



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

SB1278

Introduced 2/10/2009, by Sen. William Delgado

#### SYNOPSIS AS INTRODUCED:

225 ILCS 80/24  
320 ILCS 20/4

from Ch. 111, par. 3924  
from Ch. 23, par. 6604

Amends the Illinois Optometric Practice Act of 1987 and the Elder Abuse and Neglect Act. Provides that willfully failing to report an instance of suspected abuse or neglect (instead of child abuse or neglect) as required by law (instead of as required by the Abused and Neglected Child Reporting Act) is grounds for disciplinary action against an optometrist. Provides that any optometrist who willfully fails to report suspected elder abuse, neglect, financial exploitation, or self-neglect shall be referred to the Department of Financial and Professional Regulation for disciplinary action.

LRB096 07509 ASK 17602 b

1 AN ACT concerning aging.

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

4 Section 5. The Illinois Optometric Practice Act of 1987 is  
5 amended by changing Section 24 as follows:

6 (225 ILCS 80/24) (from Ch. 111, par. 3924)

7 (Section scheduled to be repealed on January 1, 2017)

8 Sec. 24. Grounds for disciplinary action.

9 (a) The Department may refuse to issue or to renew, or may  
10 revoke, suspend, place on probation, reprimand or take other  
11 disciplinary action as the Department may deem proper,  
12 including fines not to exceed \$10,000 for each violation, with  
13 regard to any license for any one or combination of the  
14 following causes:

15 (1) Violations of this Act, or of the rules promulgated  
16 hereunder.

17 (2) Conviction of or entry of a plea of guilty to any  
18 crime under the laws of any U.S. jurisdiction thereof that  
19 is a felony or that is a misdemeanor of which an essential  
20 element is dishonesty, or any crime that is directly  
21 related to the practice of the profession.

22 (3) Making any misrepresentation for the purpose of  
23 obtaining a license.

1           (4) Professional incompetence or gross negligence in  
2 the practice of optometry.

3           (5) Gross malpractice, prima facie evidence of which  
4 may be a conviction or judgment of malpractice in any court  
5 of competent jurisdiction.

6           (6) Aiding or assisting another person in violating any  
7 provision of this Act or rules.

8           (7) Failing, within 60 days, to provide information in  
9 response to a written request made by the Department that  
10 has been sent by certified or registered mail to the  
11 licensee's last known address.

12           (8) Engaging in dishonorable, unethical, or  
13 unprofessional conduct of a character likely to deceive,  
14 defraud, or harm the public.

15           (9) Habitual or excessive use or addiction to alcohol,  
16 narcotics, stimulants or any other chemical agent or drug  
17 that results in the inability to practice with reasonable  
18 judgment, skill, or safety.

19           (10) Discipline by another U.S. jurisdiction or  
20 foreign nation, if at least one of the grounds for the  
21 discipline is the same or substantially equivalent to those  
22 set forth herein.

23           (11) Directly or indirectly giving to or receiving from  
24 any person, firm, corporation, partnership, or association  
25 any fee, commission, rebate, or other form of compensation  
26 for any professional services not actually or personally

1 rendered. This shall not be deemed to include (i) rent or  
2 other remunerations paid to an individual, partnership, or  
3 corporation by an optometrist for the lease, rental, or use  
4 of space, owned or controlled, by the individual,  
5 partnership, corporation or association, and (ii) the  
6 division of fees between an optometrist and related  
7 professional service providers with whom the optometrist  
8 practices in a professional corporation organized under  
9 Section 3.6 of the Professional Service Corporation Act.

10 (12) A finding by the Department that the licensee,  
11 after having his or her license placed on probationary  
12 status has violated the terms of probation.

13 (13) Abandonment of a patient.

14 (14) Willfully making or filing false records or  
15 reports in his or her practice, including but not limited  
16 to false records filed with State agencies or departments.

