



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

HB5548

by Rep. Timothy L. Schmitz

#### SYNOPSIS AS INTRODUCED:

210 ILCS 85/10.4

from Ch. 111 1/2, par. 151.4

Amends the Hospital Licensing Act. Provides that the minimum procedures, with respect to medical staff and clinical privilege determinations concerning current medical members of the medical staff, shall include the right to be represented by a personal attorney. Effective immediately.

LRB097 20017 DRJ 65326 b

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 Hospital Licensing Act is amended by  
5 changing Section 10.4 as follows:

6 (210 ILCS 85/10.4) (from Ch. 111 1/2, par. 151.4)

7 Sec. 10.4. Medical staff privileges.

8 (a) Any hospital licensed under this Act or any hospital  
9 organized under the University of Illinois Hospital Act shall,  
10 prior to the granting of any medical staff privileges to an  
11 applicant, or renewing a current medical staff member's  
12 privileges, request of the Director of Professional Regulation  
13 information concerning the licensure status and any  
14 disciplinary action taken against the applicant's or medical  
15 staff member's license, except: (1) for medical personnel who  
16 enter a hospital to obtain organs and tissues for transplant  
17 from a donor in accordance with the Illinois Anatomical Gift  
18 Act; or (2) for medical personnel who have been granted  
19 disaster privileges pursuant to the procedures and  
20 requirements established by rules adopted by the Department.  
21 Any hospital and any employees of the hospital or others  
22 involved in granting privileges who, in good faith, grant  
23 disaster privileges pursuant to this Section to respond to an

1 emergency shall not, as a result of their acts or omissions, be  
2 liable for civil damages for granting or denying disaster  
3 privileges except in the event of willful and wanton  
4 misconduct, as that term is defined in Section 10.2 of this  
5 Act. Individuals granted privileges who provide care in an  
6 emergency situation, in good faith and without direct  
7 compensation, shall not, as a result of their acts or  
8 omissions, except for acts or omissions involving willful and  
9 wanton misconduct, as that term is defined in Section 10.2 of  
10 this Act, on the part of the person, be liable for civil  
11 damages. The Director of Professional Regulation shall  
12 transmit, in writing and in a timely fashion, such information  
13 regarding the license of the applicant or the medical staff  
14 member, including the record of imposition of any periods of  
15 supervision or monitoring as a result of alcohol or substance  
16 abuse, as provided by Section 23 of the Medical Practice Act of  
17 1987, and such information as may have been submitted to the  
18 Department indicating that the application or medical staff  
19 member has been denied, or has surrendered, medical staff  
20 privileges at a hospital licensed under this Act, or any  
21 equivalent facility in another state or territory of the United  
22 States. The Director of Professional Regulation shall define by  
23 rule the period for timely response to such requests.

24 No transmittal of information by the Director of  
25 Professional Regulation, under this Section shall be to other  
26 than the president, chief operating officer, chief

1 administrative officer, or chief of the medical staff of a  
2 hospital licensed under this Act, a hospital organized under  
3 the University of Illinois Hospital Act, or a hospital operated  
4 by the United States, or any of its instrumentalities. The  
5 information so transmitted shall be afforded the same status as  
6 is information concerning medical studies by Part 21 of Article  
7 VIII of the Code of Civil Procedure, as now or hereafter  
8 amended.

9 (b) All hospitals licensed under this Act, except county  
10 hospitals as defined in subsection (c) of Section 15-1 of the  
11 Illinois Public Aid Code, shall comply with, and the medical  
12 staff bylaws of these hospitals shall include rules consistent  
13 with, the provisions of this Section in granting, limiting,  
14 renewing, or denying medical staff membership and clinical  
15 staff privileges. Hospitals that require medical staff members  
16 to possess faculty status with a specific institution of higher  
17 education are not required to comply with subsection (1) below  
18 when the physician does not possess faculty status.

19 (1) Minimum procedures for pre-applicants and  
20 applicants for medical staff membership shall include the  
21 following:

22 (A) Written procedures relating to the acceptance  
23 and processing of pre-applicants or applicants for  
24 medical staff membership, which should be contained in  
25 medical staff bylaws.

26 (B) Written procedures to be followed in

1 determining a pre-applicant's or an applicant's  
2 qualifications for being granted medical staff  
3 membership and privileges.

4 (C) Written criteria to be followed in evaluating a  
5 pre-applicant's or an applicant's qualifications.

6 (D) An evaluation of a pre-applicant's or an  
7 applicant's current health status and current license  
8 status in Illinois.

