



Rep. Tom Cross

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1 AMENDMENT TO SENATE BILL 2239

2 AMENDMENT NO. _____. Amend Senate Bill 2239, by replacing
3 everything after the enacting clause with the following:

4 "ARTICLE 1. FINDINGS

5 Section 101. Findings. The General Assembly finds as
6 follows:

7 (1) The increasing cost of medical malpractice insurance
8 results in increased financial burdens on physicians and
9 hospitals.

10 (2) The increasing cost of medical malpractice insurance in
11 Illinois is believed to have contributed to the reduction of
12 the availability of medical care in portions of the State and
13 is believed to have discouraged some medical students from
14 choosing Illinois as the place they will receive their medical
15 education and practice medicine.

16 (3) The public would benefit from making the services of
17 hospitals and physicians more available.

18 (4) In order to preserve the public health, safety, and
19 welfare of the people of Illinois, the current medical
20 malpractice situation requires reforms that enhance the
21 State's oversight of physicians and ability to discipline
22 physicians, that increase the State's oversight of medical
23 liability insurance carriers, that reduce the number of
24 nonmeritorious healing art malpractice actions, that encourage

1 physicians to provide voluntary services at free medical
2 clinics, and that encourage physicians and hospitals to
3 continue providing health care services in Illinois.

4 ARTICLE 2. RISK RETENTION ARRANGEMENTS

5 Section 201. Findings and purpose.

6 (a) In order to provide an alternative to the private
7 insurance market to cover medical malpractice risks, it is the
8 finding of the General Assembly that counties in the State may
9 find it necessary to seek to protect the public health, safety,
10 and welfare by providing an alternative source of insurance or
11 self-insurance for physicians practicing medicine and their
12 personnel within that county, and that providing such an
13 alternative source is in the public interest and serves a
14 public purpose.

15 (b) A program to provide a stable and ongoing source of
16 professional liability coverage for physicians and their
17 personnel through an insurance or self-insurance trust, under
18 the direction and control of a county or counties, will operate
19 for the protection of the public health, safety, and welfare
20 and serve a paramount public interest and purpose of the county
21 or counties.

22 Section 205. The Open Meetings Act is amended by changing
23 Section 2 as follows:

24 (5 ILCS 120/2) (from Ch. 102, par. 42)

25 Sec. 2. Open meetings.

26 (a) Openness required. All meetings of public bodies shall
27 be open to the public unless excepted in subsection (c) and
28 closed in accordance with Section 2a.

29 (b) Construction of exceptions. The exceptions contained
30 in subsection (c) are in derogation of the requirement that

1 public bodies meet in the open, and therefore, the exceptions
2 are to be strictly construed, extending only to subjects
3 clearly within their scope. The exceptions authorize but do not
4 require the holding of a closed meeting to discuss a subject
5 included within an enumerated exception.

6 (c) Exceptions. A public body may hold closed meetings to
7 consider the following subjects:

8 (1) The appointment, employment, compensation,
9 discipline, performance, or dismissal of specific
10 employees of the public body or legal counsel for the
11 public body, including hearing testimony on a complaint
12 lodged against an employee of the public body or against
13 legal counsel for the public body to determine its
14 validity.

15 (2) Collective negotiating matters between the public
16 body and its employees or their representatives, or
17 deliberations concerning salary schedules for one or more
18 classes of employees.

19 (3) The selection of a person to fill a public office,
20 as defined in this Act, including a vacancy in a public
21 office, when the public body is given power to appoint
22 under law or ordinance, or the discipline, performance or
23 removal of the occupant of a public office, when the public
24 body is given power to remove the occupant under law or
25 ordinance.

26 (4) Evidence or testimony presented in open hearing, or
27 in closed hearing where specifically authorized by law, to
28 a quasi-adjudicative body, as defined in this Act, provided
29 that the body prepares and makes available for public
30 inspection a written decision setting forth its
31 determinative reasoning.

32 (5) The purchase or lease of real property for the use
33 of the public body, including meetings held for the purpose
34 of discussing whether a particular parcel should be

1 acquired.

2 (6) The setting of a price for sale or lease of
3 property owned by the public body.

4 (7) The sale or purchase of securities, investments, or
5 investment contracts.

6 (8) Security procedures and the use of personnel and
7 equipment to respond to an actual, a threatened, or a
8 reasonably potential danger to the safety of employees,
9 students, staff, the public, or public property.

10 (9) Student disciplinary cases.

11 (10) The placement of individual students in special
12 education programs and other matters relating to
13 individual students.

14 (11) Litigation, when an action against, affecting or
15 on behalf of the particular public body has been filed and
16 is pending before a court or administrative tribunal, or
17 when the public body finds that an action is probable or
18 imminent, in which case the basis for the finding shall be
19 recorded and entered into the minutes of the closed
20 meeting.

21 (12) The establishment of reserves or settlement of
22 claims as provided in the Local Governmental and
23 Governmental Employees Tort Immunity Act, if otherwise the
24 disposition of a claim or potential claim might be
25 prejudiced, or the review or discussion of claims, loss or
26 risk management information, records, data, advice or
27 communications from or with respect to any insurer of the
28 public body or any intergovernmental risk management
29 association or self insurance pool of which the public body
30 is a member.

31 (13) Conciliation of complaints of discrimination in
32 the sale or rental of housing, when closed meetings are
33 authorized by the law or ordinance prescribing fair housing
34 practices and creating a commission or administrative

1 agency for their enforcement.

2 (14) Informant sources, the hiring or assignment of
3 undercover personnel or equipment, or ongoing, prior or
4 future criminal investigations, when discussed by a public
5 body with criminal investigatory responsibilities.

6 (15) Professional ethics or performance when
7 considered by an advisory body appointed to advise a
8 licensing or regulatory agency on matters germane to the
9 advisory body's field of competence.

10 (16) Self evaluation, practices and procedures or
11 professional ethics, when meeting with a representative of
12 a statewide association of which the public body is a
13 member.

14 (17) The recruitment, credentialing, discipline or
15 formal peer review of physicians or other health care
16 professionals for a hospital, or other institution
17 providing medical care, that is operated by the public
18 body.

19 (18) Deliberations for decisions of the Prisoner
20 Review Board.

21 (19) Review or discussion of applications received
22 under the Experimental Organ Transplantation Procedures
23 Act.

24 (20) The classification and discussion of matters
25 classified as confidential or continued confidential by
26 the State Employees Suggestion Award Board.

27 (21) Discussion of minutes of meetings lawfully closed
28 under this Act, whether for purposes of approval by the
29 body of the minutes or semi-annual review of the minutes as
30 mandated by Section 2.06.

31 (22) Deliberations for decisions of the State
32 Emergency Medical Services Disciplinary Review Board.

33 (23) The operation by a municipality of a municipal
34 utility or the operation of a municipal power agency or

1 municipal natural gas agency when the discussion involves
2 (i) contracts relating to the purchase, sale, or delivery
3 of electricity or natural gas or (ii) the results or
4 conclusions of load forecast studies.

5 (24) Meetings of a residential health care facility
6 resident sexual assault and death review team or the
7 Residential Health Care Facility Resident Sexual Assault
8 and Death Review Teams Executive Council under the
9 Residential Health Care Facility Resident Sexual Assault
10 and Death Review Team Act.

11 (25) The establishment of reserves administration,
12 adjudication, or settlement of claims as provided in
13 Article XLV of the Illinois Insurance Code if otherwise the
14 disposition of a claim or potential claim might be
15 prejudiced, or the review or discussion of claims, loss or
16 risk management information, records, data, advice or
17 communications from or with respect to any self-insurance
18 trust administration or adjudication of any claim, or
19 insurer created by the public body.

20 (d) Definitions. For purposes of this Section:

21 "Employee" means a person employed by a public body whose
22 relationship with the public body constitutes an
23 employer-employee relationship under the usual common law
24 rules, and who is not an independent contractor.

25 "Public office" means a position created by or under the
26 Constitution or laws of this State, the occupant of which is
27 charged with the exercise of some portion of the sovereign
28 power of this State. The term "public office" shall include
29 members of the public body, but it shall not include
30 organizational positions filled by members thereof, whether
31 established by law or by a public body itself, that exist to
32 assist the body in the conduct of its business.

33 "Quasi-adjudicative body" means an administrative body
34 charged by law or ordinance with the responsibility to conduct

1 hearings, receive evidence or testimony and make
2 determinations based thereon, but does not include local
3 electoral boards when such bodies are considering petition
4 challenges.

5 (e) Final action. No final action may be taken at a closed
6 meeting. Final action shall be preceded by a public recital of
7 the nature of the matter being considered and other information
8 that will inform the public of the business being conducted.

9 (Source: P.A. 93-57, eff. 7-1-03; 93-79, eff. 7-2-03; 93-422,
10 eff. 8-5-03; 93-577, eff. 8-21-03; revised 9-8-03)

11 Section 210. The Counties Code is amended by changing
12 Section 5-1005 and by adding Division 6-34 as follows:

13 (55 ILCS 5/5-1005) (from Ch. 34, par. 5-1005)

14 Sec. 5-1005. Powers. Each county shall have power:

15 1. To purchase and hold the real and personal estate
16 necessary for the uses of the county, and to purchase and hold,
17 for the benefit of the county, real estate sold by virtue of
18 judicial proceedings in which the county is plaintiff.

19 2. To sell and convey or lease any real or personal estate
20 owned by the county.

21 3. To make all contracts and do all other acts in relation
22 to the property and concerns of the county necessary to the
23 exercise of its corporate powers.

24 4. To take all necessary measures and institute proceedings
25 to enforce all laws for the prevention of cruelty to animals.

26 5. To purchase and hold or lease real estate upon which may
27 be erected and maintained buildings to be utilized for purposes
28 of agricultural experiments and to purchase, hold and use
29 personal property for the care and maintenance of such real
30 estate in connection with such experimental purposes.

31 6. To cause to be erected, or otherwise provided, suitable
32 buildings for, and maintain a county hospital and necessary

1 branch hospitals and/or a county sheltered care home or county
2 nursing home for the care of such sick, chronically ill or
3 infirm persons as may by law be proper charges upon the county,
4 or upon other governmental units, and to provide for the
5 management of the same. The county board may establish rates to
6 be paid by persons seeking care and treatment in such hospital
7 or home in accordance with their financial ability to meet such
8 charges, either personally or through a hospital plan or
9 hospital insurance, and the rates to be paid by governmental
10 units, including the State, for the care of sick, chronically
11 ill or infirm persons admitted therein upon the request of such
12 governmental units. Any hospital maintained by a county under
13 this Section is authorized to provide any service and enter
14 into any contract or other arrangement not prohibited for a
15 hospital that is licensed under the Hospital Licensing Act,
16 incorporated under the General Not-For-Profit Corporation Act,
17 and exempt from taxation under paragraph (3) of subsection (c)
18 of Section 501 of the Internal Revenue Code.

19 7. To contribute such sums of money toward erecting,
20 building, maintaining, and supporting any non-sectarian public
21 hospital located within its limits as the county board of the
22 county shall deem proper.

23 8. To purchase and hold real estate for the preservation of
24 forests, prairies and other natural areas and to maintain and
25 regulate the use thereof.

26 9. To purchase and hold real estate for the purpose of
27 preserving historical spots in the county, to restore, maintain
28 and regulate the use thereof and to donate any historical spot
29 to the State.

30 10. To appropriate funds from the county treasury to be
31 used in any manner to be determined by the board for the
32 suppression, eradication and control of tuberculosis among
33 domestic cattle in such county.

34 11. To take all necessary measures to prevent forest fires

1 and encourage the maintenance and planting of trees and the
2 preservation of forests.

3 12. To authorize the closing on Saturday mornings of all
4 offices of all county officers at the county seat of each
5 county, and to otherwise regulate and fix the days and the
6 hours of opening and closing of such offices, except when the
7 days and the hours of opening and closing of the office of any
8 county officer are otherwise fixed by law; but the power herein
9 conferred shall not apply to the office of State's Attorney and
10 the offices of judges and clerks of courts and, in counties of
11 500,000 or more population, the offices of county clerk.

12 13. To provide for the conservation, preservation and
13 propagation of insectivorous birds through the expenditure of
14 funds provided for such purpose.

15 14. To appropriate funds from the county treasury and
16 expend the same for care and treatment of tuberculosis
17 residents.

18 15. In counties having less than 1,000,000 inhabitants, to
19 take all necessary or proper steps for the extermination of
20 mosquitoes, flies or other insects within the county.

