



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB4596

by Rep. Mary E. Flowers

SYNOPSIS AS INTRODUCED:

225 ILCS 60/23
225 ILCS 60/36

from Ch. 111, par. 4400-23
from Ch. 111, par. 4400-36

Amends the Medical Practice Act of 1987. Provides that upon any person's request, the Department of Financial and Professional Regulation shall disclose to the person the status of the Disciplinary Board's review of a specific report or complaint. Provides that the request may be made at any time, including prior to the Disciplinary Board's determination as to whether there are sufficient facts to warrant further investigation or action. Provides that the Department shall, at least 14 days prior to the date set for the hearing, notify in writing any person who filed a complaint against the accused of the time and place for the hearing of the charges against the accused before the Disciplinary Board and inform such person whether he or she may provide testimony at the hearing.

LRB096 13249 ASK 27909 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

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 23 and 36 as follows:

6 (225 ILCS 60/23) (from Ch. 111, par. 4400-23)

7 (Section scheduled to be repealed on December 31, 2010)

8 Sec. 23. Reports relating to professional conduct and
9 capacity.

10 (A) Entities required to report.

11 (1) Health care institutions. The chief administrator
12 or executive officer of any health care institution
13 licensed by the Illinois Department of Public Health shall
14 report to the Disciplinary Board when any person's clinical
15 privileges are terminated or are restricted based on a
16 final determination, in accordance with that institution's
17 by-laws or rules and regulations, that a person has either
18 committed an act or acts which may directly threaten
19 patient care, and not of an administrative nature, or that
20 a person may be mentally or physically disabled in such a
21 manner as to endanger patients under that person's care.
22 Such officer also shall report if a person accepts
23 voluntary termination or restriction of clinical

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

1 of subsection (C) of this Section.

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

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

21 (4) State's Attorneys. The State's Attorney of each
22 county shall report to the Disciplinary Board all instances
23 in which a person licensed under this Act is convicted or
24 otherwise found guilty of the commission of any felony. The
25 State's Attorney of each county may report to the
26 Disciplinary Board through a verified complaint any

1 instance in which the State's Attorney believes that a
2 physician has willfully violated the notice requirements
3 of the Parental Notice of Abortion Act of 1995.

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

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

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

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

26 (3) The name and date of birth of any patient or

1 patients whose treatment is a subject of the report, if
2 available, or other means of identification if such
3 information is not available, identification of the
4 hospital or other healthcare facility where the care at
5 issue in the report was rendered, provided, however, no
6 medical records may be revealed.

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

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

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

16 The Disciplinary Board or Department may also exercise the
17 power under Section 38 of this Act to subpoena copies of
18 hospital or medical records in mandatory report cases alleging
19 death or permanent bodily injury. Appropriate rules shall be
20 adopted by the Department with the approval of the Disciplinary
21 Board.

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

1 Nothing contained in this Section shall act to in any way,
2 waive or modify the confidentiality of medical reports and
3 committee reports to the extent provided by law. Any
4 information reported or disclosed shall be kept for the
5 confidential use of the Disciplinary Board, the Medical
6 Coordinators, the Disciplinary Board's attorneys, the medical
7 investigative staff, and authorized clerical staff, as
8 provided in this Act, and shall be afforded the same status as
9 is provided information concerning medical studies in Part 21
10 of Article VIII of the Code of Civil Procedure, except that the
11 Department may disclose information and documents to a federal,
12 State, or local law enforcement agency pursuant to a subpoena
13 in an ongoing criminal investigation. Furthermore, information
14 and documents disclosed to a federal, State, or local law
15 enforcement agency may be used by that agency only for the
16 investigation and prosecution of a criminal offense.

17 (C) Immunity from prosecution. Any individual or
18 organization acting in good faith, and not in a wilful and
19 wanton manner, in complying with this Act by providing any
20 report or other information to the Disciplinary Board or a peer
21 review committee, or assisting in the investigation or
22 preparation of such information, or by voluntarily reporting to
23 the Disciplinary Board or a peer review committee information
24 regarding alleged errors or negligence by a person licensed
25 under this Act, or by participating in proceedings of the
26 Disciplinary Board or a peer review committee, or by serving as

1 a member of the Disciplinary Board or a peer review committee,
2 shall not, as a result of such actions, be subject to criminal
3 prosecution or civil damages.

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

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

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

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

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

12 The notification shall include a written notice setting
13 forth the person's right to examine the report. Included in
14 such notification shall be the address at which the file is
15 maintained, the name of the custodian of the reports, and the
16 telephone number at which the custodian may be reached. The
17 person who is the subject of the report shall submit a written
18 statement responding, clarifying, adding to, or proposing the
19 amending of the report previously filed. The person who is the
20 subject of the report shall also submit with the written
21 statement any medical records related to the report. The
22 statement and accompanying medical records shall become a
23 permanent part of the file and must be received by the
24 Disciplinary Board no more than 30 days after the date on which
25 the person was notified by the Disciplinary Board of the
26 existence of the original report.

1 The Disciplinary Board shall review all reports received by
2 it, together with any supporting information and responding
3 statements submitted by persons who are the subject of reports.
4 The review by the Disciplinary Board shall be in a timely
5 manner but in no event, shall the Disciplinary Board's initial
6 review of the material contained in each disciplinary file be
7 less than 61 days nor more than 180 days after the receipt of
8 the initial report by the Disciplinary Board.