17 (15) Willfully failing to report an instance of  
18 suspected ~~child~~ abuse or neglect as required by law ~~the~~  
19 ~~Abused and Neglected Child Reporting Act~~.

20 (16) Physical illness, including but not limited to,  
21 deterioration through the aging process, or loss of motor  
22 skill, mental illness, or disability that results in the  
23 inability to practice the profession with reasonable  
24 judgment, skill, or safety.

25 (17) Solicitation of professional services other than  
26 permitted advertising.

1           (18) Failure to provide a patient with a copy of his or  
2 her record or prescription in accordance with federal law.

3           (19) Conviction by any court of competent  
4 jurisdiction, either within or without this State, of any  
5 violation of any law governing the practice of optometry,  
6 conviction in this or another State of any crime that is a  
7 felony under the laws of this State or conviction of a  
8 felony in a federal court, if the Department determines,  
9 after investigation, that such person has not been  
10 sufficiently rehabilitated to warrant the public trust.

11           (20) A finding that licensure has been applied for or  
12 obtained by fraudulent means.

13           (21) Continued practice by a person knowingly having an  
14 infectious or contagious disease.

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

22           (23) Practicing or attempting to practice under a name  
23 other than the full name as shown on his or her license.

24           (24) Immoral conduct in the commission of any act, such  
25 as sexual abuse, sexual misconduct or sexual exploitation,  
26 related to the licensee's practice.

1           (25) Maintaining a professional relationship with any  
2 person, firm, or corporation when the optometrist knows, or  
3 should know, that such person, firm, or corporation is  
4 violating this Act.

5           (26) Promotion of the sale of drugs, devices,  
6 appliances or goods provided for a client or patient in  
7 such manner as to exploit the patient or client for  
8 financial gain of the licensee.

9           (27) Using the title "Doctor" or its abbreviation  
10 without further qualifying that title or abbreviation with  
11 the word "optometry" or "optometrist".

12           (28) Use by a licensed optometrist of the word  
13 "infirmary", "hospital", "school", "university", in  
14 English or any other language, in connection with the place  
15 where optometry may be practiced or demonstrated.

16           (29) Continuance of an optometrist in the employ of any  
17 person, firm or corporation, or as an assistant to any  
18 optometrist or optometrists, directly or indirectly, after  
19 his or her employer or superior has been found guilty of  
20 violating or has been enjoined from violating the laws of  
21 the State of Illinois relating to the practice of  
22 optometry, when the employer or superior persists in that  
23 violation.

24           (30) The performance of optometric service in  
25 conjunction with a scheme or plan with another person, firm  
26 or corporation known to be advertising in a manner contrary

1 to this Act or otherwise violating the laws of the State of  
2 Illinois concerning the practice of optometry.

3 (31) Failure to provide satisfactory proof of having  
4 participated in approved continuing education programs as  
5 determined by the Board and approved by the Secretary.  
6 Exceptions for extreme hardships are to be defined by the  
7 rules of the Department.

8 (32) Willfully making or filing false records or  
9 reports in the practice of optometry, including, but not  
10 limited to false records to support claims against the  
11 medical assistance program of the Department of Healthcare  
12 and Family Services (formerly Department of Public Aid)  
13 under the Illinois Public Aid Code.

14 (33) Gross and willful overcharging for professional  
15 services including filing false statements for collection  
16 of fees for which services are not rendered, including, but  
17 not limited to filing false statements for collection of  
18 monies for services not rendered from the medical  
19 assistance program of the Department of Healthcare and  
20 Family Services (formerly Department of Public Aid) under  
21 the Illinois Public Aid Code.

22 (34) In the absence of good reasons to the contrary,  
23 failure to perform a minimum eye examination as required by  
24 the rules of the Department.

25 (35) Violation of the Health Care Worker Self-Referral  
26 Act.