21 16. To install an adequate system of accounts and financial
22 records in the offices and divisions of the county, suitable to
23 the needs of the office and in accordance with generally
24 accepted principles of accounting for governmental bodies,
25 which system may include such reports as the county board may
26 determine.

27 17. To purchase and hold real estate for the construction
28 and maintenance of motor vehicle parking facilities for persons
29 using county buildings, but the purchase and use of such real
30 estate shall not be for revenue producing purposes.

31 18. To acquire and hold title to real property located
32 within the county, or partly within and partly outside the
33 county by dedication, purchase, gift, legacy or lease, for park
34 and recreational purposes and to charge reasonable fees for the

1 use of or admission to any such park or recreational area and
2 to provide police protection for such park or recreational
3 area. Personnel employed to provide such police protection
4 shall be conservators of the peace within such park or
5 recreational area and shall have power to make arrests on view
6 of the offense or upon warrants for violation of any of the
7 ordinances governing such park or recreational area or for any
8 breach of the peace in the same manner as the police in
9 municipalities organized and existing under the general laws of
10 the State. All such real property outside the county shall be
11 contiguous to the county and within the boundaries of the State
12 of Illinois.

13 19. To appropriate funds from the county treasury to be
14 used to provide supportive social services designed to prevent
15 the unnecessary institutionalization of elderly residents, or,
16 for operation of, and equipment for, senior citizen centers
17 providing social services to elderly residents.

18 20. To appropriate funds from the county treasury and loan
19 such funds to a county water commission created under the
20 "Water Commission Act", approved June 30, 1984, as now or
21 hereafter amended, in such amounts and upon such terms as the
22 county may determine or the county and the commission may
23 agree. The county shall not under any circumstances be
24 obligated to make such loans. The county shall not be required
25 to charge interest on any such loans.

26 21. To establish an independent entity to administer a
27 medical care risk retention trust program, to contribute such
28 sums of money to the risk retention trust program as the county
29 board of the county shall deem proper to operate the medical
30 care risk retention trust program, to establish uniform
31 eligibility requirements for participation in the risk
32 retention trust program, to appoint an administrator of the
33 risk retention trust program, to charge premiums, to establish
34 a billing procedure to collect premiums, and to ensure timely

1 administration and adjudication of claims under the program. A
2 single medical care risk retention trust program may be
3 established jointly by more than one county, in accordance with
4 an agreement between the participating counties, if at least
5 one of the participating counties has a population of 200,000
6 or more according to the most recent federal decennial census.

7 All contracts for the purchase of coal under this Section
8 shall be subject to the provisions of "An Act concerning the
9 use of Illinois mined coal in certain plants and institutions",
10 filed July 13, 1937, as amended.

11 (Source: P.A. 86-962; 86-1028.)

12 (55 ILCS 5/Div. 6-34 heading new)

13 Division 6-34. Funding for health care financing programs

14 (55 ILCS 5/6-34001 new)

15 Sec. 6-34001. Authorization. The county board of any county
16 with a population of 200,000 or more according to the most
17 recent federal decennial census (and a county with a population
18 of less than 200,000 according to the most recent federal
19 decennial census if that county is participating in a single
20 trust program with one or more other counties in accordance
21 with the requirements of paragraph (21) of Section 5-1005 of
22 this Code) may, upon finding such action necessary for
23 protection of the public health, safety, and welfare, incur an
24 indebtedness by the establishment of lines or letters of credit
25 or issue general obligation or revenue bonds for the purpose of
26 ensuring the availability of and improving hospital, medical,
27 and health services as authorized under paragraph (21) of
28 Section 5-1005 of this Code.

29 (55 ILCS 5/6-34002 new)

30 Sec. 6-34002. Bonds. The bonds authorized in Section
31 6-34001 shall be issued in such denominations, be for such term

1 or terms, and bear interest at such rate as may be specified in
2 the resolution of the county board authorizing the issuance of
3 those bonds.

4 Section 215. The Illinois Insurance Code is amended by
5 adding Article XLV as follows:

6 (215 ILCS 5/Art. XLV heading new)

7 Article XLV. COUNTY RISK RETENTION ARRANGEMENTS
8 FOR THE PROVISION OF MEDICAL MALPRACTICE INSURANCE

9 (215 ILCS 5/1501 new)

10 Sec. 1501. Scope of Article. This Article applies only to
11 trusts sponsored by counties and organized under this Article
12 to provide medical malpractice insurance authorized under
13 paragraph (21) of Section 5-1005 of the Counties Code for
14 physicians and health care professionals providing medical
15 care and health care within the county's limits. In the case of
16 a single trust sponsored and organized by more than one county
17 in accordance with the requirements of paragraph (21) of
18 Section 5-1005 of the Counties Code, the powers and duties of a
19 county under this Article shall be exercised jointly by the
20 counties participating in the trust program in accordance with
21 the agreement between the counties.

22 (215 ILCS 5/1502 new)

23 Sec. 1502. Definitions. As used in this Article:

24 "Risk retention trust" or "trust" means a risk retention
25 trust created under this Article.

26 "Trust sponsor" means a county that has created a risk
27 retention trust.

28 "Pool retention fund" means a separate fund maintained for
29 payment of first dollar claims, up to a specified amount per
30 claim ("specific retention") and up to an aggregate amount for

1 a 12-month period ("aggregate retention").

2 "Contingency reserve fund" means a separate fund
3 maintained for payment of claims in excess of the pool
4 retention fund amount.

5 "Coverage grant" means the document describing specific
6 coverages and terms of coverage that are provided by a risk
7 retention trust created under this Article.

8 "Licensed service company" means an entity licensed by the
9 Department to perform claims adjusting, loss control, and data
10 processing.

11 (215 ILCS 5/1503 new)

12 Sec. 1503. Name. The corporate name of any risk retention
13 trust shall not be the same as or deceptively similar to the
14 name of any domestic insurance company or of any foreign or
15 alien insurance company authorized to transact business in this
16 State.

17 (215 ILCS 5/1504 new)

18 Sec. 1504. Principal office place of business. The
19 principal office of any risk retention trust shall be located
20 in this State.

21 (215 ILCS 5/1505 new)

22 Sec. 1505. Creation.
23 (1) Any county with a population of 200,000 or more
24 according to the most recent federal decennial census may
25 create a risk retention trust for the pooling of risks to
26 provide professional liability coverage authorized under
27 paragraph (21) of Section 5-1005 of the Counties Code for its
28 physicians and health care professionals providing medical
29 care and related health care within the county's limits. A
30 single risk retention trust may also be created jointly by more
31 than one county in accordance with the requirements of

1 paragraph (21) of Section 5-1005 of the Counties Code. A trust
2 shall be administered by at least 3 trustees who may be
3 individuals or corporate trustees and are appointed by the
4 trust sponsor and who represent physicians who have agreed in
5 writing to participate in the trust.

6 (2) The trustees shall appoint a qualified licensed
7 administrator who shall administer the affairs of the risk
8 retention trust.

9 (3) The trustees shall retain a licensed service company to
10 perform claims adjusting, loss control, and data processing and
11 any other delegated administrative duties.

12 (4) The trust sponsor, the trustees, and the trust
13 administrator shall be fiduciaries of the trust.

14 (5) A trust shall be consummated by a written trust
15 agreement and shall be subject to the laws of this State
16 governing the creation and operation of trusts, to the extent
17 not inconsistent with this Article.

18 (215 ILCS 5/1506 new)

19 Sec. 1506. Participation.

20 (1) A physician or health care professional providing
21 medical care and related health care within the county's limits
22 may participate in a risk retention trust if the physician or
23 health care professional:

24 (a) meets the underwriting standards for acceptance
25 into the trust;

26 (b) files a written application for coverage, agreeing
27 to meet all of the membership conditions of the trust;

28 (c) provides medical care and related health care in
29 the county sponsoring the trust;

30 (d) agrees to meet the ongoing loss control provisions
31 and risk pooling arrangements set forth by the trust;

32 (e) pays premium contributions on a timely basis as
33 required; and

1 (f) pays predetermined annual required contributions
2 into the contingency reserve fund.

3 (2) A physician or health care professional accepted for
4 trust membership and participating in the trust is liable for
5 payment to the trust of the amount of his or her annual premium
6 contribution and his or her annual predetermined contingency
7 reserve fund contribution.

8 (215 ILCS 5/1507 new)

9 Sec. 1507. Coverage grants; payment of claims.

10 (1) A risk retention trust may not issue coverage grants
11 until it has established a contingency reserve fund in an
12 amount deemed appropriate by the trust and filed with the
13 Department of Insurance. A risk retention trust must have and
14 at all times maintain a pool retention fund or a line or letter
15 of credit at least equal to its unpaid liabilities as
16 determined by an independent actuary.

17 (2) Every coverage grant issued or delivered in this State
18 by a risk retention trust shall provide for the extent of the
19 liability of trust members to the extent that funds are needed
20 to pay a member's share of the depleted contingency reserve
21 fund needed to maintain the reserves required by this Section.

22 (3) All claims shall be paid first from the pool retention
23 fund. If that fund becomes depleted, any additional claims
24 shall be paid from the contingency reserve fund.

25 (215 ILCS 5/1508 new)

26 Sec. 1508. Applicable Illinois Insurance Code provisions.
27 Other than this Article, only Sections 155.19, 155.20, and
28 155.25 and subsections (a) through (c) of Section 155.18 of
29 this Code shall apply to county risk retention trusts. The
30 Director shall advise the county board of any determinations
31 made pursuant to subsection (b) of Section 155.18 of this Code.

1 (215 ILCS 5/1509 new)

2 Sec. 1509. Authorized investments. In addition to other
3 investments authorized by law, a risk retention trust with
4 assets of at least \$5,000,000 may invest in any combination of
5 the following:

6 (1) the common stocks listed on a recognized exchange
7 or market;

8 (2) stock and convertible debt investments, or
9 investment grade corporate bonds, in or issued by any
10 corporation, the book value of which may not exceed 5% of
11 the total intergovernmental risk management entity's
12 investment account at book value in which those securities
13 are held, determined as of the date of the investment,
14 provided that investments in the stock of any one
15 corporation may not exceed 5% of the total outstanding
16 stock of the corporation and that the investments in the
17 convertible debt of any one corporation may not exceed 5%
18 of the total amount of such debt that may be outstanding;

19 (3) the straight preferred stocks or convertible
20 preferred stocks and convertible debt securities issued or
21 guaranteed by a corporation whose common stock is listed on
22 a recognized exchange or market;

23 (4) mutual funds or commingled funds that meet the
24 following requirements:

25 (A) the mutual fund or commingled fund is managed
26 by an investment company as defined in and registered
27 under the federal Investment Company Act of 1940 and
28 registered under the Illinois Securities Law of 1953 or
29 an investment adviser as defined under the federal
30 Investment Advisers Act of 1940;

31 (B) the mutual fund has been in operation for at
32 least 5 years; and

33 (C) the mutual fund has total net assets of
34 \$150,000,000 or more;

1 (5) commercial grade real estate located in the State
2 of Illinois.

3 Any investment adviser retained by a trust must be a
4 fiduciary who has the power to manage, acquire, or dispose of
5 any asset of the trust and has acknowledged in writing that he
6 or she is a fiduciary with respect to the trust and that he or
7 she will adhere to all of the guidelines of the trust and is
8 one or more of the following:

9 (i) registered as an investment adviser under the
10 federal Investment Advisers Act of 1940;

11 (ii) registered as an investment adviser under the
12 Illinois Securities Law of 1953;

13 (iii) a bank as defined in the federal Investment
14 Advisers Act of 1940;

15 (iv) an insurance company authorized to transact
16 business in this State.

17 Nothing in this Section shall be construed to authorize a
18 risk retention trust to accept the deposit of public funds
19 except for trust risk retention purposes.

20 ARTICLE 3. AMENDATORY PROVISIONS

21 Section 310. The Illinois Insurance Code is amended by
22 changing Sections 155.18, 155.19, 402, and 1204 and by adding
23 Section 155.18a as follows:

24 (215 ILCS 5/155.18) (from Ch. 73, par. 767.18)

25 Sec. 155.18. (a) This Section shall apply to insurance on
26 risks based upon negligence by a physician, hospital or other
27 health care provider, referred to herein as medical liability
28 insurance. This Section shall not apply to contracts of
29 reinsurance, nor to any farm, county, district or township
30 mutual insurance company transacting business under an Act
31 entitled "An Act relating to local mutual district, county and

1 township insurance companies", approved March 13, 1936, as now
2 or hereafter amended, nor to any such company operating under a
3 special charter.