9 (E) A written response to each pre-applicant or  
10 applicant that explains the reason or reasons for any  
11 adverse decision (including all reasons based in whole  
12 or in part on the applicant's medical qualifications or  
13 any other basis, including economic factors).

14 (2) Minimum procedures with respect to medical staff  
15 and clinical privilege determinations concerning current  
16 members of the medical staff shall include the following:

17 (A) A written notice of an adverse decision.

18 (B) An explanation of the reasons for an adverse  
19 decision including all reasons based on the quality of  
20 medical care or any other basis, including economic  
21 factors.

22 (C) A statement of the medical staff member's right  
23 to request a fair hearing on the adverse decision  
24 before a hearing panel whose membership is mutually  
25 agreed upon by the medical staff and the hospital  
26 governing board. The hearing panel shall have

1 independent authority to recommend action to the  
2 hospital governing board. Upon the request of the  
3 medical staff member or the hospital governing board,  
4 the hearing panel shall make findings concerning the  
5 nature of each basis for any adverse decision  
6 recommended to and accepted by the hospital governing  
7 board.

8 (i) Nothing in this subparagraph (C) limits a  
9 hospital's or medical staff's right to summarily  
10 suspend, without a prior hearing, a person's  
11 medical staff membership or clinical privileges if  
12 the continuation of practice of a medical staff  
13 member constitutes an immediate danger to the  
14 public, including patients, visitors, and hospital  
15 employees and staff. In the event that a hospital  
16 or the medical staff imposes a summary suspension,  
17 the Medical Executive Committee, or other  
18 comparable governance committee of the medical  
19 staff as specified in the bylaws, must meet as soon  
20 as is reasonably possible to review the suspension  
21 and to recommend whether it should be affirmed,  
22 lifted, expunged, or modified if the suspended  
23 physician requests such review. A summary  
24 suspension may not be implemented unless there is  
25 actual documentation or other reliable information  
26 that an immediate danger exists. This

1 documentation or information must be available at  
2 the time the summary suspension decision is made  
3 and when the decision is reviewed by the Medical  
4 Executive Committee. If the Medical Executive  
5 Committee recommends that the summary suspension  
6 should be lifted, expunged, or modified, this  
7 recommendation must be reviewed and considered by  
8 the hospital governing board, or a committee of the  
9 board, on an expedited basis. Nothing in this  
10 subparagraph (C) shall affect the requirement that  
11 any requested hearing must be commenced within 15  
12 days after the summary suspension and completed  
13 without delay unless otherwise agreed to by the  
14 parties. A fair hearing shall be commenced within  
15 15 days after the suspension and completed without  
16 delay, except that when the medical staff member's  
17 license to practice has been suspended or revoked  
18 by the State's licensing authority, no hearing  
19 shall be necessary.

20 (ii) Nothing in this subparagraph (C) limits a  
21 medical staff's right to permit, in the medical  
22 staff bylaws, summary suspension of membership or  
23 clinical privileges in designated administrative  
24 circumstances as specifically approved by the  
25 medical staff. This bylaw provision must  
26 specifically describe both the administrative

1           circumstance that can result in a summary  
2           suspension and the length of the summary  
3           suspension. The opportunity for a fair hearing is  
4           required for any administrative summary  
5           suspension. Any requested hearing must be  
6           commenced within 15 days after the summary  
7           suspension and completed without delay. Adverse  
8           decisions other than suspension or other  
9           restrictions on the treatment or admission of  
10          patients may be imposed summarily and without a  
11          hearing under designated administrative  
12          circumstances as specifically provided for in the  
13          medical staff bylaws as approved by the medical  
14          staff.

15                 (iii) If a hospital exercises its option to  
16                 enter into an exclusive contract and that contract  
17                 results in the total or partial termination or  
18                 reduction of medical staff membership or clinical  
19                 privileges of a current medical staff member, the  
20                 hospital shall provide the affected medical staff  
21                 member 60 days prior notice of the effect on his or  
22                 her medical staff membership or privileges. An  
23                 affected medical staff member desiring a hearing  
24                 under subparagraph (C) of this paragraph (2) must  
25                 request the hearing within 14 days after the date  
26                 he or she is so notified. The requested hearing



1 shall be commenced and completed (with a report and  
2 recommendation to the affected medical staff  
3 member, hospital governing board, and medical  
4 staff) within 30 days after the date of the medical  
5 staff member's request. If agreed upon by both the  
6 medical staff and the hospital governing board,  
7 the medical staff bylaws may provide for longer  
8 time periods.

