

SB0069



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB0069

Introduced 1/30/2009, by Sen. Ira I. Silverstein

SYNOPSIS AS INTRODUCED:

225 ILCS 60/22

from Ch. 111, par. 4400-22

225 ILCS 60/22.2 new

Amends the Medical Practice Act of 1987. Makes changes concerning the prohibition against fee splitting. Effective immediately.

LRB096 04135 ASK 14176 b

A BILL FOR

1 AN ACT concerning regulation.

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

4 Section 5. The Medical Practice Act of 1987 is amended by
5 changing Section 22 and adding Section 22.2 as follows:

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

7 (Section scheduled to be repealed on December 31, 2010)

8 Sec. 22. Disciplinary action.

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

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

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

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

22 (c) an ambulatory surgical treatment center or
23 hospitalization or care facility maintained by the

1 State or any agency thereof, where such department or
2 agency has authority under law to establish and enforce
3 standards for the ambulatory surgical treatment
4 centers, hospitalization, or care facilities under its
5 management and control; or

6 (d) ambulatory surgical treatment centers,
7 hospitalization or care facilities maintained by the
8 Federal Government; or

9 (e) ambulatory surgical treatment centers,
10 hospitalization or care facilities maintained by any
11 university or college established under the laws of
12 this State and supported principally by public funds
13 raised by taxation.

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

17 (3) The conviction of a felony in this or any other
18 jurisdiction, except as otherwise provided in subsection B
19 of this Section, whether or not related to practice under
20 this Act, or the entry of a guilty or nolo contendere plea
21 to a felony charge.

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

23 (5) Engaging in dishonorable, unethical or
24 unprofessional conduct of a character likely to deceive,
25 defraud or harm the public.

26 (6) Obtaining any fee by fraud, deceit, or

1 misrepresentation.

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

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

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

11 (10) Making a false or misleading statement regarding
12 their skill or the efficacy or value of the medicine,
13 treatment, or remedy prescribed by them at their direction
14 in the treatment of any disease or other condition of the
15 body or mind.

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

18 (12) Disciplinary action of another state or
19 jurisdiction against a license or other authorization to
20 practice as a medical doctor, doctor of osteopathy, doctor
21 of osteopathic medicine or doctor of chiropractic, a
22 certified copy of the record of the action taken by the
23 other state or jurisdiction being prima facie evidence
24 thereof.

25 (13) Violation of any provision of this Act or of the
26 Medical Practice Act prior to the repeal of that Act, or

1 violation of the rules, or a final administrative action of
2 the Secretary, after consideration of the recommendation
3 of the Disciplinary Board.

4 (14) Violation of the prohibition against fee
5 splitting in Section 22.2 of this Act. ~~Dividing with anyone~~
6 ~~other than physicians with whom the licensee practices in a~~
7 ~~partnership, Professional Association, limited liability~~
8 ~~company, or Medical or Professional Corporation any fee,~~
9 ~~commission, rebate or other form of compensation for any~~
10 ~~professional services not actually and personally~~
11 ~~rendered. Nothing contained in this subsection prohibits~~
12 ~~persons holding valid and current licenses under this Act~~
13 ~~from practicing medicine in partnership under a~~
14 ~~partnership agreement, including a limited liability~~
15 ~~partnership, in a limited liability company under the~~
16 ~~Limited Liability Company Act, in a corporation authorized~~
17 ~~by the Medical Corporation Act, as an association~~
18 ~~authorized by the Professional Association Act, or in a~~
19 ~~corporation under the Professional Corporation Act or from~~
20 ~~pooling, sharing, dividing or apportioning the fees and~~
21 ~~monies received by them or by the partnership, corporation~~
22 ~~or association in accordance with the partnership~~
23 ~~agreement or the policies of the Board of Directors of the~~
24 ~~corporation or association. Nothing contained in this~~
25 ~~subsection prohibits 2 or more corporations authorized by~~
26 ~~the Medical Corporation Act, from forming a partnership or~~

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

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

21 (16) Abandonment of a patient.