1           The Department may refuse to issue or may suspend the  
2 license of any person who fails to file a return, or to pay the  
3 tax, penalty or interest shown in a filed return, or to pay any  
4 final assessment of the tax, penalty or interest, as required  
5 by any tax Act administered by the Illinois Department of  
6 Revenue, until such time as the requirements of any such tax  
7 Act are satisfied.

8           (a-5) In enforcing this Section, the Board upon a showing  
9 of a possible violation, may compel any individual licensed to  
10 practice under this Act, or who has applied for licensure or  
11 certification pursuant to this Act, to submit to a mental or  
12 physical examination, or both, as required by and at the  
13 expense of the Department. The examining physicians or clinical  
14 psychologists shall be those specifically designated by the  
15 Board. The Board or the Department may order the examining  
16 physician or clinical psychologist to present testimony  
17 concerning this mental or physical examination of the licensee  
18 or applicant. No information shall be excluded by reason of any  
19 common law or statutory privilege relating to communications  
20 between the licensee or applicant and the examining physician  
21 or clinical psychologist. Eye examinations may be provided by a  
22 licensed optometrist. The individual to be examined may have,  
23 at his or her own expense, another physician of his or her  
24 choice present during all aspects of the examination. Failure  
25 of any individual to submit to a mental or physical  
26 examination, when directed, shall be grounds for suspension of



1 a license until such time as the individual submits to the  
2 examination if the Board finds, after notice and hearing, that  
3 the refusal to submit to the examination was without reasonable  
4 cause.

5 If the Board finds an individual unable to practice because  
6 of the reasons set forth in this Section, the Board shall  
7 require such individual to submit to care, counseling, or  
8 treatment by physicians or clinical psychologists approved or  
9 designated by the Board, as a condition, term, or restriction  
10 for continued, reinstated, or renewed licensure to practice, or  
11 in lieu of care, counseling, or treatment, the Board may  
12 recommend to the Department to file a complaint to immediately  
13 suspend, revoke, or otherwise discipline the license of the  
14 individual, or the Board may recommend to the Department to  
15 file a complaint to suspend, revoke, or otherwise discipline  
16 the license of the individual. Any individual whose license was  
17 granted pursuant to this Act, or continued, reinstated,  
18 renewed, disciplined, or supervised, subject to such  
19 conditions, terms, or restrictions, who shall fail to comply  
20 with such conditions, terms, or restrictions, shall be referred  
21 to the Secretary for a determination as to whether the  
22 individual shall have his or her license suspended immediately,  
23 pending a hearing by the Board.

24 (b) The determination by a circuit court that a licensee is  
25 subject to involuntary admission or judicial admission as  
26 provided in the Mental Health and Developmental Disabilities

1 Code operates as an automatic suspension. The suspension will  
2 end only upon a finding by a court that the patient is no  
3 longer subject to involuntary admission or judicial admission  
4 and issues an order so finding and discharging the patient; and  
5 upon the recommendation of the Board to the Secretary that the  
6 licensee be allowed to resume his or her practice.

7 (Source: P.A. 94-787, eff. 5-19-06.)

8 Section 10. The Elder Abuse and Neglect Act is amended by  
9 changing Section 4 as follows:

10 (320 ILCS 20/4) (from Ch. 23, par. 6604)

11 Sec. 4. Reports of abuse or neglect.

12 (a) Any person who suspects the abuse, neglect, financial  
13 exploitation, or self-neglect of an eligible adult may report  
14 this suspicion to an agency designated to receive such reports  
15 under this Act or to the Department.