9 (C-5) All peer review used for the purpose of  
10 credentialing, privileging, disciplinary action, or  
11 other recommendations affecting medical staff  
12 membership or exercise of clinical privileges, whether  
13 relying in whole or in part on internal or external  
14 reviews, shall be conducted in accordance with the  
15 medical staff bylaws and applicable rules,  
16 regulations, or policies of the medical staff. If  
17 external review is obtained, any adverse report  
18 utilized shall be in writing and shall be made part of  
19 the internal peer review process under the bylaws. The  
20 report shall also be shared with a medical staff peer  
21 review committee and the individual under review. If  
22 the medical staff peer review committee or the  
23 individual under review prepares a written response to  
24 the report of the external peer review within 30 days  
25 after receiving such report, the governing board shall  
26 consider the response prior to the implementation of

1 any final actions by the governing board which may  
2 affect the individual's medical staff membership or  
3 clinical privileges. Any peer review that involves  
4 willful or wanton misconduct shall be subject to civil  
5 damages as provided for under Section 10.2 of this Act.

6 (D) A statement of the member's right to inspect  
7 all pertinent information in the hospital's possession  
8 with respect to the decision.

9 (E) A statement of the member's right to present  
10 witnesses and other evidence at the hearing on the  
11 decision.

12 (E-5) The right to be represented by a personal  
13 attorney.

14 (F) A written notice and written explanation of the  
15 decision resulting from the hearing.

16 (F-5) A written notice of a final adverse decision  
17 by a hospital governing board.

18 (G) Notice given 15 days before implementation of  
19 an adverse medical staff membership or clinical  
20 privileges decision based substantially on economic  
21 factors. This notice shall be given after the medical  
22 staff member exhausts all applicable procedures under  
23 this Section, including item (iii) of subparagraph (C)  
24 of this paragraph (2), and under the medical staff  
25 bylaws in order to allow sufficient time for the  
26 orderly provision of patient care.

1           (H) Nothing in this paragraph (2) of this  
2 subsection (b) limits a medical staff member's right to  
3 waive, in writing, the rights provided in  
4 subparagraphs (A) through (G) of this paragraph (2) of  
5 this subsection (b) upon being granted the written  
6 exclusive right to provide particular services at a  
7 hospital, either individually or as a member of a  
8 group. If an exclusive contract is signed by a  
9 representative of a group of physicians, a waiver  
10 contained in the contract shall apply to all members of  
11 the group unless stated otherwise in the contract.

12           (3) Every adverse medical staff membership and  
13 clinical privilege decision based substantially on  
14 economic factors shall be reported to the Hospital  
15 Licensing Board before the decision takes effect. These  
16 reports shall not be disclosed in any form that reveals the  
17 identity of any hospital or physician. These reports shall  
18 be utilized to study the effects that hospital medical  
19 staff membership and clinical privilege decisions based  
20 upon economic factors have on access to care and the  
21 availability of physician services. The Hospital Licensing  
22 Board shall submit an initial study to the Governor and the  
23 General Assembly by January 1, 1996, and subsequent reports  
24 shall be submitted periodically thereafter.

25           (4) As used in this Section:

26           "Adverse decision" means a decision reducing,

1           restricting, suspending, revoking, denying, or not  
2           renewing medical staff membership or clinical privileges.

3           "Economic factor" means any information or reasons for  
4           decisions unrelated to quality of care or professional  
5           competency.

6           "Pre-applicant" means a physician licensed to practice  
7           medicine in all its branches who requests an application  
8           for medical staff membership or privileges.

9           "Privilege" means permission to provide medical or  
10          other patient care services and permission to use hospital  
11          resources, including equipment, facilities and personnel  
12          that are necessary to effectively provide medical or other  
13          patient care services. This definition shall not be  
14          construed to require a hospital to acquire additional  
15          equipment, facilities, or personnel to accommodate the  
16          granting of privileges.

17          (5) Any amendment to medical staff bylaws required  
18          because of this amendatory Act of the 91st General Assembly  
19          shall be adopted on or before July 1, 2001.

20          (c) All hospitals shall consult with the medical staff  
21          prior to closing membership in the entire or any portion of the  
22          medical staff or a department. If the hospital closes  
23          membership in the medical staff, any portion of the medical  
24          staff, or the department over the objections of the medical  
25          staff, then the hospital shall provide a detailed written  
26          explanation for the decision to the medical staff 10 days prior

1 to the effective date of any closure. No applications need to  
2 be provided when membership in the medical staff or any  
3 relevant portion of the medical staff is closed.

4 (Source: P.A. 95-331, eff. 8-21-07; 96-445, eff. 8-14-09.)

5 Section 99. Effective date. This Act takes effect upon  
6 becoming law.