4 (b) The following standards shall apply to the making and
5 use of rates pertaining to all classes of medical liability
6 insurance:

7 (1) Rates shall not be excessive or inadequate, as
8 herein defined, nor shall they be unfairly discriminatory.
9 No rate shall be held to be excessive unless such rate is
10 unreasonably high for the insurance provided, ~~and a~~
11 ~~reasonable degree of competition does not exist in the area~~
12 ~~with respect to the classification to which such rate is~~
13 ~~applicable.~~

14 No rate shall be held inadequate unless it is
15 unreasonably low for the insurance provided ~~and continued~~
16 ~~use of it would endanger solvency of the company.~~

17 (2) Consideration shall be given, to the extent
18 applicable, to past and prospective loss experience within
19 and outside this State, to a reasonable margin for
20 underwriting profit and contingencies, to past and
21 prospective expenses both countrywide and those especially
22 applicable to this State, and to all other factors,
23 including judgment factors, deemed relevant within and
24 outside this State.

25 Consideration may also be given in the making and use
26 of rates to dividends, savings or unabsorbed premium
27 deposits allowed or returned by companies to their
28 policyholders, members or subscribers.

29 (3) The systems of expense provisions included in the
30 rates for use by any company or group of companies may
31 differ from those of other companies or groups of companies
32 to reflect the operating methods of any such company or
33 group with respect to any kind of insurance, or with
34 respect to any subdivision or combination thereof.

1 (4) Risks may be grouped by classifications for the
2 establishment of rates and minimum premiums.
3 Classification rates may be modified to produce rates for
4 individual risks in accordance with rating plans which
5 establish standards for measuring variations in hazards or
6 expense provisions, or both. Such standards may measure any
7 difference among risks that have a probable effect upon
8 losses or expenses. Such classifications or modifications
9 of classifications of risks may be established based upon
10 size, expense, management, individual experience, location
11 or dispersion of hazard, or any other reasonable
12 considerations and shall apply to all risks under the same
13 or substantially the same circumstances or conditions. The
14 rate for an established classification should be related
15 generally to the anticipated loss and expense factors of
16 the class.

17 (c) Every company writing medical liability insurance
18 shall file with the Director of Insurance the rates and rating
19 schedules it uses for medical liability insurance.

20 (1) This filing shall occur upon a company's
21 commencement of medical liability insurance business in
22 this State ~~at least annually~~ and thereafter as often as the
23 rates are changed or amended.

24 (2) For the purposes of this Section, any change in
25 premium to the company's insureds as a result of a change
26 in the company's base rates or a change in its increased
27 limits factors shall constitute a change in rates and shall
28 require a filing with the Director.

29 (3) It shall be certified in such filing by an officer
30 of the company and a qualified actuary that the company's
31 rates are based on sound actuarial principles and are not
32 inconsistent with the company's experience.

33 (d) If any after an administrative ~~a~~ hearing pursuant to
34 subsection (c) of Section 401 of this Code, the Director finds:

1 (1) that any rate, rating plan or rating system
2 violates the provisions of this Section applicable to it,
3 he shall ~~may~~ issue an order to the company which has been
4 the subject of the hearing specifying in what respects such
5 violation exists and may prohibit ~~stating when, within a~~
6 ~~reasonable period of time,~~ the further use of such rate or
7 rating system by such company in contracts of insurance
8 ~~made thereafter shall be prohibited;~~

9 (2) that the violation of any of the provisions of this
10 Section ~~applicable to it~~ by any company which has been the
11 subject of the hearing was wilful or that any company has
12 repeatedly violated any provision of this Section, he may
13 take either or both of the following actions:

14 (A) Suspend ~~suspend~~ or revoke, in whole or in part,
15 the certificate of authority of such company with
16 respect to the class of insurance which has been the
17 subject of the hearing.

18 (B) Impose a penalty of up to \$1,000 against the
19 company for each violation. Each day during which a
20 violation occurs constitutes a separate violation.

21 (e) Every company writing medical liability insurance in
22 this State shall offer to each of its medical liability
23 insureds the option to make premium payments in at least
24 quarterly installments as prescribed by and filed with the
25 Director. This offer shall be included in the initial offer or
26 in the first policy renewal occurring after the effective date
27 of this amendatory Act of the 93rd General Assembly, but no
28 earlier than January 1, 2005.

29 (f) Every company writing medical liability insurance is
30 encouraged, but not required, to offer the opportunity for
31 participation in a plan offering deductibles to its medical
32 liability insureds. Any plan to offer deductibles shall be
33 filed with the Department of Insurance.

34 (g) Medical liability insurers are encouraged, but not

1 required, to offer the opportunity for participation in a plan
2 providing premium discounts for participation in risk
3 management activities to its medical liability insureds. Any
4 such plan shall be filed with the Department.

5 (Source: P.A. 79-1434.)

6 (215 ILCS 5/155.18a new)

7 Sec. 155.18a. Professional Liability Insurance Resource
8 Center. The Director of Insurance shall establish a
9 Professional Liability Insurance Resource Center on the World
10 Wide Web containing the names and telephone numbers of all
11 licensed companies providing medical liability insurance and
12 producers who sell medical liability insurance. Each company
13 and producer shall submit the information to the Department on
14 or before September 30 of each year in order to be listed on
15 the website. The Department is under no obligation to list a
16 company or producer on the website. Hyperlinks to company
17 websites shall be included, if available. The publication of
18 the information on the Department's website shall commence on
19 January 1, 2005. The Department shall update the information on
20 the Professional Liability Insurance Resource Center at least
21 annually.

22 (215 ILCS 5/155.19) (from Ch. 73, par. 767.19)

23 Sec. 155.19. All claims filed after December 31, 1976 with
24 any insurer and all suits filed after December 31, 1976 in any
25 court in this State, alleging liability on the part of any
26 physician, hospital or other health care provider for medically
27 related injuries, shall be reported to the Director of
28 Insurance in such form and under such terms and conditions as
29 may be prescribed by the Director. Notwithstanding any other
30 provision of law to the contrary, any insurer, stop loss
31 insurer, captive insurer, risk retention group, county risk
32 retention trust, religious or charitable risk pooling trust,

1 surplus line insurer, or other entity authorized or permitted
2 by law to provide medical liability insurance in this State
3 shall report to the Director, in such form and under such terms
4 and conditions as may be prescribed by the Director, all claims
5 filed after December 31, 2004 and all suits filed after
6 December 31, 2004 in any court in this State alleging liability
7 on the part of any physician, hospital, or health care provider
8 for medically-related injuries. Each clerk of the circuit court
9 shall provide to the Director such information as the Director
10 may deem necessary to verify the accuracy and completeness of
11 reports made to the Director under this Section. The Director
12 shall maintain complete and accurate records of all such claims
13 and suits including their nature, amount, disposition and other
14 information as he may deem useful or desirable in observing and
15 reporting on health care provider liability trends in this
16 State. The Director shall release to appropriate disciplinary
17 and licensing agencies any such data or information which may
18 assist such agencies in improving the quality of health care or
19 which may be useful to such agencies for the purpose of
20 professional discipline.

21 With due regard for appropriate maintenance of the
22 confidentiality thereof, the Director shall ~~may~~ release, on an
23 annual basis, ~~from time to time~~ to the Governor, the General
24 Assembly and the general public statistical reports based on
25 such data and information.

26 If the Director finds that any entity required to report
27 information in its possession under this Section has violated
28 any provision of this Section by filing late, incomplete, or
29 inaccurate reports, the Director may fine the entity up to
30 \$1,000 for each offense. Each day during which a violation
31 occurs constitutes a separate offense.

32 The Director may promulgate such rules and regulations as
33 may be necessary to carry out the provisions of this Section.

34 (Source: P.A. 79-1434.)

1 (215 ILCS 5/402) (from Ch. 73, par. 1014)

2 Sec. 402. Examinations, investigations and hearings. (1)
3 All examinations, investigations and hearings provided for by
4 this Code may be conducted either by the Director personally,
5 or by one or more of the actuaries, technical advisors,
6 deputies, supervisors or examiners employed or retained by the
7 Department and designated by the Director for such purpose.
8 When necessary to supplement its examination procedures, the
9 Department may retain independent actuaries deemed competent
10 by the Director, independent certified public accountants, or
11 qualified examiners of insurance companies deemed competent by
12 the Director, or any combination of the foregoing, the cost of
13 which shall be borne by the company or person being examined.
14 The Director may compensate independent actuaries, certified
15 public accountants and qualified examiners retained for
16 supplementing examination procedures in amounts not to exceed
17 the reasonable and customary charges for such services. The
18 Director may also accept as a part of the Department's
19 examination of any company or person (a) a report by an
20 independent actuary deemed competent by the Director or (b) a
21 report of an audit made by an independent certified public
22 accountant. Neither those persons so designated nor any members
23 of their immediate families shall be officers of, connected
24 with, or financially interested in any company other than as
25 policyholders, nor shall they be financially interested in any
26 other corporation or person affected by the examination,
27 investigation or hearing.

28 (2) All hearings provided for in this Code shall, unless
29 otherwise specially provided, be held at such time and place as
30 shall be designated in a notice which shall be given by the
31 Director in writing to the person or company whose interests
32 are affected, at least 10 days before the date designated
33 therein. The notice shall state the subject of inquiry and the

1 specific charges, if any. The hearings shall be held in the
2 City of Springfield, the City of Chicago, or in the county
3 where the principal business address of the person or company
4 affected is located.

5 (3) For a rate increase filing in medical liability
6 insurance under Section 155.18 of this Code, the Director may
7 hold a hearing with the insurance company and policyholders
8 present for the purpose of receiving testimony from the
9 insurance company and policyholders regarding the rate
10 increase. The hearing must occur under written and express
11 terms and conditions that are sufficient to protect from
12 disclosure information that the subject medical liability
13 insurance company deems proprietary, confidential, or a trade
14 secret. The insurance company must give notice of the hearing
15 time, date, and location to medical liability insurance
16 policyholders whose rates have increased. Notice to
17 policyholders may be given through regular publications issued
18 to policyholders or by electronic means. Other than the cost of
19 this notice, the Department shall be responsible for the costs
20 of this hearing.

21 (Source: P.A. 87-757.)

22 (215 ILCS 5/1204) (from Ch. 73, par. 1065.904)

23 Sec. 1204. (A) The Director shall promulgate rules and
24 regulations which shall require each insurer licensed to write
25 property or casualty insurance in the State and each syndicate
26 doing business on the Illinois Insurance Exchange to record and
27 report its loss and expense experience and other data as may be
28 necessary to assess the relationship of insurance premiums and
29 related income as compared to insurance costs and expenses. The
30 Director may designate one or more rate service organizations
31 or advisory organizations to gather and compile such experience
32 and data. The Director shall require each insurer licensed to
33 write property or casualty insurance in this State and each

1 syndicate doing business on the Illinois Insurance Exchange to
2 submit a report, on a form furnished by the Director, showing
3 its direct writings in this State and companywide.

4 (B) Such report required by subsection (A) of this Section
5 may include, but not be limited to, the following specific
6 types of insurance written by such insurer:

7 (1) Political subdivision liability insurance reported
8 separately in the following categories:

9 (a) municipalities;

10 (b) school districts;

11 (c) other political subdivisions;

12 (2) Public official liability insurance;

13 (3) Dram shop liability insurance;

14 (4) Day care center liability insurance;

15 (5) Labor, fraternal or religious organizations
16 liability insurance;

17 (6) Errors and omissions liability insurance;

18 (7) Officers and directors liability insurance
19 reported separately as follows:

20 (a) non-profit entities;

21 (b) for-profit entities;

22 (8) Products liability insurance;

23 (9) Medical malpractice insurance;

24 (10) Attorney malpractice insurance;

25 (11) Architects and engineers malpractice insurance;

26 and

27 (12) Motor vehicle insurance reported separately for
28 commercial and private passenger vehicles as follows:

29 (a) motor vehicle physical damage insurance;

30 (b) motor vehicle liability insurance.

