

AN ACT to amend the Hospital Licensing Act.

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

Section 5. The Hospital Licensing Act is amended by
changing Section 6.17 as follows:

(210 ILCS 85/6.17)

Sec. 6.17. Protection of and confidential access to
medical records and information.

(a) Every hospital licensed under this Act shall develop
a medical record for each of its patients as required by the
Department by rule.

(b) All information regarding a hospital patient
gathered by the hospital's medical staff and its agents and
employees shall be the property and responsibility of the
hospital and must be protected from inappropriate disclosure
as provided in this Section.

(c) Every hospital shall preserve its medical records in
a format and for a duration established by hospital policy
and for not less than 10 years, provided that if the hospital
has been notified in writing by an attorney before the
expiration of the 10 year retention period that there is
litigation pending in court involving the record of a
particular patient as possible evidence and that the patient
is his client or is the person who has instituted such
litigation against his client, then the hospital shall retain
the record of that patient until notified in writing by the
plaintiff's attorney, with the approval of the defendant's
attorney of record, that the case in court involving such
record has been concluded or for a period of 12 years from
the date that the record was produced, whichever occurs first
in time.

(d) No member of a hospital's medical staff and no agent or employee of a hospital shall disclose the nature or details of services provided to patients, except that the information may be disclosed to the patient, persons authorized by the patient, the party making treatment decisions, if the patient is incapable of making decisions regarding the health services provided, those parties directly involved with providing treatment to the patient or processing the payment for that treatment, those parties responsible for peer review, utilization review or, quality assurance, risk management, or defense of claims brought against the hospital arising out of the care, and those parties required to be notified under the Abused and Neglected Child Reporting Act, the Illinois Sexually Transmissible Disease Control Act, or where otherwise authorized or required by law.

(e) The hospital's medical staff members and the hospital's agents and employees may communicate, at any time and in any fashion, with legal counsel for the hospital concerning the patient medical record privacy and retention requirements of this Section and any care or treatment they provided or assisted in providing to any patient within the scope of their employment or affiliation with the hospital.

(e-5) Notwithstanding subsections (d) and (e), for actions filed on or after January 1, 2004, after a complaint for healing art malpractice is served upon the hospital or upon its agents or employees, members of the hospital's medical staff who are not actual or alleged agents, employees, or apparent agents of the hospital may not communicate with legal counsel for the hospital or with risk management of the hospital concerning the claim alleged in the complaint for healing art malpractice against the hospital except with the patient's consent or in discovery authorized by the Code of Civil Procedure or the Supreme

Court rules. For the purposes of this subsection (e-5), "hospital" includes a hospital affiliate as defined in subsection (b) of Section 10.8 of this Act.

(f) Each hospital licensed under this Act shall provide its federally designated organ procurement agency and any tissue bank with which it has an agreement with access to the medical records of deceased patients for the following purposes:

- (1) estimating the hospital's organ and tissue donation potential;
- (2) identifying the educational needs of the hospital with respect to organ and tissue donation; and
- (3) identifying the number of organ and tissue donations and referrals to potential organ and tissue donors.

(g) All hospital and patient information, interviews, reports, statements, memoranda, and other data obtained or created by a tissue bank or federally designated organ procurement agency from the medical records review described in subsection (f) shall be privileged, strictly confidential, and used only for the purposes put forth in subsection (f) of this Section and shall not be admissible as evidence nor discoverable in an action of any kind in court or before a tribunal, board, agency, or person.

(h) Any person who, in good faith, acts in accordance with the terms of this Section shall not be subject to any type of civil or criminal liability or discipline for unprofessional conduct for those actions under any professional licensing statute.

(i) Any individual who wilfully or wantonly discloses hospital or medical record information in violation of this Section is guilty of a Class A misdemeanor. As used in this subsection, "wilfully or wantonly" means a course of action that shows an actual or deliberate intention to cause harm or

that, if not intentional, shows an utter indifference to or conscious disregard for the safety of others or their property.

(j) The changes to this Section made by this amendatory Act of the 93rd General Assembly apply to any action filed on or after January 1, 2004.

(Source: P.A. 91-526, eff. 1-1-00.)

Section 99. Effective date. This Act takes effect on January 1, 2004.