22) Wilful omission to file or record, or wilfully  
4 impeding the filing or recording, or inducing another  
5 person to omit to file or record, medical reports as  
6 required by law, or wilfully failing to report an instance  
7 of suspected abuse or neglect as required by law.

8 (23) Being named as a perpetrator in an indicated  
9 report by the Department of Children and Family Services  
10 under the Abused and Neglected Child Reporting Act, and  
11 upon proof by clear and convincing evidence that the  
12 licensee has caused a child to be an abused child or  
13 neglected child as defined in the Abused and Neglected  
14 Child Reporting Act.

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

18 (25) Gross and wilful and continued overcharging for  
19 professional services, including filing false statements  
20 for collection of fees for which services are not rendered,  
21 including, but not limited to, filing such false statements  
22 for collection of monies for services not rendered from the  
23 medical assistance program of the Department of Public Aid  
24 under the Illinois Public Aid Code.

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

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

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

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

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

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

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

10          (33) Violating state or federal laws or regulations  
11 relating to controlled substances.

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

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

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

1 (37) Failure to transfer copies of medical records as  
2 required by law.

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

8 (39) Violating the Health Care Worker Self-Referral  
9 Act.

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

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

14 (42) Entering into an excessive number of written  
15 collaborative agreements with licensed advanced practice  
16 nurses resulting in an inability to adequately collaborate  
17 and provide medical direction.

18 (43) Repeated failure to adequately collaborate with  
19 or provide medical direction to a licensed advanced  
20 practice nurse.

21 All proceedings to suspend, revoke, place on probationary  
22 status, or take any other disciplinary action as the Department  
23 may deem proper, with regard to a license on any of the  
24 foregoing grounds, must be commenced within 3 years next after  
25 receipt by the Department of a complaint alleging the  
26 commission of or notice of the conviction order for any of the  
27 acts described herein. Except for the grounds numbered (8), (9)  
28 and (29), no action shall be commenced more than 5 years after  
29 the date of the incident or act alleged to have violated this  
30 Section. In the event of the settlement of any claim or cause  
31 of action in favor of the claimant or the reduction to final  
32 judgment of any civil action in favor of the plaintiff, such  
33 claim, cause of action or civil action being grounded on the  
34 allegation that a person licensed under this Act was negligent  
35 in providing care, the Department shall have an additional  
36 period of one year from the date of notification to the



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

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

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

25 The Department, upon the recommendation of the  
26 Disciplinary Board, shall adopt rules which set forth standards  
27 to be used in determining:

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

30 (b) what constitutes dishonorable, unethical or  
31 unprofessional conduct of a character likely to deceive,  
32 defraud, or harm the public;

33 (c) what constitutes immoral conduct in the commission  
34 of any act, including, but not limited to, commission of an  
35 act of sexual misconduct related to the licensee's  
36 practice; and

1           (d) what constitutes gross negligence in the practice  
2           of medicine.

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

6           In enforcing this Section, the Medical Disciplinary Board,  
7           upon a showing of a possible violation, may compel any  
8           individual licensed to practice under this Act, or who has  
9           applied for licensure or a permit pursuant to this Act, to  
10          submit to a mental or physical examination, or both, as  
11          required by and at the expense of the Department. The examining  
12          physician or physicians shall be those specifically designated  
13          by the Disciplinary Board. The Medical Disciplinary Board or  
14          the Department may order the examining physician to present  
15          testimony concerning this mental or physical examination of the  
16          licensee or applicant. No information shall be excluded by  
17          reason of any common law or statutory privilege relating to  
18          communication between the licensee or applicant and the  
19          examining physician. The individual to be examined may have, at  
20          his or her own expense, another physician of his or her choice  
21          present during all aspects of the examination. Failure of any  
22          individual to submit to mental or physical examination, when  
23          directed, shall be grounds for suspension of his or her license  
24          until such time as the individual submits to the examination if  
25          the Disciplinary Board finds, after notice and hearing, that  
26          the refusal to submit to the examination was without reasonable  
27          cause. If the Disciplinary Board finds a physician unable to  
28          practice because of the reasons set forth in this Section, the  
29          Disciplinary Board shall require such physician to submit to  
30          care, counseling, or treatment by physicians approved or  
31          designated by the Disciplinary Board, as a condition for  
32          continued, reinstated, or renewed licensure to practice. Any  
33          physician, whose license was granted pursuant to Sections 9,  
34          17, or 19 of this Act, or, continued, reinstated, renewed,  
35          disciplined or supervised, subject to such terms, conditions or  
36          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  
27 collected from such fines shall be deposited in the Medical  
28 Disciplinary Fund.

29 (B) The Department shall revoke the license or visiting  
30 permit of any person issued under this Act to practice medicine  
31 or to treat human ailments without the use of drugs and without  
32 operative surgery, who has been convicted a second time of  
33 committing any felony under the Illinois Controlled Substances  
34 Act, or who has been convicted a second time of committing a  
35 Class 1 felony under Sections 8A-3 and 8A-6 of the Illinois  
36 Public Aid Code. A person whose license or visiting permit is

1 revoked under this subsection B of Section 22 of this Act shall  
2 be prohibited from practicing medicine or treating human  
3 ailments without the use of drugs and without operative  
4 surgery.

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

15 (D) If a person has been found to have committed 3 or more  
16 incidents of medical malpractice, then the Department must  
17 refuse to issue a license to the person and must revoke any  
18 license issued to the person under this Act. For the purposes  
19 of this subsection, (i) "medical malpractice" means both the  
20 failure to practice medicine in Illinois with that level of  
21 care, skill, and treatment recognized in general law related to  
22 health care providers' licensure, and any similar wrongful act,  
23 neglect, or default in other states or countries that, if  
24 committed in Illinois, would have been considered medical  
25 malpractice; and (ii) "found to have committed" means that the  
26 malpractice has been found in a final judgment of a court of  
27 law, final administrative agency decision, or decision of  
28 binding arbitration.

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

31 Section 99. Effective date. This Act takes effect January  
32 1, 2006.