31 (C) Such report may include, but need not be limited to the
32 following data, both specific to this State and companywide, in
33 the aggregate or by type of insurance for the previous year on
34 a calendar year basis:

- 1 (1) Direct premiums written;
- 2 (2) Direct premiums earned;
- 3 (3) Number of policies;
- 4 (4) Net investment income, using appropriate estimates
- 5 where necessary;
- 6 (5) Losses paid;
- 7 (6) Losses incurred;
- 8 (7) Loss reserves:
 - 9 (a) Losses unpaid on reported claims;
 - 10 (b) Losses unpaid on incurred but not reported
 - 11 claims;
- 12 (8) Number of claims:
 - 13 (a) Paid claims;
 - 14 (b) Arising claims;
- 15 (9) Loss adjustment expenses:
 - 16 (a) Allocated loss adjustment expenses;
 - 17 (b) Unallocated loss adjustment expenses;
- 18 (10) Net underwriting gain or loss;
- 19 (11) Net operation gain or loss, including net
- 20 investment income;
- 21 (12) Any other information requested by the Director.

22 (C-5) Additional information required from medical
23 malpractice insurers.

24 (1) In addition to the other requirements of this
25 Section, all medical malpractice insurers shall include
26 the following information in the report required by
27 subsection (A) of this Section in such form and under such
28 terms and conditions as may be prescribed by the Director:

29 (a) paid and incurred losses by county for each of
30 the past 10 policy years; and

31 (b) earned exposures by ISO code, policy type, and
32 policy year by county for each of the past 10 years.

33 (2) All information collected by the Director under
34 paragraph (1) of this subsection (C-5) shall be made

1 available, on an aggregate basis, to the General Assembly
2 and the general public. This provision shall supersede any
3 other provision of law that may otherwise protect such
4 information from public disclosure as confidential. The
5 identity of the plaintiff, the defendant, the attorneys,
6 and the company shall not be disclosed.

7 (D) In addition to the information which may be requested
8 under subsection (C), the Director may also request on a
9 companywide, aggregate basis, Federal Income Tax recoverable,
10 net realized capital gain or loss, net unrealized capital gain
11 or loss, and all other expenses not requested in subsection (C)
12 above.

13 (E) Violations - Suspensions - Revocations.

14 (1) Any company or person subject to this Article, who
15 willfully or repeatedly fails to observe or who otherwise
16 violates any of the provisions of this Article or any rule
17 or regulation promulgated by the Director under authority
18 of this Article or any final order of the Director entered
19 under the authority of this Article shall by civil penalty
20 forfeit to the State of Illinois a sum not to exceed
21 \$2,000. Each day during which a violation occurs
22 constitutes a separate offense.

23 (2) No forfeiture liability under paragraph (1) of this
24 subsection may attach unless a written notice of apparent
25 liability has been issued by the Director and received by
26 the respondent, or the Director sends written notice of
27 apparent liability by registered or certified mail, return
28 receipt requested, to the last known address of the
29 respondent. Any respondent so notified must be granted an
30 opportunity to request a hearing within 10 days from
31 receipt of notice, or to show in writing, why he should not
32 be held liable. A notice issued under this Section must set
33 forth the date, facts and nature of the act or omission
34 with which the respondent is charged and must specifically

1 identify the particular provision of this Article, rule,
2 regulation or order of which a violation is charged.

3 (3) No forfeiture liability under paragraph (1) of this
4 subsection may attach for any violation occurring more than
5 2 years prior to the date of issuance of the notice of
6 apparent liability and in no event may the total civil
7 penalty forfeiture imposed for the acts or omissions set
8 forth in any one notice of apparent liability exceed
9 \$100,000.

10 (4) All administrative hearings conducted pursuant to
11 this Article are subject to 50 Ill. Adm. Code 2402 and all
12 administrative hearings are subject to the Administrative
13 Review Law.

14 (5) The civil penalty forfeitures provided for in this
15 Section are payable to the General Revenue Fund of the
16 State of Illinois, and may be recovered in a civil suit in
17 the name of the State of Illinois brought in the Circuit
18 Court in Sangamon County or in the Circuit Court of the
19 county where the respondent is domiciled or has its
20 principal operating office.

21 (6) In any case where the Director issues a notice of
22 apparent liability looking toward the imposition of a civil
23 penalty forfeiture under this Section that fact may not be
24 used in any other proceeding before the Director to the
25 prejudice of the respondent to whom the notice was issued,
26 unless (a) the civil penalty forfeiture has been paid, or
27 (b) a court has ordered payment of the civil penalty
28 forfeiture and that order has become final.

29 (7) When any person or company has a license or
30 certificate of authority under this Code and knowingly
31 fails or refuses to comply with a lawful order of the
32 Director requiring compliance with this Article, entered
33 after notice and hearing, within the period of time
34 specified in the order, the Director may, in addition to

1 any other penalty or authority provided, revoke or refuse
2 to renew the license or certificate of authority of such
3 person or company, or may suspend the license or
4 certificate of authority of such person or company until
5 compliance with such order has been obtained.

6 (8) When any person or company has a license or
7 certificate of authority under this Code and knowingly
8 fails or refuses to comply with any provisions of this
9 Article, the Director may, after notice and hearing, in
10 addition to any other penalty provided, revoke or refuse to
11 renew the license or certificate of authority of such
12 person or company, or may suspend the license or
13 certificate of authority of such person or company, until
14 compliance with such provision of this Article has been
15 obtained.

16 (9) No suspension or revocation under this Section may
17 become effective until 5 days from the date that the notice
18 of suspension or revocation has been personally delivered
19 or delivered by registered or certified mail to the company
20 or person. A suspension or revocation under this Section is
21 stayed upon the filing, by the company or person, of a
22 petition for judicial review under the Administrative
23 Review Law.

24 (Source: P.A. 93-32, eff. 7-1-03.)

25 Section 315. The Medical Practice Act of 1987 is amended by
26 changing Sections 7, 22, 23, 24, and 36 as follows:

27 (225 ILCS 60/7) (from Ch. 111, par. 4400-7)

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

29 Sec. 7. Medical Disciplinary Board.

30 (A) There is hereby created the Illinois State Medical
31 Disciplinary Board (hereinafter referred to as the
32 "Disciplinary Board"). The Disciplinary Board shall consist of

1 9 members, to be appointed by the Governor by and with the
2 advice and consent of the Senate. All shall be residents of the
3 State, not more than 5 of whom shall be members of the same
4 political party. Five members shall be physicians licensed to
5 practice medicine in all of its branches in Illinois possessing
6 the degree of doctor of medicine. Two shall be members of the
7 public, who shall not be engaged in any way, directly or
8 indirectly, as providers of health care. The 2 public members
9 shall act as voting members. One member shall be a physician
10 licensed to practice in Illinois possessing the degree of
11 doctor of osteopathy or osteopathic medicine. One member shall
12 be a physician licensed to practice in Illinois and possessing
13 the degree of doctor of chiropractic.

14 (B) Members of the Disciplinary Board shall be appointed
15 for terms of 4 years. Upon the expiration of the term of any
16 member, their successor shall be appointed for a term of 4
17 years by the Governor by and with the advice and consent of the
18 Senate. The Governor shall fill any vacancy for the remainder
19 of the unexpired term by and with the advice and consent of the
20 Senate. Upon recommendation of the Board, any member of the
21 Disciplinary Board may be removed by the Governor for
22 misfeasance, malfeasance, or wilful neglect of duty, after
23 notice, and a public hearing, unless such notice and hearing
24 shall be expressly waived in writing. Each member shall serve
25 on the Disciplinary Board until their successor is appointed
26 and qualified. No member of the Disciplinary Board shall serve
27 more than 2 consecutive 4 year terms.

28 In making appointments the Governor shall attempt to insure
29 that the various social and geographic regions of the State of
30 Illinois are properly represented.

31 In making the designation of persons to act for the several
32 professions represented on the Disciplinary Board, the
33 Governor shall give due consideration to recommendations by
34 members of the respective professions and by organizations

1 therein.

2 (C) The Disciplinary Board shall annually elect one of its
3 voting members as chairperson and one as vice chairperson. No
4 officer shall be elected more than twice in succession to the
5 same office. Each officer shall serve until their successor has
6 been elected and qualified.

7 (D) (Blank).

8 (E) Four voting members of the Disciplinary Board shall
9 constitute a quorum. A vacancy in the membership of the
10 Disciplinary Board shall not impair the right of a quorum to
11 exercise all the rights and perform all the duties of the
12 Disciplinary Board. Any action taken by the Disciplinary Board
13 under this Act may be authorized by resolution at any regular
14 or special meeting and each such resolution shall take effect
15 immediately. The Disciplinary Board shall meet at least
16 quarterly. The Disciplinary Board is empowered to adopt all
17 rules and regulations necessary and incident to the powers
18 granted to it under this Act.

19 (F) Each member, and member-officer, of the Disciplinary
20 Board shall receive a per diem stipend as the Director of the
21 Department, hereinafter referred to as the Director, shall
22 determine. The Director shall also determine the per diem
23 stipend that each ex-officio member shall receive. Each member
24 shall be paid their necessary expenses while engaged in the
25 performance of their duties.

26 (G) The Director shall select a Chief Medical Coordinator
27 and not less than 2 ~~a~~ Deputy Medical Coordinators ~~Coordinator~~
28 who shall not be members of the Disciplinary Board. Each
29 medical coordinator shall be a physician licensed to practice
30 medicine in all of its branches, and the Director shall set
31 their rates of compensation. The Director shall assign at least
32 one medical coordinator to a region composed of Cook County and
33 such other counties as the Director may deem appropriate, and
34 such medical coordinator or coordinators shall locate their

1 office in Chicago. The Director shall assign at least one ~~the~~
2 ~~remaining~~ medical coordinator to a region composed of the
3 balance of counties in the State, and such medical coordinator
4 or coordinators shall locate their office in Springfield. Each
5 medical coordinator shall be the chief enforcement officer of
6 this Act in his or her ~~their~~ assigned region and shall serve at
7 the will of the Disciplinary Board.

8 The Director shall employ, in conformity with the Personnel
9 Code, not less than one full time investigator for every 2,500
10 ~~5000~~ physicians licensed in the State. Each investigator shall
11 be a college graduate with at least 2 years' investigative
12 experience or one year advanced medical education. Upon the
13 written request of the Disciplinary Board, the Director shall
14 employ, in conformity with the Personnel Code, such other
15 professional, technical, investigative, and clerical help,
16 either on a full or part-time basis as the Disciplinary Board
17 deems necessary for the proper performance of its duties.

18 (H) Upon the specific request of the Disciplinary Board,
19 signed by either the chairman, vice chairman, or a medical
20 coordinator of the Disciplinary Board, the Department of Human
21 Services or the Department of State Police shall make available
22 any and all information that they have in their possession
23 regarding a particular case then under investigation by the
24 Disciplinary Board.

25 (I) Members of the Disciplinary Board shall be immune from
26 suit in any action based upon any disciplinary proceedings or
27 other acts performed in good faith as members of the
28 Disciplinary Board.

29 (J) The Disciplinary Board may compile and establish a
30 statewide roster of physicians and other medical
31 professionals, including the several medical specialties, of
32 such physicians and medical professionals, who have agreed to
33 serve from time to time as advisors to the medical
34 coordinators. Such advisors shall assist the medical

1 coordinators or the Disciplinary Board in their investigations
2 and participation in complaints against physicians. Such
3 advisors shall serve under contract and shall be reimbursed at
4 a reasonable rate for the services provided, plus reasonable
5 expenses incurred. While serving in this capacity, the advisor,
6 for any act undertaken in good faith and in the conduct of
7 their duties under this Section, shall be immune from civil
8 suit.

9 (Source: P.A. 93-138, eff. 7-10-03.)

10 (225 ILCS 60/22) (from Ch. 111, par. 4400-22)

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

12 Sec. 22. Disciplinary action.

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

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

22 (a) a facility licensed pursuant to the Ambulatory
23 Surgical Treatment Center Act;

24 (b) an institution licensed under the Hospital
25 Licensing Act; or

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

33 (d) ambulatory surgical treatment centers,

1 hospitalization or care facilities maintained by the
2 Federal Government; or

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

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

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

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

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

20 (6) Obtaining any fee by fraud, deceit, or
21 misrepresentation.

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

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

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

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

1 body or mind.

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

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

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

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

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

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

23 (16) Abandonment of a patient.

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

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

33 (19) Offering, undertaking or agreeing to cure or treat
34 disease by a secret method, procedure, treatment or

1 medicine, or the treating, operating or prescribing for any
2 human condition by a method, means or procedure which the
3 licensee refuses to divulge upon demand of the 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 reports
8 in his or her practice as a physician, including, but not
9 limited to, false records to support claims against the
10 medical assistance program of the Department of Public Aid
11 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 instance
16 of suspected abuse or neglect as required by law.