9 When the Disciplinary Board makes its initial review of the
10 materials contained within its disciplinary files, the
11 Disciplinary Board shall, in writing, make a determination as
12 to whether there are sufficient facts to warrant further
13 investigation or action. Failure to make such determination
14 within the time provided shall be deemed to be a determination
15 that there are not sufficient facts to warrant further
16 investigation or action.

17 Should the Disciplinary Board find that there are not
18 sufficient facts to warrant further investigation, or action,
19 the report shall be accepted for filing and the matter shall be
20 deemed closed and so reported to the Secretary. The Secretary
21 shall then have 30 days to accept the Medical Disciplinary
22 Board's decision or request further investigation. The
23 Secretary shall inform the Board in writing of the decision to
24 request further investigation, including the specific reasons
25 for the decision. The individual or entity filing the original
26 report or complaint and the person who is the subject of the

1 report or complaint shall be notified in writing by the
2 Secretary of any final action on their report or complaint.
3 Upon any person's request, the Department shall disclose to the
4 person the status of the Disciplinary Board's review of a
5 specific report or complaint. Such request may be made at any
6 time, including prior to the Disciplinary Board's
7 determination as to whether there are sufficient facts to
8 warrant further investigation or action.

9 (F) Summary reports. The Disciplinary Board shall prepare,
10 on a timely basis, but in no event less than once every other
11 month, a summary report of final actions taken upon
12 disciplinary files maintained by the Disciplinary Board. The
13 summary reports shall be made available to the public upon
14 request and payment of the fees set by the Department. This
15 publication may be made available to the public on the
16 Department's Internet website.

17 (G) Any violation of this Section shall be a Class A
18 misdemeanor.

19 (H) If any such person violates the provisions of this
20 Section an action may be brought in the name of the People of
21 the State of Illinois, through the Attorney General of the
22 State of Illinois, for an order enjoining such violation or for
23 an order enforcing compliance with this Section. Upon filing of
24 a verified petition in such court, the court may issue a
25 temporary restraining order without notice or bond and may
26 preliminarily or permanently enjoin such violation, and if it

1 is established that such person has violated or is violating
2 the injunction, the court may punish the offender for contempt
3 of court. Proceedings under this paragraph shall be in addition
4 to, and not in lieu of, all other remedies and penalties
5 provided for by this Section.

6 (Source: P.A. 94-677, eff. 8-25-05; 95-639, eff. 10-5-07.)

7 (225 ILCS 60/36) (from Ch. 111, par. 4400-36)

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

9 Sec. 36. Upon the motion of either the Department or the
10 Disciplinary Board or upon the verified complaint in writing of
11 any person setting forth facts which, if proven, would
12 constitute grounds for suspension or revocation under Section
13 22 of this Act, the Department shall investigate the actions of
14 any person, so accused, who holds or represents that they hold
15 a license. Such person is hereinafter called the accused.

16 The Department shall, before suspending, revoking, placing
17 on probationary status, or taking any other disciplinary action
18 as the Department may deem proper with regard to any license at
19 least 30 days prior to the date set for the hearing, notify the
20 accused in writing of any charges made and the time and place
21 for a hearing of the charges before the Disciplinary Board,
22 direct them to file their written answer thereto to the
23 Disciplinary Board under oath within 20 days after the service
24 on them of such notice and inform them that if they fail to
25 file such answer default will be taken against them and their

1 license may be suspended, revoked, placed on probationary
2 status, or have other disciplinary action, including limiting
3 the scope, nature or extent of their practice, as the
4 Department may deem proper taken with regard thereto. The
5 Department shall, at least 14 days prior to the date set for
6 the hearing, notify in writing any person who filed a complaint
7 against the accused of the time and place for the hearing of
8 the charges against the accused before the Disciplinary Board
9 and inform such person whether he or she may provide testimony
10 at the hearing.

11 Where a physician has been found, upon complaint and
12 investigation of the Department, and after hearing, to have
13 performed an abortion procedure in a wilful and wanton manner
14 upon a woman who was not pregnant at the time such abortion
15 procedure was performed, the Department shall automatically
16 revoke the license of such physician to practice medicine in
17 Illinois.

18 Such written notice and any notice in such proceedings
19 thereafter may be served by delivery of the same, personally,
20 to the accused person, or by mailing the same by registered or
21 certified mail to the address last theretofore specified by the
22 accused in their last notification to the Department.

23 All information gathered by the Department during its
24 investigation including information subpoenaed under Section
25 23 or 38 of this Act and the investigative file shall be kept
26 for the confidential use of the Secretary, Disciplinary Board,

1 the Medical Coordinators, persons employed by contract to
2 advise the Medical Coordinator or the Department, the
3 Disciplinary Board's attorneys, the medical investigative
4 staff, and authorized clerical staff, as provided in this Act
5 and shall be afforded the same status as is provided
6 information concerning medical studies in Part 21 of Article
7 VIII of the Code of Civil Procedure, except that the Department
8 may disclose information and documents to a federal, State, or
9 local law enforcement agency pursuant to a subpoena in an
10 ongoing criminal investigation. Furthermore, information and
11 documents disclosed to a federal, State, or local law
12 enforcement agency may be used by that agency only for the
13 investigation and prosecution of a criminal offense.

14 (Source: P.A. 94-677, eff. 8-25-05.)