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

1 (18) Promotion of the sale of drugs, devices,
2 appliances or goods provided for a patient in such manner
3 as to exploit the patient for financial gain of the
4 physician.

5 (19) Offering, undertaking or agreeing to cure or treat
6 disease by a secret method, procedure, treatment or
7 medicine, or the treating, operating or prescribing for any
8 human condition by a method, means or procedure which the
9 licensee refuses to divulge upon demand of the Department.

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

13 (21) Wilfully making or filing false records or reports
14 in his or her practice as a physician, including, but not
15 limited to, false records to support claims against the
16 medical assistance program of the Department of Healthcare
17 and Family Services (formerly Department of Public Aid)
18 under the Illinois Public Aid Code.

19 (22) Wilful omission to file or record, or wilfully
20 impeding the filing or recording, or inducing another
21 person to omit to file or record, medical reports as
22 required by law, or wilfully failing to report an instance
23 of suspected abuse or neglect as required by law.

24 (23) Being named as a perpetrator in an indicated
25 report by the Department of Children and Family Services
26 under the Abused and Neglected Child Reporting Act, and

1 upon proof by clear and convincing evidence that the
2 licensee has caused a child to be an abused child or
3 neglected child as defined in the Abused and Neglected
4 Child Reporting Act.

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

8 (25) Gross and wilful and continued overcharging for
9 professional services, including filing false statements
10 for collection of fees for which services are not rendered,
11 including, but not limited to, filing such false statements
12 for collection of monies for services not rendered from the
13 medical assistance program of the Department of Healthcare
14 and Family Services (formerly Department of Public Aid)
15 under the Illinois Public Aid Code.

16 (26) A pattern of practice or other behavior which
17 demonstrates incapacity or incompetence to practice under
18 this Act.

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

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

26 (29) Cheating on or attempt to subvert the licensing

1 examinations administered under this Act.

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

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

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

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

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

24 (35) Failure to report to the Department surrender of a
25 license or authorization to practice as a medical doctor, a
26 doctor of osteopathy, a doctor of osteopathic medicine, or

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

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

13 (37) Failure to transfer copies of medical records as
14 required by law.

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

20 (39) Violating the Health Care Worker Self-Referral
21 Act.

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

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

26 (42) Entering into an excessive number of written

1 collaborative agreements with licensed advanced practice
2 nurses resulting in an inability to adequately collaborate
3 and provide medical direction.

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

7 Except for actions involving the ground numbered (26), all
8 proceedings to suspend, revoke, place on probationary status,
9 or take any other disciplinary action as the Department may
10 deem proper, with regard to a license on any of the foregoing
11 grounds, must be commenced within 5 years next after receipt by
12 the Department of a complaint alleging the commission of or
13 notice of the conviction order for any of the acts described
14 herein. Except for the grounds numbered (8), (9), (26), and
15 (29), no action shall be commenced more than 10 years after the
16 date of the incident or act alleged to have violated this
17 Section. For actions involving the ground numbered (26), a
18 pattern of practice or other behavior includes all incidents
19 alleged to be part of the pattern of practice or other behavior
20 that occurred or a report pursuant to Section 23 of this Act
21 received within the 10-year period preceding the filing of the
22 complaint. In the event of the settlement of any claim or cause
23 of action in favor of the claimant or the reduction to final
24 judgment of any civil action in favor of the plaintiff, such
25 claim, cause of action or civil action being grounded on the
26 allegation that a person licensed under this Act was negligent

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

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

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

1 The Department, upon the recommendation of the
2 Disciplinary Board, shall adopt rules which set forth standards
3 to be used in determining:

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

6 (b) what constitutes dishonorable, unethical or
7 unprofessional conduct of a character likely to deceive,
8 defraud, or harm the public;

9 (c) what constitutes immoral conduct in the commission
10 of any act, including, but not limited to, commission of an
11 act of sexual misconduct related to the licensee's
12 practice; and

13 (d) what constitutes gross negligence in the practice
14 of medicine.