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

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

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

34 (26) A pattern of practice or other behavior which

1 demonstrates incapacity or incompetence to practice under
2 this Act.

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

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

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

12 (30) Wilfully or negligently violating the
13 confidentiality between physician and patient except as
14 required by law.

15 (31) The use of any false, fraudulent, or deceptive
16 statement in any document connected with practice under
17 this Act.

18 (32) Aiding and abetting an individual not licensed
19 under this Act in the practice of a profession licensed
20 under this Act.

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

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

34 (35) Failure to report to the Department surrender of a

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

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

15 (37) Failure to transfer copies of medical records as
16 required by law.

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

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

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

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

28 (42) Entering into an excessive number of written
29 collaborative agreements with licensed advanced practice
30 nurses resulting in an inability to adequately collaborate
31 and provide medical direction.

32 (43) Repeated failure to adequately collaborate with
33 or provide medical direction to a licensed advanced
34 practice nurse.

1 Except for actions involving the ground numbered (26), all
2 ~~All~~ proceedings to suspend, revoke, place on probationary
3 status, or take any other disciplinary action as the Department
4 may deem proper, with regard to a license on any of the
5 foregoing grounds, must be commenced within 5 ~~3~~ years next
6 after receipt by the Department of a complaint alleging the
7 commission of or notice of the conviction order for any of the
8 acts described herein. Except for the grounds numbered (8),
9 (9), (26), and (29), no action shall be commenced more than 10
10 ~~5~~ years after the date of the incident or act alleged to have
11 violated this Section. For actions involving the ground
12 numbered (26), a pattern of practice or other behavior includes
13 all incidents alleged to be part of the pattern of practice or
14 other behavior that occurred or a report pursuant to Section 23
15 of this Act received within the 10-year period preceding the
16 filing of the complaint. In the event of the settlement of any
17 claim or cause of action in favor of the claimant or the
18 reduction to final judgment of any civil action in favor of the
19 plaintiff, such claim, cause of action or civil action being
20 grounded on the allegation that a person licensed under this
21 Act was negligent in providing care, the Department shall have
22 an additional period of 2 years ~~one year~~ from the date of
23 notification to the Department under Section 23 of this Act of
24 such settlement or final judgment in which to investigate and
25 commence formal disciplinary proceedings under Section 36 of
26 this Act, except as otherwise provided by law. The Department
27 shall expunge the records of discipline solely for
28 administrative matters 3 years after final disposition or after
29 the statute of limitations has expired, whichever is later. The
30 time during which the holder of the license was outside the
31 State of Illinois shall not be included within any period of
32 time limiting the commencement of disciplinary action by the
33 Department.

34 The entry of an order or judgment by any circuit court

1 establishing that any person holding a license under this Act
2 is a person in need of mental treatment operates as a
3 suspension of that license. That person may resume their
4 practice only upon the entry of a Departmental order based upon
5 a finding by the Medical Disciplinary Board that they have been
6 determined to be recovered from mental illness by the court and
7 upon the Disciplinary Board's recommendation that they be
8 permitted to resume their practice.

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

17 The Department, upon the recommendation of the
18 Disciplinary Board, shall adopt rules which set forth standards
19 to be used in determining:

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

22 (b) what constitutes dishonorable, unethical or
23 unprofessional conduct of a character likely to deceive,
24 defraud, or harm the public;

25 (c) what constitutes immoral conduct in the commission
26 of any act, including, but not limited to, commission of an
27 act of sexual misconduct related to the licensee's
28 practice; and

29 (d) what constitutes gross negligence in the practice
30 of medicine.

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

34 In enforcing this Section, the Medical Disciplinary Board,

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

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

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

17 The Department may promulgate rules for the imposition of
18 fines in disciplinary cases, not to exceed \$10,000 ~~\$5,000~~ for
19 each violation of this Act. Fines may be imposed in conjunction
20 with other forms of disciplinary action, but shall not be the
21 exclusive disposition of any disciplinary action arising out of
22 conduct resulting in death or injury to a patient. Any funds
23 collected from such fines shall be deposited in the Medical
24 Disciplinary Fund.

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

1 ailments without the use of drugs and without operative
2 surgery.

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

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

15 (225 ILCS 60/23) (from Ch. 111, par. 4400-23)

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

17 Sec. 23. Reports relating to professional conduct and
18 capacity.

19 (A) Entities required to report.

20 (1) Health care institutions. The chief administrator
21 or executive officer of any health care institution
22 licensed by the Illinois Department of Public Health shall
23 report to the Disciplinary Board when any person's clinical
24 privileges are terminated or are restricted based on a
25 final determination, in accordance with that institution's
26 by-laws or rules and regulations, that a person has either
27 committed an act or acts which may directly threaten
28 patient care, and not of an administrative nature, or that
29 a person may be mentally or physically disabled in such a
30 manner as to endanger patients under that person's care.
31 Such officer also shall report if a person accepts
32 voluntary termination or restriction of clinical
33 privileges in lieu of formal action based upon conduct

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

27 (2) Professional associations. The President or chief
28 executive officer of any association or society, of persons
29 licensed under this Act, operating within this State shall
30 report to the Disciplinary Board when the association or
31 society renders a final determination that a person has
32 committed unprofessional conduct related directly to
33 patient care or that a person may be mentally or physically
34 disabled in such a manner as to endanger patients under

1 that person's care.

2 (3) Professional liability insurers. Every insurance
3 company which offers policies of professional liability
4 insurance to persons licensed under this Act, or any other
5 entity which seeks to indemnify the professional liability
6 of a person licensed under this Act, shall report to the
7 Disciplinary Board the settlement of any claim or cause of
8 action, or final judgment rendered in any cause of action,
9 which alleged negligence in the furnishing of medical care
10 by such licensed person when such settlement or final
11 judgment is in favor of the plaintiff.

12 (4) State's Attorneys. The State's Attorney of each
13 county shall report to the Disciplinary Board all instances
14 in which a person licensed under this Act is convicted or
15 otherwise found guilty of the commission of any felony. The
16 State's Attorney of each county may report to the
17 Disciplinary Board through a verified complaint any
18 instance in which the State's Attorney believes that a
19 physician has willfully violated the notice requirements
20 of the Parental Notice of Abortion Act of 1995.

21 (5) State agencies. All agencies, boards, commissions,
22 departments, or other instrumentalities of the government
23 of the State of Illinois shall report to the Disciplinary
24 Board any instance arising in connection with the
25 operations of such agency, including the administration of
26 any law by such agency, in which a person licensed under
27 this Act has either committed an act or acts which may be a
28 violation of this Act or which may constitute
29 unprofessional conduct related directly to patient care or
30 which indicates that a person licensed under this Act may
31 be mentally or physically disabled in such a manner as to
32 endanger patients under that person's care.

33 (B) Mandatory reporting. All reports required by items
34 (34), (35), and (36) of subsection (A) of Section 22 and by

1 Section 23 shall be submitted to the Disciplinary Board in a
2 timely fashion. The reports shall be filed in writing within 60
3 days after a determination that a report is required under this
4 Act. All reports shall contain the following information:

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

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

9 (3) The name and date of birth ~~or other means of~~
10 ~~identification~~ of any patient or patients whose treatment
11 is a subject of the report, if available, or other means of
12 identification if such information is not available,
13 identification of the hospital or other healthcare
14 facility where the care at issue in the report was
15 rendered, provided, however, no medical records may be
16 revealed ~~without the written consent of the patient or~~
17 ~~patients.~~

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

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

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

27 ~~The Department shall have the right to inform patients of~~
28 ~~the right to provide written consent for the Department to~~
29 ~~obtain copies of hospital and medical records.~~ The Disciplinary
30 Board or Department may also exercise the power under Section
31 38 of this Act to subpoena copies of hospital or medical
32 records in mandatory report cases alleging death or permanent
33 bodily injury ~~when consent to obtain records is not provided by~~
34 ~~a patient or legal representative.~~ Appropriate rules shall be

1 adopted by the Department with the approval of the Disciplinary
2 Board.

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

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

24 (C) Immunity from prosecution. Any individual or
25 organization acting in good faith, and not in a wilful and
26 wanton manner, in complying with this Act by providing any
27 report or other information to the Disciplinary Board or a peer
28 review committee, or assisting in the investigation or
29 preparation of such information, or by voluntarily reporting to
30 the Disciplinary Board or a peer review committee information
31 regarding alleged errors or negligence by a person licensed
32 under this Act, or by participating in proceedings of the
33 Disciplinary Board or a peer review committee, or by serving as
34 a member of the Disciplinary Board or a peer review committee,

1 shall not, as a result of such actions, be subject to criminal
2 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

1 within 30 days of receipt by the Disciplinary Board of the
2 report.

3 The notification shall include a written notice setting
4 forth the person's right to examine the report. Included in
5 such notification shall be the address at which the file is
6 maintained, the name of the custodian of the reports, and the
7 telephone number at which the custodian may be reached. The
8 person who is the subject of the report shall submit a written
9 statement responding, clarifying, adding to, or proposing the
10 amending of the report previously filed. The person who is the
11 subject of the report shall also submit with the written
12 statement any medical records related to the report. The
13 statement and accompanying medical records shall become a
14 permanent part of the file and must be received by the
15 Disciplinary Board no more than 30 ~~60~~ days after the date on
16 which the person was notified by the Disciplinary Board of the
17 existence of the original report.

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

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

34 Should the Disciplinary Board find that there are not

1 sufficient facts to warrant further investigation, or action,
2 the report shall be accepted for filing and the matter shall be
3 deemed closed and so reported to the Director. The Director
4 shall then have 30 days to accept the Medical Disciplinary
5 Board's decision or request further investigation. The
6 Director shall inform the Board in writing of the decision to
7 request further investigation, including the specific reasons
8 for the decision. The individual or entity filing the original
9 report or complaint and the person who is the subject of the
10 report or complaint shall be notified in writing by the
11 Director of any final action on their report or complaint.

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

26 (G) Any violation of this Section shall be a Class A
27 misdemeanor.

28 (H) If any such person violates the provisions of this
29 Section an action may be brought in the name of the People of
30 the State of Illinois, through the Attorney General of the
31 State of Illinois, for an order enjoining such violation or for
32 an order enforcing compliance with this Section. Upon filing of
33 a verified petition in such court, the court may issue a
34 temporary restraining order without notice or bond and may

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

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

9 (225 ILCS 60/24) (from Ch. 111, par. 4400-24)

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

11 Sec. 24. Report of violations; medical associations. Any
12 physician licensed under this Act, the Illinois State Medical
13 Society, the Illinois Association of Osteopathic Physicians
14 and Surgeons, the Illinois Chiropractic Society, the Illinois
15 Prairie State Chiropractic Association, or any component
16 societies of any of these 4 groups, and any other person, may
17 report to the Disciplinary Board any information the physician,
18 association, society, or person may have that appears to show
19 that a physician is or may be in violation of any of the
20 provisions of Section 22 of this Act.

21 The Department may enter into agreements with the Illinois
22 State Medical Society, the Illinois Association of Osteopathic
23 Physicians and Surgeons, the Illinois Prairie State
24 Chiropractic Association, or the Illinois Chiropractic Society
25 to allow these organizations to assist the Disciplinary Board
26 in the review of alleged violations of this Act. Subject to the
27 approval of the Department, any organization party to such an
28 agreement may subcontract with other individuals or
29 organizations to assist in review.

30 Any physician, association, society, or person
31 participating in good faith in the making of a report, under
32 this Act or participating in or assisting with an investigation
33 or review under this Act ~~Section~~ shall have immunity from any

1 civil, criminal, or other liability that might result by reason
2 of those actions.

3 The medical information in the custody of an entity under
4 contract with the Department participating in an investigation
5 or review shall be privileged and confidential to the same
6 extent as are information and reports under the provisions of
7 Part 21 of Article VIII of the Code of Civil Procedure.

8 Upon request by the Department after a mandatory report has
9 been filed with the Department, an attorney for any party
10 seeking to recover damages for injuries or death by reason of
11 medical, hospital, or other healing art malpractice shall
12 provide patient records related to the physician involved in
13 the disciplinary proceeding to the Department within 30 days of
14 the Department's request for use by the Department in any
15 disciplinary matter under this Act. An attorney who provides
16 patient records to the Department in accordance with this
17 requirement shall not be deemed to have violated any
18 attorney-client privilege. Notwithstanding any other provision
19 of law, consent by a patient shall not be required for the
20 provision of patient records in accordance with this
21 requirement.

