

1 AN ACT in relation to medical practice.

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
5 by changing Section 23 and adding Section 23.1 as follows:

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

7 (Section scheduled to be repealed on January 1, 2007)

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

10 (A) Entities required to report.

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

1 person, licensed under this Act, who is impaired by
2 reason of age, drug or alcohol abuse, physical or mental
3 impairment, is under supervision and, where appropriate,
4 is in a program of rehabilitation. Such reports shall be
5 strictly confidential and may be reviewed and considered
6 only by the members of the Disciplinary Board, or by
7 authorized staff as provided by rules of the Disciplinary
8 Board. Provisions shall be made for the periodic report
9 of the status of any such person not less than twice
10 annually in order that the Disciplinary Board shall have
11 current information upon which to determine the status of
12 any such person. Such initial and periodic reports of
13 impaired physicians shall not be considered records
14 within the meaning of The State Records Act and shall be
15 disposed of, following a determination by the
16 Disciplinary Board that such reports are no longer
17 required, in a manner and at such time as the
18 Disciplinary Board shall determine by rule. The filing
19 of such reports shall be construed as the filing of a
20 report for purposes of subsection (C) of this Section.

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

30 (3) Professional liability insurers. Every
31 insurance company which offers policies of professional
32 liability insurance to persons licensed under this Act,
33 or any other entity which seeks to indemnify the
34 professional liability of a person licensed under this

1 Act, shall report to the Disciplinary Board the
2 settlement of any claim or cause of action, or final
3 judgment rendered in any cause of action, which alleged
4 negligence in the furnishing of medical care by such
5 licensed person when such settlement or final judgment is
6 in favor of the plaintiff.

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

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

30 (B) Mandatory reporting. All reports required by items
31 (34), (35), and (36) of subsection (A) of Section 22 and by
32 Section 23 shall be submitted to the Disciplinary Board in a
33 timely fashion. The reports shall be filed in writing within
34 60 days after a determination that a report is required under

1 this Act. All reports shall contain the following
2 information:

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

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

7 (3) The name or other means of identification of
8 any patient or patients whose treatment is a subject of
9 the report, provided, however, no medical records may be
10 revealed without the written consent of the patient or
11 patients.

12 (4) A brief description of the facts which gave
13 rise to the issuance of the report, including the dates
14 of any occurrences deemed to necessitate the filing of
15 the report.

16 (5) If court action is involved, the identity of
17 the court in which the action is filed, along with the
18 docket number and date of filing of the action.

19 (6) Any further pertinent information which the
20 reporting party deems to be an aid in the evaluation of
21 the report.

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

32 When the Department has received written reports
33 concerning incidents required to be reported in items (34),
34 (35), and (36) of subsection (A) of Section 22, the

1 licensee's failure to report the incident to the Department
2 under those items shall not be the sole grounds for
3 disciplinary action.

4 Nothing contained in this Section shall act to in any
5 way, waive or modify the confidentiality of medical reports
6 and committee reports to the extent provided by law. Except
7 for information required for physician profiles under Section
8 23.1 of this Act, any information reported or disclosed shall
9 be kept for the confidential use of the Disciplinary Board,
10 the Medical Coordinators, the Disciplinary Board's attorneys,
11 the medical investigative staff, and authorized clerical
12 staff, as provided in this Act, and shall be afforded the
13 same status as is provided information concerning medical
14 studies in Part 21 of Article VIII of the Code of Civil
15 Procedure.

16 (C) Immunity from prosecution. Any individual or
17 organization acting in good faith, and not in a wilful and
18 wanton manner, in complying with this Act by providing any
19 report or other information to the Disciplinary Board, or
20 assisting in the investigation or preparation of such
21 information, or by participating in proceedings of the
22 Disciplinary Board, or by serving as a member of the
23 Disciplinary Board, shall not, as a result of such actions,
24 be subject to criminal prosecution or civil damages.

25 (D) Indemnification. Members of the Disciplinary Board,
26 the Medical Coordinators, the Disciplinary Board's attorneys,
27 the medical investigative staff, physicians retained under
28 contract to assist and advise the medical coordinators in the
29 investigation, and authorized clerical staff shall be
30 indemnified by the State for any actions occurring within the
31 scope of services on the Disciplinary Board, done in good
32 faith and not wilful and wanton in nature. The Attorney
33 General shall defend all such actions unless he or she
34 determines either that there would be a conflict of interest

1 in such representation or that the actions complained of were
2 not in good faith or were wilful and wanton.

3 Should the Attorney General decline representation, the
4 member shall have the right to employ counsel of his or her
5 choice, whose fees shall be provided by the State, after
6 approval by the Attorney General, unless there is a
7 determination by a court that the member's actions were not
8 in good faith or were wilful and wanton.