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

18 In enforcing this Section, the Medical Disciplinary Board,
19 upon a showing of a possible violation, may compel any
20 individual licensed to practice under this Act, or who has
21 applied for licensure or a permit pursuant to this Act, to
22 submit to a mental or physical examination, or both, as
23 required by and at the expense of the Department. The examining
24 physician or physicians shall be those specifically designated
25 by the Disciplinary Board. The Medical Disciplinary Board or
26 the Department may order the examining physician to present

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

1 or to treat human ailments without the use of drugs and without
2 operative surgery, who has been convicted a second time of
3 committing any felony under the Illinois Controlled Substances
4 Act or the Methamphetamine Control and Community Protection
5 Act, or who has been convicted a second time of committing a
6 Class 1 felony under Sections 8A-3 and 8A-6 of the Illinois
7 Public Aid Code. A person whose license or visiting permit is
8 revoked under this subsection B of Section 22 of this Act shall
9 be prohibited from practicing medicine or treating human
10 ailments without the use of drugs and without operative
11 surgery.

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

22 (Source: P.A. 94-556, eff. 9-11-05; 94-677, eff. 8-25-05;
23 95-331, eff. 8-21-07.)

24 (225 ILCS 60/22.2 new)

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

1 Sec. 22.2. Prohibition against fee splitting.

2 (a) A licensee under this Act may not directly or
3 indirectly divide any professional fee or other form of
4 compensation for professional services with anyone other than
5 any of the following:

6 (1) A licensed health care professional for services
7 actually and personally rendered.

8 (2) A licensed health care professional as permitted
9 pursuant to the Professional Service Corporation Act.

10 (3) A physician with whom the licensee practices in a
11 partnership, a professional association, a limited
12 liability company, or a Medical Corporation.

13 (b) Nothing contained in this Section prohibits persons
14 holding valid and current licenses under this Act from
15 practicing medicine in a partnership under a partnership
16 agreement, which may take any of the following forms:

17 (1) A limited liability partnership.

18 (2) A limited liability company under the Limited
19 Liability Company Act.

20 (3) A corporation authorized by the Medical
21 Corporation Act.

22 (4) An association authorized by the Professional
23 Association Act.

24 (5) A corporation under the Professional Service
25 Corporation Act.

26 (c) Nothing contained in this Section prohibits 2 or more

1 corporations authorized by the Medical Corporation Act from
2 forming a partnership or joint venture and providing medical,
3 surgical, and scientific research and knowledge from employees
4 of these corporation if such employees are licensed under this
5 Act.

6 (d) Nothing contained in this Section prohibits a person,
7 partnership, corporation, association, or joint venture as set
8 out in subsections (b) and (c) of this Section from pooling,
9 sharing, dividing, or apportioning the fees and monies received
10 by them in accordance with the partnership agreement, policies
11 of the board of directors of the corporation or association, or
12 joint venture agreement.

13 (e) Nothing contained in this Section abrogates the right
14 of 2 or more persons holding valid and current licenses to each
15 receive adequate compensation for concurrently rendering
16 professional services to a patient and to divide a fee provided
17 that the patient has full knowledge of the division and the
18 division is made in proportion to the services performed and
19 responsibility assumed by each person.

20 (f) Nothing contained in this Section prohibits a licensee
21 from paying a reasonable fee based on a percentage of
22 professional service fees billed or collected, a flat fee, or
23 any other arrangement that divides professional fees, for the
24 administrative processing or collecting of the licensee's
25 charges for professional services, provided that the licensee
26 at all times controls the amount of fees charged and collected.

1 (g) Nothing contained in this Section prohibits the
2 granting of a security interest in the accounts receivable or
3 funds of a physician or the physician's practice for bona fide
4 advances made to the physician or physician's practice.

5 (h) Under no circumstances may a health care professional
6 fee be divided, shared, or split with another person for the
7 purpose of patient referrals.

8 Section 99. Effective date. This Act takes effect upon
9 becoming law.