22 For the purpose of any civil or criminal proceedings, the
23 good faith of any physician, association, society or person
24 shall be presumed. The Disciplinary Board may request the
25 Illinois State Medical Society, the Illinois Association of
26 Osteopathic Physicians and Surgeons, the Illinois Prairie
27 State Chiropractic Association, or the Illinois Chiropractic
28 Society to assist the Disciplinary Board in preparing for or
29 conducting any medical competency examination as the Board may
30 deem appropriate.

31 (Source: P.A. 88-324.)

32 (225 ILCS 60/36) (from Ch. 111, par. 4400-36)

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

1 Sec. 36. Upon the motion of either the Department or the
2 Disciplinary Board or upon the verified complaint in writing of
3 any person setting forth facts which, if proven, would
4 constitute grounds for suspension or revocation under Section
5 22 of this Act, the Department shall investigate the actions of
6 any person, so accused, who holds or represents that they hold
7 a license. Such person is hereinafter called the accused.

8 The Department shall, before suspending, revoking, placing
9 on probationary status, or taking any other disciplinary action
10 as the Department may deem proper with regard to any license at
11 least 30 days prior to the date set for the hearing, notify the
12 accused in writing of any charges made and the time and place
13 for a hearing of the charges before the Disciplinary Board,
14 direct them to file their written answer thereto to the
15 Disciplinary Board under oath within 20 days after the service
16 on them of such notice and inform them that if they fail to
17 file such answer default will be taken against them and their
18 license may be suspended, revoked, placed on probationary
19 status, or have other disciplinary action, including limiting
20 the scope, nature or extent of their practice, as the
21 Department may deem proper taken with regard thereto.

22 Where a physician has been found, upon complaint and
23 investigation of the Department, and after hearing, to have
24 performed an abortion procedure in a wilful and wanton manner
25 upon a woman who was not pregnant at the time such abortion
26 procedure was performed, the Department shall automatically
27 revoke the license of such physician to practice medicine in
28 Illinois.

29 Such written notice and any notice in such proceedings
30 thereafter may be served by delivery of the same, personally,
31 to the accused person, or by mailing the same by registered or
32 certified mail to the address last theretofore specified by the
33 accused in their last notification to the Department.

34 All information gathered by the Department during its

1 investigation including information subpoenaed under Section
2 23 or 38 of this Act and the investigative file shall be kept
3 for the confidential use of the Director, Disciplinary Board,
4 the Medical Coordinators, persons employed by contract to
5 advise the Medical Coordinator or the Department, the
6 Disciplinary Board's attorneys, the medical investigative
7 staff, and authorized clerical staff, as provided in this Act
8 and shall be afforded the same status as is provided
9 information concerning medical studies in Part 21 of Article
10 VIII of the Code of Civil Procedure, except that the Department
11 may disclose information and documents to a federal, State, or
12 local law enforcement agency pursuant to a subpoena in an
13 ongoing criminal investigation. Furthermore, information and
14 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 (Source: P.A. 90-699, eff. 1-1-99.)

18 Section 320. The Clerks of Courts Act is amended by adding
19 Section 27.10 as follows:

20 (705 ILCS 105/27.10 new)

21 Sec. 27.10. Director of Insurance. Each clerk of the
22 circuit court shall provide to the Director of Insurance such
23 information as the Director of Insurance requests under Section
24 155.19 of the Illinois Insurance Code.

25 Section 325. The Health Care Arbitration Act is amended by
26 changing Sections 8 and 9 as follows:

27 (710 ILCS 15/8) (from Ch. 10, par. 208)

28 Sec. 8. Conditions. Every health care arbitration
29 agreement shall be subject to the following conditions:

30 (a) The agreement is not a condition to the rendering of

1 health care services by any party and the agreement has been
2 executed by the recipient of health care services at the
3 inception of or during the term of provision of services for a
4 specific cause by either a health care provider or a hospital;
5 and

6 (b) The agreement is a separate instrument complete in
7 itself and not a part of any other contract or instrument and
8 an executed copy of the agreement shall be provided to the
9 patient or the patient's legal representative upon signing; and

10 (c) The agreement may not limit, impair, or waive any
11 substantive rights or defenses of any party, including the
12 statute of limitations; and

13 (d) The agreement shall not limit, impair, or waive the
14 procedural rights to be heard, to present material evidence, to
15 cross-examine witnesses, and to be represented by an attorney,
16 or other procedural rights of due process of any party.

17 ~~(e) As a part of the discharge planning process the patient~~
18 ~~or, if appropriate, members of his family must be given a copy~~
19 ~~of the health care arbitration agreement previously executed by~~
20 ~~or for the patient and shall re-affirm it.~~

21 ~~Failure to comply with this provision during the discharge~~
22 ~~planning process shall void the health care arbitration~~
23 ~~agreement.~~

24 (Source: P.A. 80-1012.)

25 (710 ILCS 15/9) (from Ch. 10, par. 209)

26 Sec. 9. Mandatory Provisions.

27 (a) Every health care arbitration agreement shall be
28 clearly captioned "Health Care Arbitration Agreement".

29 (b) Every health care arbitration agreement in relation to
30 health care services rendered during hospitalization shall
31 specify the date of commencement of hospitalization. Every
32 health care arbitration agreement in relation to health care
33 services not rendered during hospitalization shall state the

1 specific cause for which the services are provided.

2 (c) Every health care arbitration agreement may be
3 cancelled by any signatory (1) within 120 ~~60~~ days of its
4 execution or within 120 ~~60~~ days of the date of the patient's
5 discharge from the hospital, whichever is later, as to an
6 agreement in relation to health care services rendered during
7 hospitalization, ~~provided, that if executed other than at the~~
8 ~~time of discharge of the patient from the hospital, the health~~
9 ~~care arbitration agreement be reaffirmed at the time of the~~
10 ~~discharge planning process in the same manner as provided for~~
11 ~~in the execution of the original agreement;~~ or (2) within 120
12 ~~60~~ days of the date of its execution, or the last date of
13 treatment by the health care provider, whichever is later, as
14 to an agreement in relation to health care services not
15 rendered during hospitalization. Provided, that no health care
16 arbitration agreement shall be valid after 4 ~~2~~ years from the
17 date of its execution. An employee of a hospital or health care
18 provider who is not a signatory to an agreement may cancel such
19 agreement as to himself until 30 days following his
20 notification that he is a party to a dispute or issue on which
21 arbitration has been demanded pursuant to such agreement. If
22 any person executing a health care arbitration agreement dies
23 before the period of cancellation as outlined above, the
24 personal representative of the decedent shall have the right to
25 cancel the health care arbitration agreement within 60 days of
26 the date of his appointment as the legal representative of the
27 decedent's estate. ~~Provided, that if no legal representative is~~
28 ~~appointed within 6 months of the death of said decedent the~~
29 ~~next of kin of such decedent shall have the right to cancel the~~
30 ~~health care arbitration agreement within 8 months from the date~~
31 ~~of death.~~

32 (d) Every health care arbitration agreement shall contain
33 immediately above the signature lines, in upper case type in
34 printed letters of at least 3/16 inch height, a caption and

1 paragraphs as follows:

2 "AGREEMENT TO ARBITRATE HEALTH CARE

3 NEGLIGENCE CLAIMS

4 NOTICE TO PATIENT

5 YOU CANNOT BE REQUIRED TO SIGN THIS AGREEMENT IN ORDER TO
6 RECEIVE TREATMENT. BY SIGNING THIS AGREEMENT, YOUR RIGHT TO
7 TRIAL BY A JURY OR A JUDGE IN A COURT WILL BE BARRED AS TO
8 ANY DISPUTE RELATING TO INJURIES THAT MAY RESULT FROM
9 NEGLIGENCE DURING YOUR TREATMENT OR CARE, AND WILL BE
10 REPLACED BY AN ARBITRATION PROCEDURE.

11 THIS AGREEMENT MAY BE CANCELLED WITHIN 120 ~~60~~ DAYS OF
12 SIGNING OR 120 ~~60~~ DAYS AFTER YOUR HOSPITAL DISCHARGE,
13 WHICHEVER IS LATER, OR 120 ~~60~~ DAYS AFTER YOUR LAST MEDICAL
14 TREATMENT IN RELATION TO HEALTH CARE SERVICES NOT RENDERED
15 DURING HOSPITALIZATION.

16 THIS AGREEMENT PROVIDES THAT ANY CLAIMS WHICH MAY ARISE OUT
17 OF YOUR HEALTH CARE WILL BE SUBMITTED TO A PANEL OF
18 ARBITRATORS, RATHER THAN TO A COURT FOR DETERMINATION. THIS
19 AGREEMENT REQUIRES ALL PARTIES SIGNING IT TO ABIDE BY THE
20 DECISION OF THE ARBITRATION PANEL."

21 (e) An ~~an~~ executed copy of the AGREEMENT TO ARBITRATE
22 HEALTH CARE CLAIMS ~~and any reaffirmation of that agreement as~~
23 ~~required by this Act~~ shall be given to the patient or the
24 patient's legally authorized representative upon signing
25 ~~during the time of the discharge planning process or at the~~
26 ~~time of discharge.~~

27 (f) This amendatory Act of the 93rd General Assembly
28 applies to health care arbitration agreements executed on or
29 after its effective date.

30 (Source: P.A. 91-156, eff. 1-1-00.)

31 Section 330. The Code of Civil Procedure is amended by
32 reenacting and changing Sections 2-402, 2-622, 2-1107.1, and
33 8-2501, by changing Sections 2-1704 and 8-1901, and by adding

1 Sections 2-1105.01 and 2-1721 as follows:

2 (735 ILCS 5/2-402) (from Ch. 110, par. 2-402)

3 (Text of Section WITHOUT the changes made by P.A. 89-7,
4 which has been held unconstitutional)

5 Sec. 2-402. Respondents in discovery. The plaintiff in any
6 civil action may designate as respondents in discovery in his
7 or her pleading those individuals or other entities, other than
8 the named defendants, believed by the plaintiff to have
9 information essential to the determination of who should
10 properly be named as additional defendants in the action.

11 Persons or entities so named as respondents in discovery
12 shall be required to respond to discovery by the plaintiff in
13 the same manner as are defendants and may, on motion of the
14 plaintiff, be added as defendants if the evidence discloses the
15 existence of probable cause for such action.

16 A person or entity named a respondent in discovery may upon
17 his or her own motion be made a defendant in the action, in
18 which case the provisions of this Section are no longer
19 applicable to that person.

20 A copy of the complaint shall be served on each person or
21 entity named as a respondent in discovery.

22 Each respondent in discovery shall be paid expenses and
23 fees as provided for witnesses.

24 A person or entity named as a respondent in discovery in
25 any civil action may be made a defendant in the same action at
26 any time within 6 months after being named as a respondent in
27 discovery, even though the time during which an action may
28 otherwise be initiated against him or her may have expired
29 during such 6 month period. An extension from the original
30 6-month period for good cause may be granted only once for up
31 to 90 days for (i) withdrawal of plaintiff's counsel or (ii)
32 good cause. Notwithstanding the limitations in this Section,
33 the court may grant additional reasonable extensions from this

1 6-month period for a failure or refusal on the part of the
2 respondent to comply with timely filed discovery.

3 This amendatory Act of the 93rd General Assembly applies to
4 causes of action pending on or after its effective date.

5 (Source: P.A. 86-483.)