16 (a-5) If any mandated reporter has reason to believe that  
17 an eligible adult, who because of dysfunction is unable to seek  
18 assistance for himself or herself, has, within the previous 12  
19 months, been subjected to abuse, neglect, or financial  
20 exploitation, the mandated reporter shall, within 24 hours  
21 after developing such belief, report this suspicion to an  
22 agency designated to receive such reports under this Act or to  
23 the Department. Whenever a mandated reporter is required to  
24 report under this Act in his or her capacity as a member of the

1 staff of a medical or other public or private institution,  
2 facility, board and care home, or agency, he or she shall make  
3 a report to an agency designated to receive such reports under  
4 this Act or to the Department in accordance with the provisions  
5 of this Act and may also notify the person in charge of the  
6 institution, facility, board and care home, or agency or his or  
7 her designated agent that the report has been made. Under no  
8 circumstances shall any person in charge of such institution,  
9 facility, board and care home, or agency, or his or her  
10 designated agent to whom the notification has been made,  
11 exercise any control, restraint, modification, or other change  
12 in the report or the forwarding of the report to an agency  
13 designated to receive such reports under this Act or to the  
14 Department. The privileged quality of communication between  
15 any professional person required to report and his or her  
16 patient or client shall not apply to situations involving  
17 abused, neglected, or financially exploited eligible adults  
18 and shall not constitute grounds for failure to report as  
19 required by this Act.

20 (a-7) A person making a report under this Act in the belief  
21 that it is in the alleged victim's best interest shall be  
22 immune from criminal or civil liability or professional  
23 disciplinary action on account of making the report,  
24 notwithstanding any requirements concerning the  
25 confidentiality of information with respect to such eligible  
26 adult which might otherwise be applicable.

1 (a-9) Law enforcement officers shall continue to report  
2 incidents of alleged abuse pursuant to the Illinois Domestic  
3 Violence Act of 1986, notwithstanding any requirements under  
4 this Act.

5 (b) Any person, institution or agency participating in the  
6 making of a report, providing information or records related to  
7 a report, assessment, or services, or participating in the  
8 investigation of a report under this Act in good faith, or  
9 taking photographs or x-rays as a result of an authorized  
10 assessment, shall have immunity from any civil, criminal or  
11 other liability in any civil, criminal or other proceeding  
12 brought in consequence of making such report or assessment or  
13 on account of submitting or otherwise disclosing such  
14 photographs or x-rays to any agency designated to receive  
15 reports of alleged or suspected abuse or neglect. Any person,  
16 institution or agency authorized by the Department to provide  
17 assessment, intervention, or administrative services under  
18 this Act shall, in the good faith performance of those  
19 services, have immunity from any civil, criminal or other  
20 liability in any civil, criminal, or other proceeding brought  
21 as a consequence of the performance of those services. For the  
22 purposes of any civil, criminal, or other proceeding, the good  
23 faith of any person required to report, permitted to report, or  
24 participating in an investigation of a report of alleged or  
25 suspected abuse, neglect, or financial exploitation shall be  
26 presumed.

1 (c) The identity of a person making a report of alleged or  
2 suspected abuse or neglect under this Act may be disclosed by  
3 the Department or other agency provided for in this Act only  
4 with such person's written consent or by court order.

5 (d) The Department shall by rule establish a system for  
6 filing and compiling reports made under this Act.

7 (e) Any physician who willfully fails to report as required  
8 by this Act shall be referred to the Illinois State Medical  
9 Disciplinary Board for action in accordance with subdivision  
10 (A) (22) of Section 22 of the Medical Practice Act of 1987. Any  
11 dentist or dental hygienist who willfully fails to report as  
12 required by this Act shall be referred to the Department of  
13 Professional Regulation for action in accordance with  
14 paragraph 19 of Section 23 of the Illinois Dental Practice Act.  
15 Any optometrist who willfully fails to report as required by  
16 this Act shall be referred to the Department of Financial and  
17 Professional Regulation for action in accordance with  
18 paragraph (15) of subsection (a) of Section 24 of the Illinois  
19 Optometric Practice Act of 1987. Any other mandated reporter  
20 required by this Act to report suspected abuse, neglect, or  
21 financial exploitation who willfully fails to report the same  
22 is guilty of a Class A misdemeanor.

23 (Source: P.A. 93-300, eff. 1-1-04; 93-301, eff. 1-1-04;  
24 94-1064, eff. 1-1-07.)