9 The member must notify the Attorney General within 7 days
10 of receipt of notice of the initiation of any action
11 involving services of the Disciplinary Board. Failure to so
12 notify the Attorney General shall constitute an absolute
13 waiver of the right to a defense and indemnification.

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

17 (E) Deliberations of Disciplinary Board. Upon the
18 receipt of any report called for by this Act, other than
19 those reports of impaired persons licensed under this Act
20 required pursuant to the rules of the Disciplinary Board, the
21 Disciplinary Board shall notify in writing, by certified
22 mail, the person who is the subject of the report. Such
23 notification shall be made within 30 days of receipt by the
24 Disciplinary Board of the report.

25 The notification shall include a written notice setting
26 forth the person's right to examine the report. Included in
27 such notification shall be the address at which the file is
28 maintained, the name of the custodian of the reports, and the
29 telephone number at which the custodian may be reached. The
30 person who is the subject of the report shall submit a
31 written statement responding, clarifying, adding to, or
32 proposing the amending of the report previously filed. The
33 statement shall become a permanent part of the file and must
34 be received by the Disciplinary Board no more than 60 days

1 after the date on which the person was notified by the
2 Disciplinary Board of the existence of the original report.

3 The Disciplinary Board shall review all reports received
4 by it, together with any supporting information and
5 responding statements submitted by persons who are the
6 subject of reports. The review by the Disciplinary Board
7 shall be in a timely manner but in no event, shall the
8 Disciplinary Board's initial review of the material contained
9 in each disciplinary file be less than 61 days nor more than
10 180 days after the receipt of the initial report by the
11 Disciplinary Board.

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

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

33 (F) Summary reports. The Disciplinary Board shall
34 prepare, on a timely basis, but in no event less than one

1 every other month, a summary report of final actions taken
2 upon disciplinary files maintained by the Disciplinary Board.
3 The summary reports shall be sent by the Disciplinary Board
4 to every health care facility licensed by the Illinois
5 Department of Public Health, every professional association
6 and society of persons licensed under this Act functioning on
7 a statewide basis in this State, the American Medical
8 Association, the American Osteopathic Association, the
9 American Chiropractic Association, all insurers providing
10 professional liability insurance to persons licensed under
11 this Act in the State of Illinois, the Federation of State
12 Medical Licensing Boards, and the Illinois Pharmacists
13 Association.

14 (G) Any violation of this Section shall be a Class A
15 misdemeanor.

16 (H) If any such person violates the provisions of this
17 Section an action may be brought in the name of the People of
18 the State of Illinois, through the Attorney General of the
19 State of Illinois, for an order enjoining such violation or
20 for an order enforcing compliance with this Section. Upon
21 filing of a verified petition in such court, the court may
22 issue a temporary restraining order without notice or bond
23 and may preliminarily or permanently enjoin such violation,
24 and if it is established that such person has violated or is
25 violating the injunction, the court may punish the offender
26 for contempt of court. Proceedings under this paragraph
27 shall be in addition to, and not in lieu of, all other
28 remedies and penalties provided for by this Section.

29 (Source: P.A. 89-18, eff. 6-1-95; 89-702, eff. 7-1-97;
30 90-699, eff. 1-1-99.)

31 (225 ILCS 60/23.1 new)

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

33 Sec. 23.1. Public disclosure of disciplinary records.

1 (a) The Disciplinary Board shall collect all of the
2 following information to create individual profiles on
3 licensees, in a format created by the Disciplinary Board that
4 shall be available for dissemination to the public:

5 (1) A description of any criminal convictions for
6 felonies and serious misdemeanors as determined by the
7 Disciplinary Board, within the most recent 10 years. For
8 the purposes of this item, a person shall be deemed to be
9 convicted of a crime if he or she pled guilty or if he or
10 she was found or adjudged guilty by a court of competent
11 jurisdiction.

12 (2) A description of any charges to which a
13 physician pleads nolo contendere or where a disposition
14 of supervision is made by a court of competent
15 jurisdiction, within the most recent 10 years.

16 (3) A description of any final disciplinary actions
17 taken by the Disciplinary Board within the most recent 10
18 years.

19 (4) A description of any final disciplinary actions
20 taken by licensing boards in other states within the most
21 recent 10 years.

22 (5) A description of revocation or involuntary
23 restriction of hospital privileges for reasons related to
24 competence or character that have been taken by the
25 hospital's governing body or any other official of the
26 hospital after procedural due process has been afforded,
27 the resignation from or nonrenewal of medical staff
28 membership, or the restriction of privileges at a
29 hospital taken in lieu of or in settlement of a pending
30 disciplinary case related to competence or character in
31 that hospital. Only cases that have occurred within the
32 most recent 10 years shall be disclosed by the
33 Disciplinary Board to the public.