6 (735 ILCS 5/2-622) (from Ch. 110, par. 2-622)

7 (Text of Section WITHOUT the changes made by P.A. 89-7,
8 which has been held unconstitutional)

9 Sec. 2-622. Healing art malpractice.

10 (a) In any action, whether in tort, contract or otherwise,
11 in which the plaintiff seeks damages for injuries or death by
12 reason of medical, hospital, or other healing art malpractice,
13 the plaintiff's attorney or the plaintiff, if the plaintiff is
14 proceeding pro se, shall file an affidavit, attached to the
15 original and all copies of the complaint, declaring one of the
16 following:

17 1. That the affiant has consulted and reviewed the
18 facts of the case with a health professional who the
19 affiant reasonably believes: (i) is knowledgeable in the
20 relevant issues involved in the particular action; (ii)
21 practices or has practiced within the last 5 ~~6~~ years or
22 teaches or has taught within the last 5 ~~6~~ years in the same
23 area of health care or medicine that is at issue in the
24 particular action; and (iii) meets the expert witness
25 standards set forth in paragraphs (a) through (d) of
26 Section 8-2501; is qualified by experience or demonstrated
27 ~~competence in the subject of the case;~~ that the reviewing
28 health professional has determined in a written report,
29 after a review of the medical record and other relevant
30 material involved in the particular action that there is a
31 reasonable and meritorious cause for the filing of such
32 action; and that the affiant has concluded on the basis of
33 the reviewing health professional's review and

1 consultation that there is a reasonable and meritorious
2 cause for filing of such action. A single written report
3 must be filed to cover each defendant in the action. As to
4 defendants who are individuals, the ~~If the affidavit is~~
5 ~~filed as to a defendant who is a physician licensed to~~
6 ~~treat human ailments without the use of drugs or medicines~~
7 ~~and without operative surgery, a dentist, a podiatrist, a~~
8 ~~psychologist, or a naprapath,~~ The written report must be
9 from a health professional licensed in the same profession,
10 with the same class of license, as the defendant. For
11 written reports ~~affidavits~~ filed as to all other
12 defendants, who are not individuals, the written report
13 must be from a physician licensed to practice medicine in
14 all its branches who is qualified by experience with the
15 standard of care, methods, procedures and treatments
16 relevant to the allegations at issue in the case. In either
17 event, the written report ~~affidavit~~ must identify the
18 profession of the reviewing health professional. A copy of
19 the written report, clearly identifying the plaintiff and
20 the reasons for the reviewing health professional's
21 determination that a reasonable and meritorious cause for
22 the filing of the action exists, must be attached to the
23 affidavit, but information which would identify the
24 reviewing health professional may be deleted from the copy
25 so attached. The report must contain the affirmations set
26 forth in items (i) through (iii) of this paragraph 1. At
27 the first Supreme Court Rule 218 case management
28 conference, the plaintiff shall present to the court the
29 original signed health professional's report, along with
30 the health professional's current license number and state
31 of licensure and curriculum vitae, for an in camera
32 inspection. The court shall verify whether the report and
33 affidavit comply with the requirements of this paragraph 1.
34 The court, in verifying whether the report and affidavit

1 comply with the requirements of this paragraph 1, shall
2 determine whether the health professional preparing the
3 report is qualified and the determination shall be either
4 in writing or transcribed. If the court finds that the
5 report, the health professional's current license
6 information or curriculum vitae, or the affidavit is
7 deficient, the court may request from the plaintiff all
8 documents it deems necessary to make its decision and shall
9 allow for a reasonable opportunity to provide any requested
10 documents and to amend that report or affidavit; provided,
11 if the statute of limitations has tolled, the judge may
12 grant only one extension not exceeding 120 days. The
13 court's verification as to whether the health professional
14 preparing the report is qualified shall be issued to all
15 parties and be made a part of the official record. The
16 original report, the health professional's current license
17 number and state of licensure and curriculum vitae, and any
18 documents requested by the court shall remain under seal
19 and part of the court record. Notwithstanding the other
20 provisions of this Section, the judge may disclose the name
21 and address of the reviewing health professional upon a
22 showing of good cause by the defendant who in good faith
23 challenges the qualifications of the health professional
24 based on information available to the defendant. If the
25 information is disclosed at the trial level, then it shall
26 be confidential and it shall not be disclosed by the
27 defendant to a third party.

28 2. That the affiant was unable to obtain a consultation
29 required by paragraph 1 because a statute of limitations
30 would impair the action and the consultation required could
31 not be obtained before the expiration of the statute of
32 limitations. If an affidavit is executed pursuant to this
33 paragraph, the affidavit ~~certificate~~ and written report
34 required by paragraph 1 shall be filed within 90 days after

1 the filing of the complaint. No additional 90-day
2 extensions pursuant to this paragraph 2 shall be granted,
3 except where there has been a withdrawal of the plaintiff's
4 counsel. The defendant shall be excused from answering or
5 otherwise pleading until 30 days after being served with an
6 affidavit and a report ~~a certificate~~ required by paragraph
7 1.

8 3. That a request has been made by the plaintiff or his
9 attorney for examination and copying of records pursuant to
10 Part 20 of Article VIII of this Code and the party required
11 to comply under those Sections has failed to produce such
12 records within 60 days of the receipt of the request. If an
13 affidavit is executed pursuant to this paragraph, the
14 affidavit ~~certificate~~ and written report required by
15 paragraph 1 shall be filed within 90 days following receipt
16 of the requested records. All defendants except those whose
17 failure to comply with Part 20 of Article VIII of this Code
18 is the basis for an affidavit under this paragraph shall be
19 excused from answering or otherwise pleading until 30 days
20 after being served with the affidavit and report
21 ~~certificate~~ required by paragraph 1.

22 (b) Where an affidavit ~~a certificate~~ and written report are
23 required pursuant to this Section a separate affidavit
24 ~~certificate~~ and written report shall be filed as to each
25 defendant who has been named in the complaint and shall be
26 filed as to each defendant named at a later time.

27 (c) Where the plaintiff intends to rely on the doctrine of
28 "res ipsa loquitur", as defined by Section 2-1113 of this Code,
29 the affidavit ~~certificate~~ and written report must state that,
30 in the opinion of the reviewing health professional, negligence
31 has occurred in the course of medical treatment. The affiant
32 shall certify upon filing of the complaint that he is relying
33 on the doctrine of "res ipsa loquitur".

34 (d) When the attorney intends to rely on the doctrine of

1 failure to inform of the consequences of the procedure, the
2 attorney shall certify upon the filing of the complaint that
3 the reviewing health professional has, after reviewing the
4 medical record and other relevant materials involved in the
5 particular action, concluded that a reasonable health
6 professional would have informed the patient of the
7 consequences of the procedure.

8 (e) Allegations and denials in the affidavit, made without
9 reasonable cause and found to be untrue, shall subject the
10 party pleading them or his attorney, or both, to the payment of
11 reasonable expenses, actually incurred by the other party by
12 reason of the untrue pleading, together with reasonable
13 attorneys' fees to be summarily taxed by the court upon motion
14 made within 30 days of the judgment or dismissal. In no event
15 shall the award for attorneys' fees and expenses exceed those
16 actually paid by the moving party, including the insurer, if
17 any. In proceedings under this paragraph (e), the moving party
18 shall have the right to depose and examine any and all
19 reviewing health professionals who prepared reports used in
20 conjunction with an affidavit required by this Section.

21 (f) A reviewing health professional who in good faith
22 prepares a report used in conjunction with an affidavit
23 required by this Section shall have civil immunity from
24 liability which otherwise might result from the preparation of
25 such report.

26 (g) The failure of the plaintiff to file an affidavit and
27 report in compliance with ~~to file a certificate required by~~
28 this Section shall be grounds for dismissal under Section
29 2-619.

30 (h) This Section does not apply to or affect any actions
31 pending at the time of its effective date, but applies to cases
32 filed on or after its effective date.

33 (i) This amendatory Act of 1997 does not apply to or
34 affect any actions pending at the time of its effective date,

1 but applies to cases filed on or after its effective date.

2 (j) This amendatory Act of the 93rd General Assembly
3 applies to causes of action accruing on or after its effective
4 date.

5 (Source: P.A. 86-646; 90-579, eff. 5-1-98.)

6 (735 ILCS 5/2-1105.01 new)

7 Sec. 2-1105.01. Personal assets protected in healing art
8 malpractice cases. In all cases, whether tort, contract, or
9 otherwise, in which the plaintiff seeks damages by reason of
10 medical healing art malpractice, a physician who maintains at
11 least a minimum of \$1,000,000 in professional liability
12 insurance coverage to cover a claim against him or her is
13 entitled to an exemption of his or her assets from attachment,
14 garnishment, or other form of forfeiture to satisfy any
15 judgment or verdict in the amount equal to 2 times the maximum
16 amount payable per occurrence under his or her insurance
17 coverage. Corporate assets are subject to attachment for
18 satisfaction of a judgment. For the purposes of this Section,
19 "asset" includes, without limitation, any asset, property
20 (real or personal), interest, or other thing of value, of any
21 kind or character whatsoever that would otherwise be subject to
22 immediate execution to satisfy a judgment.

23 This Section shall not restrict, impair, or otherwise
24 affect the amount of damages that may be awarded to the
25 plaintiff or the amount of any judgment in favor of the
26 plaintiff. This Section shall not restrict, impair, or
27 otherwise affect the statutory and common law causes of action
28 a physician or the physician's assignee has against the
29 physician's insurer for the insurer acting in bad faith or
30 vexatiously and without reasonable cause by failing to settle
31 the action against the physician within the physician's
32 insurance policy limits. The plaintiff shall be required to
33 prove all the elements of any such cause of action. This

1 Section shall not reduce or limit the damages that otherwise
2 would have been recoverable in any such action.

3 (735 ILCS 5/2-1107.1) (from Ch. 110, par. 2-1107.1)

4 (Text of Section WITHOUT the changes made by P.A. 89-7,
5 which has been held unconstitutional)

6 Sec. 2-1107.1. Jury instruction in tort actions.

7 (a) In all actions on account of bodily injury or death or
8 physical damage to property based on negligence, or product
9 liability based on strict tort liability, the court shall
10 instruct the jury in writing that the defendant shall be found
11 not liable if the jury finds that the contributory fault of the
12 plaintiff is more than 50% of the proximate cause of the injury
13 or damage for which recovery is sought.

14 (b) In all healing art malpractice actions, the court shall
15 instruct the jury in writing whether or not any award of
16 compensatory damages will be taxable under federal or State
17 income tax law.

18 The changes to this Section made by this amendatory Act of
19 the 93rd General Assembly apply to causes of action filed on or
20 after its effective date.

21 (Source: P.A. 84-1431.)

22 (735 ILCS 5/2-1704) (from Ch. 110, par. 2-1704)

23 Sec. 2-1704. Healing art malpractice ~~Medical Malpractice~~
24 ~~Action~~. As used in this Code Part, "healing art ~~medical~~
25 malpractice action" means any action, whether in tort, contract
26 or otherwise, in which the plaintiff seeks damages for injuries
27 or death by reason of medical, hospital, or other healing art
28 malpractice including but not limited to medical, hospital,
29 nursing, dental, or podiatric malpractice. The term "healing
30 art" shall not include care and treatment by spiritual means
31 through prayer in accord with the tenets and practices of a
32 recognized church or religious denomination.

1 (Source: P.A. 84-7.)

2 (735 ILCS 5/2-1721 new)

3 Sec. 2-1721. Hospitals; apparent or ostensible agency.

4 (a) A hospital shall not be liable for the conduct of a
5 non-employee member of its medical staff under any claim based
6 upon apparent or ostensible agency as a matter of law,
7 provided:

8 (1) the patient was unconscious or unaware of his or
9 her surroundings upon arrival at the hospital and the
10 patient's legal representative was not present at the time
11 to be informed that the non-employee member of its medical
12 staff was not an agent or employee of the hospital; or

13 (2) the specific member of the hospital's medical staff
14 personally informed the patient, or his or her legal
15 representative, if present, before rendering treatment
16 that he or she was not an agent or employee of the
17 hospital.

18 (b) A hospital shall not be liable for the conduct of a
19 non-employee member of its medical staff under any claim based
20 upon apparent or ostensible agency, provided:

21 (1) the following disclosure is provided to the patient
22 prior to the provision of the care in question in a
23 separate document, complete in itself and not part of any
24 other contract or instrument, which shall contain in upper
25 case type in printed letters of at least 3/16 inch height a
26 caption and statement as follows:

27 "NOTICE OF STATUS OF TREATING PHYSICIANS

28 SOME PHYSICIANS WHO WILL TREAT YOU AT THIS HOSPITAL MAY NOT
29 BE EMPLOYEES OF THE HOSPITAL AND AS SUCH, THE HOSPITAL IS
30 NOT RESPONSIBLE FOR ANY CONDUCT OF ANY NON-EMPLOYEE
31 PHYSICIANS ON THE BASIS THAT THEY ARE HOSPITAL AGENTS OR

1 EMPLOYEES"; and

2 (2) if the patient is asked to sign the disclosure, the
3 disclosure shall contain immediately above the signature
4 lines, in upper case bold type printed letters of at least
5 3/16 inch height, a statement that the patient cannot be
6 required to sign the disclosure in order to receive
7 treatment; and

8 (3) the patient was not required to sign the disclosure
9 in order to receive treatment; and

10 (4) such disclosure is provided in a reasonable and
11 meaningful manner. In determining if a disclosure
12 satisfies the requirements of this item (4), the trier of
13 fact shall consider only the following factors:

14 (A) Whether the patient knowingly and voluntarily
15 signed the disclosure.

16 (B) Whether the hospital provided an opportunity
17 for the patient to ask questions.

18 (C) Whether the patient's questions about this
19 disclosure were answered and the contents of the
20 answers.

21 (D) Whether such disclosure was provided orally
22 and in writing.

23 (E) Whether a reasonable person under the
24 circumstances should have understood the disclosure.

25 (c) As used in this Section, "patient" refers to the
26 patient or any legal representative of the patient.

27 (d) Nothing in this Section shall be construed as imposing
28 an obligation on a hospital to provide any particular health
29 care service, treatment, or procedure to a patient.

30 (e) Nothing in this Section precludes any other defense to
31 a claim of apparent or ostensible agency.

32 (f) This amendatory Act of the 93rd General Assembly
33 applies to causes of action accruing on or after its effective
34 date.

1 (735 ILCS 5/8-1901) (from Ch. 110, par. 8-1901)

2 Sec. 8-1901. Admission of liability - Effect.

3 (a) The providing of, or payment for, medical, surgical,
4 hospital, or rehabilitation services, facilities, or equipment
5 by or on behalf of any person, or the offer to provide, or pay
6 for, any one or more of the foregoing, shall not be construed
7 as an admission of any liability by such person or persons.
8 Testimony, writings, records, reports or information with
9 respect to the foregoing shall not be admissible in evidence as
10 an admission of any liability in any action of any kind in any
11 court or before any commission, administrative agency, or other
12 tribunal in this State, except at the instance of the person or
13 persons so making any such provision, payment or offer.

14 (b) Any expression of grief, apology, or explanation
15 provided by a health care provider, including, but not limited
16 to, a statement that the health care provider is "sorry" for
17 the outcome to a patient, the patient's family, or the
18 patient's legal representative about an inadequate or
19 unanticipated treatment or care outcome that is provided within
20 72 hours of when the provider knew or should have known of the
21 potential cause of such outcome shall not be admissible as
22 evidence in any action of any kind in any court or before any
23 tribunal, board, agency, or person. The disclosure of any such
24 information, whether proper, or improper, shall not waive or
25 have any effect upon its confidentiality or inadmissibility. As
26 used in this Section, a "health care provider" is any hospital,
27 nursing home or other facility, or employee or agent thereof, a
28 physician, or other licensed health care professional. Nothing
29 in this Section precludes the discovery or admissibility of any
30 other facts regarding the patient's treatment or outcome as
31 otherwise permitted by law.

32 (Source: P.A. 82-280.)

1 (735 ILCS 5/8-2501) (from Ch. 110, par. 8-2501)

2 (Text of Section WITHOUT the changes made by P.A. 89-7,
3 which has been held unconstitutional)

4 Sec. 8-2501. Expert Witness Standards. In any case in which
5 the standard of care applicable to ~~given by~~ a medical
6 professional profession is at issue, the court shall apply the
7 following standards to determine if a witness qualifies as an
8 expert witness and can testify on the issue of the appropriate
9 standard of care.

10 (a) Whether the witness is board certified or board
11 eligible, or has completed a residency, in the same or
12 substantially similar medical specialties as the defendant and
13 is otherwise qualified by significant experience with the
14 standard of care, methods, procedures, and treatments relevant
15 to the allegations against the defendant ~~Relationship of the~~
16 ~~medical specialties of the witness to the medical problem or~~
17 ~~problems and the type of treatment administered in the case;~~

18 (b) Whether the witness has devoted a majority ~~substantial~~
19 ~~portion~~ of his or her work time to the practice of medicine,
20 teaching or University based research in relation to the
21 medical care and type of treatment at issue which gave rise to
22 the medical problem of which the plaintiff complains;

23 (c) whether the witness is licensed in the same profession
24 with the same class of license as the defendant if the
25 defendant is an individual; and

26 (d) whether, in the case against a nonspecialist, the
27 witness can demonstrate a sufficient familiarity with the
28 standard of care practiced in this State.

29 An expert shall provide evidence of active practice,
30 teaching, or engaging in university-based research. If
31 retired, an expert must provide evidence of attendance and
32 completion of continuing education courses for 3 years previous
33 to giving testimony. An expert who has not actively practiced,
34 taught, or been engaged in university-based research, or any

1 combination thereof, during the preceding 5 years may not be
2 qualified as an expert witness.

3 This amendatory Act of the 93rd General Assembly applies to
4 causes of action filed on or after its effective date.

5 (Source: P.A. 84-7.)

6 Section 340. The Good Samaritan Act is amended by changing
7 Section 30 as follows:

8 (745 ILCS 49/30)

9 Sec. 30. Free medical clinic; exemption from civil
10 liability for services performed without compensation.

11 (a) A person licensed under the Medical Practice Act of
12 1987, a person licensed to practice the treatment of human
13 ailments in any other state or territory of the United States,
14 or a health care professional, including but not limited to an
15 advanced practice nurse, retired physician, physician
16 assistant, nurse, pharmacist, physical therapist, podiatrist,
17 or social worker licensed in this State or any other state or
18 territory of the United States, who, in good faith, provides
19 medical treatment, diagnosis, or advice as a part of the
20 services of an established free medical clinic providing care,
21 including but not limited to home visits, without charge to
22 ~~medically indigent~~ patients which is limited to care that does
23 not require the services of a licensed hospital or ambulatory
24 surgical treatment center and who receives no fee or
25 compensation from that source shall not be liable for civil
26 damages as a result of his or her acts or omissions in
27 providing that medical treatment, except for willful or wanton
28 misconduct.

29 (b) For purposes of this Section, a "free medical clinic"
30 is an organized community based program providing medical care
31 without charge to individuals ~~unable to pay for it,~~ at which
32 the care provided does not include ~~the use of general~~

1 ~~anesthesia or require~~ an overnight stay in a health-care
2 facility.

3 (c) The provisions of subsection (a) of this Section do not
4 apply to a particular case unless the free medical clinic has
5 posted in a conspicuous place on its premises an explanation of
6 the exemption from civil liability provided herein.

7 (d) The immunity from civil damages provided under
8 subsection (a) also applies to physicians, retired physicians,
9 hospitals, and other health care providers that provide further
10 medical treatment, diagnosis, or advice, including but not
11 limited to hospitalization, office visits, and home visits, to
12 a patient upon referral from an established free medical clinic
13 without fee or compensation.

14 (d-5) A free medical clinic may receive reimbursement from
15 the Illinois Department of Public Aid, provided any
16 reimbursements shall be used only to pay overhead expenses of
17 operating the free medical clinic and may not be used, in whole
18 or in part, to provide a fee or other compensation to any
19 person licensed under the Medical Practice Act of 1987 or any
20 other health care professional who is receiving an exemption
21 under this Section. Any health care professional receiving an
22 exemption under this Section may not receive any fee or other
23 compensation in connection with any services provided to, or
24 any ownership interest in, the clinic. Medical care shall not
25 include an overnight stay in a health care facility.

26 (e) Nothing in this Section prohibits a free medical clinic
27 from accepting voluntary contributions for medical services
28 provided to a patient who has acknowledged his or her ability
29 and willingness to pay a portion of the value of the medical
30 services provided.

31 (f) Any voluntary contribution collected for providing
32 care at a free medical clinic shall be used only to pay
33 overhead expenses of operating the clinic. No portion of any
34 moneys collected shall be used to provide a fee or other

1 compensation to any person licensed under Medical Practice Act
2 of 1987.

3 (g) This amendatory Act of the 93rd General Assembly
4 applies to causes of action accruing on or after its effective
5 date.

6 (Source: P.A. 89-607, eff. 1-1-97; 90-742, eff. 8-13-98.)

7 ARTICLE 4. SORRY WORKS! PILOT PROGRAM ACT

8 Section 401. Short title. This Article 4 may be cited as
9 the Sorry Works! Pilot Program Act, and references in this
10 Article to "this Act" mean this Article.

11 Section 405. Sorry Works! pilot program. The Sorry Works!
12 pilot program is established. During the first year of the
13 program's operation, participation in the program shall be open
14 to one hospital. Hospitals may participate only with the
15 approval of the hospital administration and the hospital's
16 organized medical staff. During the second year of the
17 program's operation, participation in the program shall be open
18 to one additional hospital.

19 The first participating hospital selected by the committee
20 established under Section 410 shall be located in a county with
21 a population greater than 200,000 that is contiguous with the
22 Mississippi River.

23 Under the program, participating hospitals and physicians
24 shall promptly acknowledge and apologize for mistakes in
25 patient care and promptly offer fair settlements.
26 Participating hospitals shall encourage patients and families
27 to retain their own legal counsel to ensure that their rights
28 are protected and to help facilitate negotiations for fair
29 settlements. Participating hospitals shall report to the
30 committee their total costs for healing art malpractice
31 verdicts, settlements, and defense litigation for the

1 preceding 5 years to enable the committee to determine average
2 costs for that hospital during that period. The committee shall
3 develop standards and protocols to compare costs for cases
4 handled by traditional means and cases handled under the Sorry
5 Works! protocol.

6 If the committee determines that the total costs of cases
7 handled under the Sorry Works! protocol by a hospital
8 participating in the program exceed the total costs that would
9 have been incurred if the cases had been handled by traditional
10 means, the hospital may apply for a grant from the Sorry Works!
11 Fund, a special fund that is created in the State Treasury, for
12 an amount, as determined by the committee, by which the total
13 costs exceed the total costs that would have been incurred if
14 the cases had been handled by traditional means; however, the
15 total of all grants from the Fund for cases in any single
16 participating hospital in any year may not exceed the amount in
17 the Fund or \$2,000,000, whichever is less. All grants shall be
18 subject to appropriation. Moneys in the Fund shall consist of
19 funds transferred into the Fund or otherwise made available
20 from any source.

21 Section 410. Establishment of committee.

22 (a) A committee is established to develop, oversee, and
23 implement the Sorry Works! pilot program. The committee shall
24 have 10 members, each of whom shall be a voting member. Six
25 members of the committee shall constitute a quorum. The
26 committee shall be comprised as follows:

27 (1) The President of the Senate, the Minority Leader of
28 the Senate, the Speaker of the House of Representatives,
29 and the Minority Leader of the House of Representatives
30 shall each appoint 2 members.

31 (2) The Director of Professional Regulation or his or
32 her designee.

33 (3) The Director of Insurance or his or her designee.

1 (b) The committee shall establish criteria for the program,
2 including but not limited to: selection of hospitals,
3 physicians, and insurers to participate in the program; and
4 creation of a subcommittee to review cases from hospitals and
5 determine whether hospitals, physicians, and insurers are
6 entitled to compensation under the program.

7 (c) The committee shall communicate with hospitals,
8 physicians, and insurers that are interested in participating
9 in the program. The committee shall make final decisions as to
10 which applicants are accepted for the program.

11 (d) The committee shall report to the Governor and the
12 General Assembly annually.

13 (e) The committee shall publish data regarding the program.

14 (f) Committee members shall receive no compensation for the
15 performance of their duties as members, but each member shall
16 be paid necessary expenses while engaged in the performance of
17 those duties.

18 Section 415. Termination of program.

19 (a) The program may be terminated at any time if the
20 committee, by a vote of two-thirds of its members, votes to
21 terminate the program.

22 (b) If the program is not terminated under subsection (a),
23 the program shall terminate after its second year of operation.

24 Section 495. The State Finance Act is amended by adding
25 Section 5.626 as follows:

26 (30 ILCS 105/5.626 new)

27 Sec. 5.626. The Sorry Works! Fund.

28 ARTICLE 9. MISCELLANEOUS PROVISIONS

29 Section 995. Liberal construction; inseverability.

1 (a) This Act, being necessary for the welfare of the State
2 and its inhabitants, shall be liberally construed to effect its
3 purposes.

4 (b) The provisions of this Act are mutually dependent and
5 inseverable. If any provision is held invalid other than as
6 applied to a particular person or circumstance, then this
7 entire Act is invalid.

8 Section 999. Effective date. This Act takes effect upon
9 becoming law.".