34 (6) All medical malpractice court judgments,

1 medical malpractice arbitration awards, and settlements
2 of medical malpractice claims in which a payment is made
3 to a complaining party, within the most recent 10 years.
4 Dispositions of paid claims shall be reported in a
5 minimum of 3 graduated categories indicating the level of
6 significance of the award or settlement. Information
7 concerning paid medical malpractice claims shall be put
8 in context by comparing an individual licensee's medical
9 malpractice judgment and arbitration awards and
10 settlements to the experience of other licensees within
11 the same specialty. Information concerning settlements
12 shall be accompanied by the following statement:
13 "Settlement of a claim may occur for a variety of reasons
14 which do not necessarily reflect negatively on the
15 professional competence or conduct of the physician. A
16 payment in settlement of a medical malpractice action or
17 claim should not be construed as creating a presumption
18 that medical malpractice has occurred." Nothing in this
19 Section shall be construed to limit or prevent the
20 Disciplinary Board from providing further explanatory
21 information regarding the significance of categories in
22 which settlements are reported.

23 Pending malpractice claims shall not be disclosed by
24 the Disciplinary Board to the public. Nothing in this
25 Section shall be construed to prevent the Disciplinary
26 Board from investigating and disciplining a licensee on
27 the basis of medical malpractice claims that are pending.

28 (7) Names of medical schools and dates of
29 graduation.

30 The Disciplinary Board shall provide each licensee with a
31 copy of his or her profile prior to release to the public. A
32 licensee shall be provided a reasonable time to correct
33 factual inaccuracies that appear in his or her profile.

34 (a-5) A licensee may elect to include in his or her

1 profile the following information that shall be available for
2 dissemination to the public:

3 (1) specialty board certification;

4 (2) number of years in practice;

5 (3) names of the hospitals where the licensee has
6 privileges;

7 (4) appointments to medical school faculties and
8 indication as to whether a licensee has had a
9 responsibility for graduate medical education within the
10 most recent 10 years;

11 (5) publications in peer-reviewed medical
12 literature within the most recent 10 years;

13 (6) professional or community service activities
14 and awards;

15 (7) the location of the licensee's primary practice
16 setting;

17 (8) the identification of any translating services
18 that may be available at the licensee's primary practice
19 location; and

20 (9) an indication of whether the licensee
21 participates in the Medicaid program.

22 (b) The Department shall maintain a toll free telephone
23 line for responding to requests for information about the
24 disciplinary records of physicians in Illinois.

25 (c) When collecting information or compiling reports
26 intended to compare physicians, the Disciplinary Board shall
27 require that:

28 (1) physicians shall be meaningfully involved in
29 the development of all aspects of the profile
30 methodology, including collection methods, formatting,
31 and methods and means for release and dissemination;

32 (2) the entire methodology for collecting and
33 analyzing the data shall be disclosed to all relevant
34 physician organizations and to all physicians under

1 review;

2 (3) data collection and analytical methodologies
3 shall be used that meet accepted standards of validity
4 and reliability;

5 (4) the limitations of the data sources and
6 analytic methodologies used to develop physician profiles
7 shall be clearly identified and acknowledged, including
8 but not limited to the appropriate and inappropriate uses
9 of the data;

10 (5) to the greatest extent possible, physician
11 profiling initiatives shall use standard-based norms
12 derived from widely accepted, provider-developed practice
13 guidelines;

14 (6) provider profiles and other information that
15 have been compiled regarding physician performance shall
16 be shared with physicians under review prior to
17 dissemination provided that an opportunity for
18 corrections and additions of helpful explanatory comments
19 shall be afforded before publication, and provided
20 further that the profiles shall include only data that
21 reflect care under the control of the physician for whom
22 the profile is prepared;

23 (7) comparisons among physician profiles shall
24 adjust for patient case mix and other relevant risk
25 factors and control for provider peer groups, when
26 appropriate;

27 (8) effective safeguards to protect against the
28 unauthorized use or disclosure of physician profiles
29 shall be developed and implemented;

30 (9) effective safeguards to protect against the
31 dissemination of inconsistent, incomplete, invalid,
32 inaccurate, or subjective profile data shall be developed
33 and implemented;

34 (10) the quality and accuracy of physician

1 profiles, data sources, and methodologies shall be
2 evaluated regularly; and

3 (11) only the most basic identifying information
4 from mandatory reports may be used, and details about a
5 patient or personal details about a physician not already
6 a matter of public record through another source must not
7 be released.

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